



# CASC

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# BULLETIN

THE CHARTERED ACCOUNTANTS  
STUDY CIRCLE

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## INDEX

Subject	Author	Page No.
Recent Judgments in VAT CST GST	CA. V.V. Sampathkumar	6
GST - Advance Rulings Case Laws - GST	CA. Vijay Anand	12
Tax Transparency: End of Swiss Banking Secrecy Era!!	Mr. Sudarshan Rangan	26
Annual Return - Features and Challenges	CA. Debasis Nayak	29
Powers of NCLT and NCLAT	Mr. N. Ramanathan	32
Excel Tips		39

## MEETINGS

Date	Time	Speaker	Topic
11.10.2018 Thursday	06.30 p.m.	CA. Santosh Mogalapalli S N M	Reporting of Fraud Under Companies Act, 2013
24.10.2018 Wednesday	06.30 p.m.	CA. D. Chaarulatha	Revised Accounting Standards - Impact Analysis

Preceded with High Tea Half an hour before the scheduled time of meeting.

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## EDITORIAL

My dear professional Colleagues,

### Part 1

It is a fact that every year, July and September repeats itself and we as professionals, in the company of our supporting workforce, undergo stress and strain every year, without fail. We also look forward, in anticipation, to Whatsapp/Email messages from the Council Members, Contestants, Office bearers for that message "The Government has today extended the deadline..." and then breathe a sigh of relief!

All of us, from time to time, have procrastinated both professional and personal tasks or projects. Procrastination is the intentional and habitual postponement of a task, in favor of a less-important one. Procrastination hurts our ability to stay proactive, efficient, and productive. And yet, far too many of us are guilty of procrastinating on a fairly regular basis.

The most common excuses we tell ourselves while procrastinating include:

- It's not due yet
- I work better under pressure
- The task is boring
- The task is tedious
- I do not feel motivated to do it right now
- It's too late

Like any habit, overcoming procrastination is possible. It does,

however, take some work and commitment to replace this habit with healthier habits and actions. To overcome procrastination, it is critical that we figure out what is causing us to delay the task. Look back over the list of excuses above and identify which one apply to us personally. Once we are able to pinpoint the cause, it is easier to generate a solution.

Procrastination is linked to a range of stress-related health problems, including headaches, digestive issues, colds and flus, and insomnia, plus those who do it often self-report poor health. A new study has found that people who are prone to procrastination have a heightened risk of cardiovascular disease and high blood pressure, suggesting that intervention and better awareness could minimise the effects.

Quality of an individual's life is very important. It is a highly subjective measure of happiness. It is a concept that includes both subjective evaluations of both positive and negative aspects of life.

Factors that play a role in quality of life vary according to personal preferences, but they often include financial security, job satisfaction, family life, health and safety. And stress due to procrastination, is definitely not the one that will contribute towards improving the quality of life.

My dear colleagues in profession "Every day spent procrastinating is another day spent worrying about that thing. Do it now, and move on with your life!"

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## Part 2

In 2006 the amended Chartered Accountants Act came into force w.e.f. 17.11.2006 and it allowed auditors firms to accept assignments that were lower than the previous year's fee (undercutting).

The said amendments were made with a clear intention to give an open playground to Big Four of PwC, Deloitte, EY and KPMG, to win big accounts by bidding lower fees, which ultimately managed to capture a large market share. The fact is that Big 4 firms are having 85% of the fee of BSE 500, PE-invested companies plus large private companies.

Also, several auditing firms have announced their resignations from the prominent companies. So far in the year 2018, about 40 firms have resigned mid-term, compared with seven auditor resignations in 2017.

The current law permitting unrestricted undercutting of the fee has pressurized several auditing firms to **offer significant discounts** from existing price levels to grow market share, especially during the mandated rotation process under The Companies Act 2013.

Selection of auditors based on pricing is detrimental to the profession and companies need to re-evaluate their audit firm selection process with the focus on quality of the services and not the price.

Now in July 2017, the Institute of Chartered Accountants of India is contemplating conveying back the regulation that prohibits undercutting of

fees by audit firms and returning to the earlier ethical rule when firms weren't allowed to undercut statutory audit fees and to restore the quality of audits.

Now on to the two major questions that need to be reflected upon from the above said development – One is on the ETHICS to be followed by the professionals in letter and spirit and the other is on the REGULATORY body swaying from its principles established in 1949 to switchover in 2006 and once again rollback in 2018 to the decades old time-tested ethical rule.

### Appeal

The 20<sup>th</sup> Annual Residential Conference is scheduled from 23<sup>rd</sup> to 27<sup>th</sup> January 2019, at Sri Lanka, the details of which has been already circulated to the members through mail. For the first time CASC is going to conduct a conference outside India. Members are requested to enroll themselves at the earliest and enable us to make the arrangements smoothly.

Members are requested to attend the programs conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent by hard copy to the office of the CASC or emailed to admin@casconline.org or any of the Members on the Management Committee.

For and on behalf of Editorial Board

**CA. P. Ramasamy**

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2. Earlier issues of the bulletin are also available on the website in the "News" column.

The soft copy of this bulletin will be hosted on the website shortly.

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## RECENT JUDGMENTS IN VAT CST GST

### Books and Accounts:

The assessment proceeding is an outcome of delay and discussion between the assessee and the Assessing Officer. This is so because, the Assessing Officer has to correctly assess the tax and collect the same and anything over and above the authorised calculation would be illegal. Therefore, the respondents could have called for the books of accounts and not proceeded merely based on the Income Tax returns filed by the petitioner. M/s. **Chennai RAS Constructions Pvt Ltd., Vs. The Assistant Commissioner (CT) MMDA Colony Assessment Circle, W.P.Nos.15490 to 15498 of 2017 DATED :24.01.2018**



**CA. V.V. SAMPATHKUMAR**

dealer and In view of the judgment of the Supreme Court in Devendran and Company case (1996) 103 STC 95, the writ petition will stand allowed. M/s. **Peeyes Power Engineering Works, Vs. The Assistant commissioner (CT) FAC, Harbour II Assessment Circle. Writ Petition No.15587 of 2013 Dated : 11.01.2018**

### Compounding tax option:

The option exercised to pay the compounding tax for an assessment year is final for the relevant assessment year. The question of revising the compounding order does not arise especially when a dealer is exercising option in payment of rates in compound rate and the petitioner was also made to pay tax at 4% on the entire contract value. Section 16 of the TNGST Act is not intended to withdraw the said option exercised by the petitioner

### Natural Justice:

The petitioner who is a registered dealer on the file of the first respondent. The primary ground on which the petitioner has challenged the impugned assessment order, is on the ground that it is in violation of principles of natural justice. Since the petitioner's objection/reply to the notice dated 28.02.2012 though filed on 14.03.2013 was received by the second respondent on instructions of the first respondent, was not considered by the

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first respondent while passing the impugned assessment order. Though such a contention has been specifically raised by the petitioner in the affidavit filed in support of the writ petition as well as in the affidavit filed in support of the implead petition, no counter or objection has been filed either by the first respondent or the second respondent. For the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration, who shall furnish notice to the petitioner, afford an opportunity of not less than fifteen days to file their objections and on receipt of the objections afford an opportunity of personal hearing to the authorized representative of the petitioner and re-do the assessment in accordance with law.

**M/s. Classic Welding Products (P) Limited Vs. 1 AC (CT), Hosur (South).**

**2 Usha Rani, The Superintendent Of the AC (CT) Hosur (South).**

**W.P.No.16118 of 2013 DATED: 24.01.2018**

#### **Opportunity:**

The petitioner, which is a Sick Industrial Company. The respondent issued a notice, dated 21.03.2013, stating that for non-payment of tax, notice for recovery was issued to the petitioner's bankers as well as the petitioner on 10.03.2012, and on

receipt of the notice, the petitioner stated that their Factory was damaged due to Thane Cyclone during the month of December 2011, and the damages are relating to the building, machinery and finished goods, and the estimated damages due to cyclone is about Rs.7.68 crores. Further, it was stated in the notice, dated 21.03.2013, that the petitioner have not furnished the particulars of damage, in detail, and in the absence of separate details of damages, the admissible claim of input tax credit is not capable for verification. Therefore, it is proposed to reverse the claim of input tax credit on the entire amount of Rs.7.68 crore and notice dated 21.02.2013 was issued. On receipt of the notice, the petitioner filed a letter addressed to M/s. National Insurance Ltd., Chennai, in which, particulars of estimated damages on account of cyclone "Thane" were made known to the respondent. It appears that the petitioner did not effectively participate in the assessment proceedings, but, merely sent a letter, stating that they have availed input tax credit of Rs.2,78,831.00 only and requested not to demand anything from the petitioner. The respondent could have issued a notice of personal hearing to the petitioner, and called upon the petitioner to produce books to ascertain as to what would be

the eligible input tax credit. However, without doing so, the respondent completed the assessment and passed the impugned order, which has been challenged in this Writ Petition, and stayed by the Court and the matter is pending since 2013. The petitioner has to be blamed for not having effectively participated in the assessment proceedings and producing details and documents, relating to the transaction. Further, considering the fact that the petitioner was declared as Sick Industrial Undertaking, and a Scheme for Rehabilitation appears to be in vogue, this Court is inclined to give one more opportunity to the petitioner/assessee to appear before the Assessing Officer and place all materials before him for reconsideration.

**M/s.Neycr India Limited,  
Vs. The Assistant Commissioner (CT),  
Cuddalore Taluk Assistant Circle  
Writ Petition No.16872 of 2013 Dated:  
23.01.2018**

#### **Application for re-opening assessment:**

Considering the limited scope of the writ petition and in the light of the statutory provisions as contained under Section 22(6)(a) of the TNVAT, the writ petitions themselves are taken up for final disposal. Petitioner, a registered dealer, is running a small scale industry under the name and

style of Krishna Engineering, is aggrieved by the impugned assessment orders for the years 2013-14, 2014-15, 2015-16 dated 26.09.2016. The petitioner's case is that no pre-revision notice was served on the petitioner. Though in the impugned assessment orders, there is a reference to the notice dated 06.09.2016. Further, the impugned assessments are based on the details culled out from the department website, alleging purchase suppression. The impugned assessments are all based on judgments assessments under Section 22(4) of the TNVAT Act and it would be well open to the petitioner/dealer to approach the Assessing Officer to make a fresh assessment in terms of Section 22(6)(a) of the TNVAT Act. However, there is a proviso under Sub Section 22(6)(1), which states that no such application shall be entertained under the said Sub Section unless it is accompanied by satisfactory proof on the payment of tax admitted by the applicant to be due or any such instalment thereof as might have become possible, as the case may be. The petitioner has not filed the returns. Therefore, if they seek to approach the Assessing Officer requesting for a fresh assessment, then they have to file their return along with admitted tax and then explain to the Assessing Officer as to why they did not file the returns in time and

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what are the reasons, which are beyond their control. Considering the facts and circumstances of the case and the statutory provisions and also noting that though the impugned assessment orders were passed on 26.09.2016, they have continued to remain as paper orders and the Department has not been able to recover any of the tax and penalty as quantified in the impugned assessment orders. Therefore, this Court is of the view that an opportunity to be granted to the petitioner to go before the Assessing Officer, but however, such liberty goes with a condition of paying 15% of the disputed tax. **M/s.Sri Krishna Engineers ,Vs. DCTO, Cuddalore Taluk Assessment Circle, Cuddalore. Writ Petition Nos.1778 to 1780 of 2018**

**DATED: 01.02.2018**

#### **Compounding rate of tax:**

As per the amended provisions of section 3(4) the turnover in excess of the prescribed limit alone is taxable at regular and not the turnover up to Rs 50 lakhs. Stating so, the order levying tax at regular rates, based on the report of the enforcement wing officials, on the entire turnover, was set aside by the Court  
**Tvl.Bawa Medicals,Vs The Commercial Tax Officer, Omalur Assessment Circle, Omalur. Writ Petition Nos.19262 of 2017**  
**Dated : 09.1.2018**

#### **Notice:**

The petitioner, who is a registered dealer filed the present Writ Petitions, challenging the notices issued by the respondent, dated 11.06.2013, for the assessment years 2010-11 and 2011-12 respectively, on the ground that the respondent has pre-decided the matter, as there is direction to the petitioner to remit the amount along with penalty in the impugned notices. The Court observed and held that the demand made in the impugned notices appear to be an inadvertent error. In the last para of the impugned notices, the respondent has given time to the petitioner to file their objections along with relevant details within 15 days from the date of receipt of the notices. Therefore, it cannot be stated that the respondent has pre-decided or pre-concluded the matter and the impugned notices shall be construed only as proposal and not as a demand. With this clarification, the petitioner is directed to submit their objections to the impugned notices within a period of thirty days from the date of receipt of a copy of this order, after which, the respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner and complete the assessment in accordance with law.

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**M/s. Angels Cosmetics & Novelties,  
Vs.The Assistant Commissioner (CT)  
(Main) Amindakarai Assessment Circle,  
Writ Petition Nos.19269 & 19270 of 2013**

**Dated: 23.01.2018**

**Assessment:**

The petitioner's contends that, for the first time, in the impugned order, the respondent states that the petitioner has obtained C forms from the Office of the respondent, it is evident that the petitioner has purchased the goods from other States. The learned counsel appearing for the petitioner has invited the attention of this Court to the four unused C forms, i) 666382, 666383, 666384 and 666385, and the respondent, while issuing the revision notice, dated 16.07.2012, did not make such observation. If he has done so, the petitioner would have appeared before the Authority and surrendered the four unused C forms. Observing that the revision notice does not contain such allegation, and for the first time, in the impugned order of assessment, the same has been made, the Court held that the impugned order is held to be in violation of principles of natural justice.

**Sri Siva Timber Depot Vs The Commercial**

**Tax Officer, Mannargudi Writ Petition  
No.19384 of 2013 Dated : 23.01.2018**

**Refund:**

After the issuance of form P refund order the excess of amount of Input tax credit is refundable if the same is not carried forward to the next year. If there is any delay interest at 0.5% id also due and payable. In this matter when there is delay the Court directed that the authorised representative of the petitioner to appear before the respondent along with a representation and a copy of the order passed by this court and seek for the refund of the excess amount paid by them. On receipt of the same, the respondent is directed to refund the excess amount to the petitioner, within a period of one(1) week from the date on which the authorised representative of the petitioner appears before the respondent along with the representation. **Mohata Construction Company Vs. The Assistant Commissioner (CT) Alandur Assessment Circle Writ Petition Nos.1975 to 1977 of 2018 DATED: 02.02.2018**

*(The author is a Chennai based Chartered Accountant. He can be reached at vvsampat@yahoo.com)*

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## GST - ADVANCE RULINGS CASE LAWS - GST

### 1. GST - ADVANCE RULING - EXAM SUPPORT SERVICES - COMPOSITE SUPPLY WITH PRINCIPAL SUPPLY BEING CONDUCTING OF EXAMS WHICH IS NOT EXEMPT - TAXABLE

In RE: BC Examinations and English Services India Pvt. Ltd. 2018 (15) GSTL 107 (A.A.R.-GST), the applicant is a subsidiary of the British Council which is the U.K.'s International Organization for cultural relations and educational opportunities. The International English Language Testing System (hereinafter referred to as 'IELTS') is a highly regarded English Language proficiency test developed, managed and owned by the British Council, U.K. (BCUK).

In relation to conducting of IELTS & other examinations for the candidates based in India, BCUK requires local administrative support from the applicant to organize, administer and conduct these examinations at various test centers in India for which they propose to enter into an agreement with the applicant wherein the applicant has agreed to provide 'Exam Support Services' & Student Facilitation Services to BCUK in



**CA. VIJAY ANAND**

respect of the aforesaid exams for which BCUK will pay the Exam Support Services calculated at cost plus mark up determined in accordance with relevant transfer pricing regulations. Such cost will include costs of test centres & dedicated staff, directly recruited by the applicant & an apportionment of the attributable indirect costs incurred.

The applicant has filed an application seeking advance ruling as to the following:-

1. Whether all the activities involved in the exam support services constitute a mixed supply or a composite supply?
2. What will be rate of GST applicable on these exam support services?
3. What is the place of supply of these exam support services rendered by the Applicant to BCUK?

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The authority observed as under:

1. A perusal of the copy of proposed agreement submitted on record, reveals that Exam Support Services cover the following:-
  - i. To source and manage the running of suitable test centre venues in India for the examination;
  - ii. To receive registration information from BCUK and its registration agents for IELTS;
  - iii. To maintain supplies of Test Materials for administration and comply with security requirement set by BCUK and relevant external exam boards in relation to logging in and out. To distribute test materials to candidates on the test day and collect them after best administration for processing;
  - iv. To manage test administration and logistics for test days. including scheduling of the Applicant's staff and liaison with the best centres;
  - v. To provide back office support in relation to financial controls and accounting processes in respect of examinations held at test centres managed by the Applicant;
  - vi. To print IELTS result in paper form from the BCUK's global system and distribute certificates on BCUK's behalf to successful candidates in India;
  - vii. To recruit, train and monitor invigilators. examiners and test paper markers for the IELTS tests, in accordance with the standards set by BCUK and their own administrative and management staff,
  - viii. To periodically inspect the quality of test centres and provide documented evidence on their performance.
2. The above services are for conducting the IELTS exams and are so bundled with each other that these cannot have an independent existence and therefore these are composite supply of services with the principal supply being the service of conducting exams which is classifiable under service code 999299 group 99929 and heading 9992 as education support service and taxable @ of 18% vide sr. no. 30 of Notification no.11/2017 Central Tax (Rate) dated 28.06.2017 and corresponding State notification.

Hence, the authority held that the activities of exam support service constitute a composite supply with the principal supply being conducting IELTS exam that is covered under Service Code

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999299 Group 99929 and Heading 9992 as education support service and taxable @ 18% vide Sr.No.30 of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 and corresponding State Notification.

## **2. GST - ADVANCE RULING - ISSUANCE FEE RETAINED VIDE FORFEITING REWARD/PAY BACK POINTS TAXABLE**

In RE: Loyalty Solutions And Research P. Ltd. 2018 (15) GSTL 123 (A.A.R.-GST), the applicant owns and operates a reward point based loyalty programme that is integrated towards its partners and their customers. Under this programme, the applicant is providing certain services to its clients/partner, such as M/s Nice Chemicals Pvt. Ltd. (NICE). The applicant is managing the customer loyalty programme for its clients/partners such as NICE, which is based on issuance of reward points, also known as payback points by the applicant to end customers. These reward/payment points have value of 0.25 INR each. For managing this loyalty programme, the applicant is getting Management fee and/or service charges fee. The applicant are paying GST on the management fee as well service charges charged by them from NICE.

In pursuance to these reward points management, "partner" transfers amount equivalent to 0.25 of INR, per reward point, as issuance charges to LSRPL. Whenever any purchase is made by end customer, by using/redeeming rewards points, the applicant transfers amount equivalent to 0.25 INR per reward point used to the concerned store and the concerned store gives discounts the payment to be received from end customer to this extent. In case a customer does not or is not able to redeem the rewards points within 36 months from the date of issue, the rewards points are forfeited by the applicant and the amount equivalent to 0.25 INR per reward point is being retained by the applicant.

An application was filed seeking advance ruling as to the following:-

- a) Whether the value of points forfeited of the applicant on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration for 'actionable claim' other than lottery, gambling or betting and therefore would not qualify as supply of either goods or services in

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terms of Section 7 r.w. Schedule III of the Central Goods and Services Act, 2017 and therefore would be outside the scope and levy of GST.

- b) Whether the value of points forfeited of the applicant on which money has been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period can be treated as "supply" of any other goods or services and consequently be chargeable to GST?

The authority observed as under:

1. Rewards points earned by the end customers for purchase of products of "partners" to loyalty programme are indeed "actionable claim". However, the question arises that, when these reward/payback points are not redeemed by the customer for the reasons that their validity period has expired, do such reward points continue to be actionable claim? After the expiry of validity date, these reward/payback points can no longer be redeemed/encashed by the end customer and the end customer loses any right over them. Also, as per the definition of "actionable claim", given under Section 3 of the Transfer of

Property Act, no legal action can be taken by the end customer in connection with enforcing their right over redeeming these reward/payment points. This implies that after expiry of their validity period, these reward/payment points are not "actionable claim".

2. Consequently, the action of forfeiture of rewards/payment who validity period has lapsed, does not mean that actionable claim been transferred, as after expiry of validity period, these reward/payback points are no longer covered under the definition of "actionable claim". Thus, the provisions of Schedule III to CGST Act, 2017 also do not come into picture, under such circumstances.
3. In view of above, the money equivalent to these reward/payback points, i.e. issuance fee given by partners and lying with the applicant, which is retained by the applicant in the name of forfeiting reward/payback points is nothing but revenue of the applicant coming from the respective "partners" which has been earned by them owing to the activities of their providing services to the said "partners" through the loyalty programmes run by the applicant.

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4. Even from the clauses of agreement between the applicant and the "partners", it is evident money equivalent of reward points expired/not redeemed by customers/forfeited after expiry, would be retained by the applicant. Thus, the agreement itself provides for revenue to the applicant, in shape of retaining the issuance fee. In the event of the forfeiture, the Issuance fee received by the applicant from the partner in relation to such lapsed payment points, is retained by the applicant.
  5. Thus, the agreement between the applicant and the partner specifically provides that it is actually the issuance fee that is being retained by the applicant in the event of non-redemption of loyalty points by customers and such an amount is liable to be considered as consideration for supply of services by the applicant to its partners in the normal course of business and becomes part of remuneration for the applicant for providing services.
  6. The applicant is already charging service/management fee from the partner, on which the applicant is paying GST. Thus, the retention of amounts received from partners as

issuance fee by the applicant and retained by the applicant on account of non-redeeming of reward/payment points by end-customer would be liable to be added to the value of services being provided by the applicant to their partners.

Hence, the authority observed as under:

- a. The value of points forfeited of the applicant on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration received in lieu of services being provided by the applicant to its clients and thus would be outside the scope of being considered as 'actionable claim' other than lottery, gambling or betting and therefore would qualify as supply of services in terms of Section 7 of the Central Goods and Services Act, 2017 (CGST Act).
- b. The value of points forfeited of the applicant on which money has been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period is to be treated as "supply" of services and consequently be chargeable to GST.

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### **3. GST - ADVANCE RULING - FABRICATION OF BUS BODIES MOUNTING/FITTING ON CHASIS SUPPLIED BY CUSTOMERS - COMPOSITE SUPPLY WITH PRINCIPAL SUPPLY BEING SUPPLY OF BUS-BODY**

In RE: Paras Motor Industries 2018 (15) GSTL 139 (A.A.R.-GST), the applicant is engaged in the business of fabrication & fitting out bus bodies on the chassis supplied by its customers. The customers are mainly roadways corporations of various states. The bus bodies are constructed & fitted under a written contract as per the specifications provided by the customers. An application was filed seeking advance ruling as to whether the activity of fabrication and fitting and mounting of bus bodies on the chassis supplied by the other party is a composite supply of goods or a supply of the service of job work. The authority observed as under:-

1. In the instant case, it is only the chassis which is supplied by the customers of the applicant and in fact no treatment or process is undertaken by the applicant on the chassis itself, except fitment/mounting of bus body on the same.
2. Bus body building involves use of raw materials/inputs etc., for manufacture/ fabrication of bus body and the cost of these inputs, etc., do form the part of value which is being charged by the applicant from its customers. The customer is providing only chassis and all inputs/materials required for fabrication of bus body, has to be used by the applicant from its own account.
3. Under such situation it is the bus-body which is being fabricated and also being mounted on the chassis provided by the customer and such activity is not merely job-work but a supply of bus body and an activity of fitting/ mounting of bus body on chassis is an ancillary activity to the principal activity of supply of bus body.
4. In terms of the clarification issued by the CBEC vide Circular No.34/8/2018-GST dt.03.03.2018, the impugned activity is a composite supply with principal supply being supply of bus body.

Hence, the authority observed that the activity of fabrication and fitting and mounting of bus bodies on the chassis supplied by the other party is a composite

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supply with supply of goods, i.e., bus bodies, being principal supply (HSN Code 8707).

**4. GST- ADVANCE RULING - TRANSPORTATION CHARGES RECEIVED PURSUANT TO AN AGREEMENT IN EPC CONTRACT FOR THE CONSTRUCTION OF SOLAR PLANT -UNDER COMPOSITE SUPPLY OF WORKS CONTRACT EVEN IF THE ASSESSOR IS NOT A TRANSPORTER**

In RE: Dinesh Kumar Agrawal, 2018 (15) GSTL 404 (A.A.R.-GST), the applicant is an individual who proposed to undertake to certain products related to service contracts and composite EPC that also covers transportation of equipments for the construction of solar power plant. An application was filed seeking advance ruling in respect of the following:

Question No. 1 Whether Standalone Contract of transportation merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/ 2017-Central Tax (Rate) dated 28 June 2017?

Question No. 2 Whether composite supply of transportation and insurance merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017?

Question No. 3 Whether composite supply of 'loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at project site and in-transit insurance' merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/ 2017-Central Tax (Rate) dated 28 June 2017?

Question No. 4 Whether supply of services namely 'loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at project site and in-transit insurance' under Service Contract (under Split Contract) merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/ 2017-Central Tax (Rate) dated 28 June 2017?

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Question No. 5 Whether supply of services namely 'loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at project site and in-transit insurance' under EPC Contract merits classification under Service code 9965 and whether same is exempt under Entry No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017?

The authority observed as under:

1. The proposed activity is for "Engineering, procurement and Solar Power Plant" i.e. roof top photovoltaic (PV). The applicants submission is that he is not a goods transport agency (GTA) as he is not issuing any consignment note or the like and hence no tax is payable by virtue of Sr. No. 18 of Notification No. 12/2017 Central Tax (Rate ) dated 28/06/2017.
2. From the co-joint reading of the clauses of the agreement it can be concluded that the contract is a single contract for Engineering Procurement and construction of Solar Power plant which constitutes composite supply in the nature of Works Contract.
3. The next issue to be decided is whether this composite supplies constitute Works Contract as defined U/s 2(119) of the GST Act. The clauses in the agreement suggest that the project is the ground mounted Solar Power Plant and not exclusively the Roof Top Mounted Solar Power Plant as claimed by the applicant. Even in a case where it is Roof Top Mounted Solar Power Plant, the intent in operationalizing Solar Power Plant, on a Roof Top is to set even it up as an immovable property which involves civil work.
4. Supreme Court has, in T.T.G. Industries Ltd. v. CCE 2004 (167) ELT 501 (S.C), observed that the expression "attached to the earth" has three distinct dimensions - (a) rooted in the earth as in the case of trees and shrubs (b) imbedded in the earth as in the case of walls or buildings or (c) attached to what is imbedded for the permanent beneficial enjoyment of that to which is attached. It has been categorically observed that the attachment of the plant to the foundation at which it rests does not fall in the third category [ attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached] as for an attachment to

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fall in the third category it must be for permanent beneficial enjoyment of that to which the plant is attached.

5. Hence, the intent of the person at the time of erecting and operationalizing a structure/plant is to be seen and if the intent is to establish it as an immovable property at the time of setting it up, then it is to be treated as an immovable property even if later on due some exigency it is required to be dismantled or removed.

Hence, the authority held that the transportation charges received by the applicant are liable to GST as a works contract as per provisions of section 2(119) of the GST Act.

- 5. GST - APPELLATE AUTHORITY FOR ADVANCE RULING - PROMOTION OF FOREIGN UNIVERSITY IN INDIA ON CONSIDERATION BASED ON PERCENTAGE OF FEE - INTERMEDIARY - NOT TO BE TREATED AS EXPORT OF SERVICES**

In RE: Global Reach Education Services Pvt. Ltd. 2018 (15) GSTL 618 (App.A.A.R.-GST), the appellant is engaged in promoting the courses of Foreign Universities in India among

prospective students& had approached the West Bengal Authority for Advance Ruling for deciding the determination of liability to pay goods and services tax on Appellant's output services. The West Bengal Authority for Advance Ruling came to the finding that the applicant was an intermediary service provider and, hence, such services are not 'Export of Services' and are taxable under the GST Act. On appeal the appellate authority observed as under:-

The appellate authority observed as under:

1. The appellant cannot have the liberty to pick and choose only some portions of the Agreement by saying that such and such clause is not being undertaken by it. The Agreement has to be considered in its entirety.
2. In the matter of M/s GoDaddy India Web Services Ltd [2016-TIOL-08-ARA-ST], the nature of agreement with GoDaddy US was not identical either in terms of service rendered or the other conditions, including payment for the services rendered.
3. Unlike the agreement of the Appellant, M/s GoDaddy India Web Services Ltd. had M/s GoDaddy US as the only customer and had several other

- 
- restrictive and stringent conditions including the fee which was fixed equal to the operating cost and a markup of 13 above such cost.
4. The appellant, in the instant case, was free to refer students to Australian Catholic University (ACU) or any other University of its choice & the fee paid to the Appellant was not tied to the promotional activities or expenses incurred to promote Courses of ACU but as a percentage of fee paid by the students who got admitted to ACU. In other words no consideration was paid in spite of incurring expenses by the appellant for promoting activities of ACU, if no student joined ACU.
5. The definition of intermediary under Rule 2(f) of the Place of Provision of Service Rules, 2012 (POPS), in relation to 'main service' is different from such definition under clause (13) of Section 2 of the Integrated Goods and Services Tax Act, 2017, consequent to which the analogy of the decision in M/s Sunrise Immigration Consultants Private Ltd. v. CCE & ST, – Appeal No. ST/ 52205/2015, dated 16.03.2018 by CESTAT, Chandigarh, cannot be imported into "intermediary", as defined under the IGST Act, 2017.
6. In this case, the appellant promotes the courses of the University, finds suitable prospective students to undertake the courses, and, in accordance with University procedures and requirements, recruits and assists in the recruitment of suitable students, and hence, the appellant is to be considered as an intermediary in terms of Section 2(13) of the IGST Act.

In view of the above discussions, the decision of the West Bengal Authority for Advance Ruling holding that same is not covered under 'Export of Services' under the GST Act, and are eligible to pay tax is found to be meritorious.

## **6. GST - APPELLATE ADVANCE RULING - UPS SUPPLY OF BATTERY - MIXED SUPPLY**

In RE: Switching Avo Electro Power Ltd. 2018 (15) GSTL 636 (App.A.A.R.-GST), the appellant supplies power solution products and is also a manufacturer of power backups and solar products, including uninterrupted power supply system (hereinafter referred to as "UPS"). The Appellant had approached the West Bengal Authority for Advance Ruling for classification of the supply of UPS

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along with the battery which held that the supply of UPS and Battery is to be considered as mixed supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price. On appeal, the appellate authority observed as under:-

1. There is no denying of the fact that an in-built battery of static converter (UPS) is part and parcel of the uninterrupted power supply system and is covered under Tariff Head 8504 and intra-State supply thereof attracts tax under GST Act as per rate applicable to goods enumerated under Schedule III of Tax-Rate Notification(s), vide serial No. 375, but the situation changes when storage battery or electric accumulator is supplied separately irrespective of whether under a single contract or a separate contract.
2. UPS serves no purpose if the battery is not supplied or removed. It cannot function as a UPS unless the battery is attached. However, what needs to be considered is whether or not these two items are "naturally bundled". The stated Illustration to Section 2(30) of the CGST Act refers to a supply where the ancillary supplies are inseparable from the principal

supply and form an integral part of the composite supply. When a UPS is supplied with built-in batteries so that supply of the battery is inseparable from supply of the UPS, it should be treated as a composite supply and as a composite machine in terms of Note 3. The UPS being the principal supply, the relevant tariff head for the composite supply will be 8504 under serial no. 375 of Schedule III in terms of Notification No. 01/2017-Central Tax (Rate) dated 28/06/2017 and the corresponding State Notification.

3. The storage battery has multiple uses and can be put to different uses and when supplied separately with static converter (UPS), it cannot be considered as a composite supply or a naturally bundled supply.

Hence, the Appellate Authority held that there was no infirmity in the ruling rendered by Authority for Advance Ruling.

## **7. GST - ADVANCE RULING - ELECTRONIC COMMERCE OPERATOR - TAXI AGGREGATION - LIABILITY TO PAY TAX ON THE AMOUNTS BILLED ON BEHALF OF TAXI OPERATORS**

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In RE: Opta Cabs Pvt. Ltd. 2018 (15) GSTL 715 (A.A.R.-GST), the applicant is an aggregator of tax and has sought advance ruling as to whether the money paid by the customer to the driver of the cab for the services of the trip is liable to GST and whether the applicant company is liable to pay GST on this amount

The authority observed as under:

1. The applicant proposes to operate a taxi aggregation service wherein he would be providing a mobile application to both the customers and the taxi operators. The taxi operators are proposed to be given a membership and monthly charges would be collected from them. For this usage of facilities, the applicant proposes to collect monthly usage charges from each of the taxi operator and undertakes to collect and pay goods and service tax on the same. The applicant proposes not to charge any commission or any other consideration other than the monthly usage charges from any of the taxi operators.
2. The applicant will not be collecting any application usage charges from the consumers of the taxi service and the consumers would be sent an invoice for the usage of the taxi service from his software application and the amount so billed shall be payable by the consumer to the taxi operator on which he proposes to have no control over the payment. The consumer would book the taxi on his application and the taxi operator would be intimated about the potential customer and on usage, he would be billed by the applicant on behalf of the taxi operator.
3. The applicant does not dispute his liability on the monthly usage charges charged on the taxi operators for using the application. The service is provided by the taxi operator and the amount is collected from the customer by him and the applicant company has no role to play other than issue of invoice on behalf of the taxi operator to the customer. The customer would log in to the application of the applicant and book the taxi.
4. A conjoint reading of section 9 (5) of Central Goods and Services Tax Act, 2017 read with Notification No.17/ 2017 - Central Tax (Rate) dated 28th June, 2017 makes it clear that the electronic commerce operator shall be liable to pay tax on the services provided by a motor cab or maxi cab or motor cycle or radio-taxi,

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by way of transportation of passengers, if such services are supplied through it and it shall be deemed that the electronic commerce operator is deemed to be supplier in such cases. The services of transportation of passengers is supplied to the consumers through the applicant and by virtue of this provision, it shall be deemed that the applicant would be deemed to be the supplier liable to pay tax in relation to the supply of such service by the taxi operator.

Hence, the authority ruled that the applicant is liable to tax on the amounts billed by him on behalf of the taxi operators for the service provided in the nature of transportation of passengers through it, in accordance with the provisions of sub-section (5) of section 9 of the CGST read with Notification No. 17/2017 - Central Tax (Rate) dated 28.06.2017.

**8. GST - ADVANCE RULING - SUPPLY BY CORPORATE OFFICE TO OTHER OFFICES OF THE SAME CORPORATE OFFICE - COVERED UNDER ENTRY 2 OF SCHEDULE - I OF THE CGST ACT**

In RE: Columbia Asia Hospitals Pvt. Ltd. 2018 (15) GSTL 722 (A.A.R.-GST), the applicant is a private limited company engaged in providing health care services categorizing them as In-patient (IP) and Out-patient (OP) services. The Company is also engaged in the supply of medicines (pharmacy) to IP and OP. It also operates Restaurant/Canteen services in its premises which is used for supplying food and other eatable items to its patients and their attendants. The applicant has its Indian Management Office (IMO) i.e. Corporate Office in Karnataka and some of the activities of for all the units' w.r.t. accounting, administration & maintenance of IT systems are carried out by employees from IMO.

An application for advance ruling was filed as to whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well shall be treated as supply as per Entry 2 of Schedule I of the CGST Act or it shall not be treated as supply of services as

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per Entry 1 of Schedule III of the CGST Act?".

The authority observed as under:

1. Entry 2 of Schedule I deals with the activities that are to be treated as supplies even if made without consideration. The applicant's office in the state of Karnataka and the units are covered under different registrations, are related persons and any supply of goods and services from IMO to the separately registered units would amount to supply of goods and services, even if made without consideration.
2. Hence any activities made between related persons made or agreed to be made without a consideration shall be covered under supply of goods or services& that these activities are not covered under any of the entries in Schedule III.
3. W.r.t. the second issue related to the activities performed by the employees at the corporate office at Karnataka in the course of or in relation to employment, the employees employed in the Corporate Office are providing services to the Corporate Office and

hence there is an employee-employer relationship only in the IMO. The other offices are distinct persons and therefore the employees in the IMO have no employer employee relationship with other offices.

4. The services provided to the corporate office by the persons employed by the corporate office are in the nature of the employee-employer relationship. Further, since the corporate office and the units are distinct persons under the Act, there is no such relationship between the employees of one distinct entity with another distinct entity, at least as per the Goods and Service Tax Acts, even if they are belonging to the same legal entity.

Hence, the authority held that the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states shall be treated as supply as per Entry 2 of Schedule I of the CGST Act.

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## TAX TRANSPARENCY: END OF SWISS BANKING SECRECY ERA!!

### A) Prologue

#### Data Theft Case

Whenever the terms banking secrecy appears, immediately one relates to Switzerland, due to its rigorous and stringent Banking Secrecy Laws. But however, in this day and age where transparency is the order of the day, one wondered how long can the banking information be kept secret especially in this digital age. Now it is certain that the banking secrecy will soon become archaic.

Recently in a landmark decision by the Federal court in Lausanne, Switzerland's highest court of appeal<sup>1</sup> has ruled its tax authorities the Federal Tax Administration (FTA) to provide administrative assistance to the Indian Government, pertaining to the exchange of information on potential tax evaders holding bank accounts in Switzerland.

It is worth recollecting that in 2008, a French-Italian whistleblower, Mr Herve Falciani who was working with the Geneva branch of HSBC bank collected evidence of potential tax fraud involving



**Mr. SUDARSHAN RANGAN  
Advocate**

more than one lakh individuals. The collected stolen data from the Bank was shared by Mr Falciani with many European nations and more specifically to the French tax authorities. It is also imperative to mention that Mr Falciani in an interview to a news channel in India had offered his help to the Indian Government to share the stolen data. However, taking the diplomatic route, India rightfully and legally approached Switzerland through the India-Switzerland Tax Treaty to share the relevant data as an Exchange of Information upon request. Switzerland however, was dodging to cooperate and thereby were not providing the relevant information on the grounds that the exchange of information will not pertain to information on stolen data.

<sup>1</sup>2C\_648/2017

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The said issue came up before the Swiss Supreme Court recently. The Moot issue before the Supreme Court was the validity of seeking administrative assistance by the Indian tax authorities to the Swiss tax authorities based on the stolen data and whether sharing of the stolen data will violate the principle of good faith as envisaged under Article 7 of the Swiss Tax Administrative Assistance Act (STAA). For better understanding, Article 7 of the STAA is as follows:

#### **"Art. 7 Non-consideration**

*The request will not be considered if:*

- a. *it constitutes a fishing expedition;*
- b. *it requests information not covered by the administrative assistance provisions of the applicable agreement; or*
- c. *it violates the principle of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law"*

#### **B) Verdict**

The Supreme Court in this landmark decision pertaining to the exchange of information related matters has held that the administrative assistance request from

the Indian Government does not constitute a violation of the principle of good faith, even if the data pertains to stolen data. Further, it also held that since there are no explicit arrangements between India and Switzerland to not use stolen data, the Supreme Court held that the Swiss FTA must provide information regarding the appellants to the Indian Government.

It is imperative to note here that the Swiss Supreme Court in an earlier ruling in 2017 had denied the French tax authorities in obtaining information from Swiss FTA on the same stolen data matter relating to Mr Falciani. The French authorities were denied information primarily due to the fact that they had provided an explicitly written undertaking that HSBC data would not be used in connection with any exchange of information requests addressed to Switzerland. Therefore, based on this undertaking the Swiss Supreme Court held that any request from French tax authorities pertaining to stolen data will not be entertained, as it will violate the principles of good faith.

In the current case relating to the Indian Government's request, since no such

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explicit undertaking was provided by the Indian Government, the Supreme Court deviated from its earlier ruling and held that the Swiss FTA must cooperate with its Indian counterpart. Further, the Supreme Court also held that the Indian Government had directly approached the Swiss Government and did not obtain the stolen information from Mr Falciani directly, which also strengthened the fact the Indian Government had acted in good faith. It's interesting to note here that the doctrine – "fruit of the poisonous tree" appears to have been ignored by the Swiss Supreme Court.

### C) Epilogue

Based on this landmark decision, India can now obtain the stolen data information from the Swiss FTA as it will not violate the principle of good faith. This decision is indeed a shot in the arm for the Indian Government especially the Indian Revenue Authorities, who have been patient and pertinent with the Switzerland Government to obtain the data. Recently in a report published by the Switzerland Banking Ombudsman, that more than INR 300 crore is lying dormant in India linked Swiss bank

accounts. This is a testimony to the Indian Revenue Authorities that Indian tax evaders are apprehensive to claim ownership to their illicit money in Switzerland fearing tax proceedings.

Further with the evolution and implementation of OECD's Common Reporting Standard under Automatic Exchange of Information and USA's Foreign Accounting Tax Compliance Act (FATCA), one can say that Transparency will be the order of the day and there will no such thing as secrecy in the digital age. However, with a hint of scepticism, must mention that the AEOI has its own fair share of challenges and loopholes.

Switzerland's erstwhile finance minister in a G20 meeting in 2009 declared that it will be the end of banking secrecy in Switzerland, however the declaration was more in words than in action, but however after a decade of developments on the exchange of information and judicial precedents, one can now declare that Banking secrecy in Switzerland will indeed be a thing of past.

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## ANNUAL RETURN - FEATURES AND CHALLENGES

The government has recently notified the form for the annual return vide Notification No 39/2018 – Central Tax, dated 4<sup>th</sup> September, 2018, by amending the existing CGST Rules to include Form GSTR- 9. This would be applicable for all assesses other than those specifically stated below. In this article, we shall discuss the form GSTR-9 along with its features and challenges expected to be faced.



**CA. DEBASIS NAYAK**

### 1. Introduction

GSTR-9 is an annual return to be filed once in a year by a registered tax payer under the GST regime. It contains details regarding the outward supplies and inward made and received during a Financial Year. It would also act as a consolidated return of all the monthly/quarterly returns filed throughout the Financial Year.

All registered persons under GST must file their annual return excluding the following persons:

- Casual Taxable persons
- Input Service Distributors
- Non-resident taxable persons
- Persons paying TDS under Sec 51 of the GST Act

### 1. Types of returns under GSTR-9

There are 4 types of returns under GSTR-9 which are as follows:

- **GSTR-9:** GSTR 9 should be filed by the regular taxpayers filing GSTR 1, GSTR 2, GSTR 3.
- **GSTR 9A:** GSTR 9A should be filed by the persons registered under composition scheme under GST.
- **GSTR 9B:** GSTR 9B should be filed by the e-commerce operators who have filed GSTR 8 during the financial year.
- **GSTR 9C:** GSTR 9C should be filed by the taxpayers whose annual turnover exceeds Rs 2 crores during the financial year. All such taxpayers are also required to get their accounts audited and file a copy of audited annual accounts and reconciliation statement of tax already paid and tax payable as per audited accounts along with GSTR 9C.

### 2. Due date of filing the returns

GSTR-9 shall be filed on or before the 31<sup>st</sup> December of the subsequent Financial Year

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### **3. Penalty for late filing**

Late fees for non-filing within due date would be INR 100 per day per Act up to a minimum of an amount calculated at 0.25% of the turnover in the state or union territory.

### **4. Parts of the GSTR-9 and details required to be provided by the tax payers**

<b>Sl No</b>	<b>Parts of GSTR-9</b>	<b>Information Required</b>
1	Part - I	Basic details of the taxpayer. This detail will be auto-populated.
2	Part - II	Details of Outward and Inward supplies declared during the financial year. This detail must be picked up by consolidating summary from all GST returns filed in previous FY.
3	Part - III	Details of ITC declared in returns filed during the FY. This will be summarized values picked up from all the GST returns filed in previous FY.
4	Part - IV	Details of tax paid as declared in returns filed during the FY.
5	Part - V	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to the date of filing of annual return of previous FY whichever is earlier. Usually, the summary of amendment or omission entries belonging to previous FY but reported in Current FY would be segregated and declared here.
6	Part - VI	Other Information comprising details of: <ul style="list-style-type: none"><li>• GST Demands and refunds</li><li>• HSN wise summary information of the quantity of goods supplied and received with its corresponding Tax details against each HSN code</li><li>• Late fees payable and paid details and</li><li>• Segregation of inward supplies received from different categories of taxpayers like Composition dealers, deemed supply and goods supplied on approval basis.</li></ul>

The above 6 parts are comprised of 19 tables.

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## 5. Key Takeaways and challenges

Majority of the information required to be filled into the above tables are based on information already provided by taxpayers at the time of filing GSTR-1 and GSTR-3B for the period July 2017 to March 2018. Therefore, certain information would get auto-populated from those returns

The total Input Tax Credit claimed by taxpayers in GSTR-3B would not be required to be bifurcated into inputs, capital goods and input services. This classification does not form part of the GSTR-3B hence would require attention of the taxpayers.

The major task involved and forming a part of GSTR-9 would be the vendor reconciliation report. This is a reconciliation between the credits claimed by the taxpayers in their GSTR-3B for the above period, with the entries appearing in their Form GSTR-2A, which is the outward supplies as declared by the supplier. This is an essential part of the GSTR-9 and would require to be carried out carefully by all taxpayers.

Inward supplies from composition dealers, deemed supply from job workers etc., are required to be reported separately. Thus one needs to be very sure of the profile of the supplier in order to correctly classify them for the purpose of Annual Return.

Input tax credit reversed and reclaimed in FY 2017-18 is required to be reported separately in GSTR-9. So far, the dealers were re-claiming credit under normal ITC. However, for the purpose of Annual Return, such re-claimed credits are to be identified and disclosed separately.

Credits taken by way of making payment under reverse charge, would require to be bifurcated into inward supplies from registered persons attracting reverse charge, and inward supplies from un-registered persons attracting reverse charge. This bifurcation was not available in GSTR-3B

It is also noted that the entries forming part of GSTR-2A of the vendors, would get auto-populated into GSTR-9. Hence taxpayers must ensure accuracy of the data appearing in their respective months' GSTR-2A and should ensure they carry out timely reconciliation.

HSN wise outward and inward supplies are to be provided in the GSTR 9. While HSN wise outward supplies will be available with the taxpayers and HSN wise inward supply is going to be challenge for all the tax payers.

Given the time line involved, it is advisable to start collate the information from now to file the return within the due date.

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**POWERS OF NCLT AND NCLAT**  
**POWERS OF NCLT UNDER COMPANIES ACT, 2013**

Mr. N. RAMANATHAN  
 (Practising Company Secretary, Chennai)

<b>Section Number</b>	<b>Description</b>	<b>Effective Date of Notification</b>	<b>Earlier exercised by</b>
Sec. 2(41) Proviso	To permit a company to follow different financial year	01.04.2014	New Matter
Sec. 7 (7)	To deregister a Company incorporated by false representation or fraudulent action	Except clause (c) and (d) - 01.06.2016  Clause (c) and (d) - 15.12.2016	New Matter
Sec. 8(9)	Winding up of Sec. 8 Companies restriction on transfer of remaining assets	15.12.2016	New Matter
Sec. 14 (1)	To conversion a public company into a private company.	01.06.2016	Central Government
Sec. 48(2)	To cancel variation of rights	15.12.2016	High Court
Sec. 55 (3)	To issue further redeemable preference shares to redeem existing shares or pay dividend thereon	01.06.2016	New Matter
Sec. 55(3) Proviso	Redemption of preference shares where consent for further issue not received	01.06.2016	New Matter
Sec. 56(4)	Prohibition on delivery of security certificates	01.04.2014	New Matter
Sec. 58 (5)	Appeal against refusal of registration of shares.	12.09.2013	High Court
Sec. 59(2)	Appeal for rectification of register of member.	12.09.2013	Company Law Board
Sec. 59(3)	Suspension of voting rights	12.09.2013	New Matter

Sec. 59(4)	Direction to company/depository to rectify register and records	12.09.2013	New Matter
Sec.61(1)(b) proviso	Consolidation and division of shares which results in change in voting percentage of shareholders	01.06.2016	Company Law Board
Sec. 62 (4)	Appeal against order of Govt. fixing terms and conditions for conversion of debentures and shares.	01.06.2016	New Matter
Sec. 66 (1)	Reduction of share capital	15.12.2016	High Court
Sec. 71 (9)	To impose restriction on Company from incurring further liabilities on application by Debenture-trustee.	01.06.2016	Company Law Board
Sec. 71 (10)	Redemption of debenture in the event of failure on part of company.	01.06.2016	Company Law Board
Sec. 73 (4)	Repayment of deposit or interest in the event of failure on part of company.	01.04.2014	Company Law Board
Sec. 74 (2)	To allow further time as considered reasonable to the company to repay deposits.	01.04.2014	New Matter
Sec. 97 (1)	Direction for calling of Annual General meeting.	01.06.2016	New Matter
Sec. 98 (1)	Direction for calling of general meeting of company other than annual general meeting	01.06.2016	Company Law Board
Sec. 119 (4)	Direction for immediate inspection of minute's books or directing a copy thereof be sent forthwith to person requiring it.	01.06.2016	Company Law Board
Sec. 125(3)	Utilizations of IEPF for reimbursement of legal expenses	07.09.2016	New Matter
Sec. 130 (1)	Re-opening of books of account on application made by any person other than Central Government, Income Tax authorities, SEBI or any other statutory regulatory body or authority.	01.06.2016	New Matter

Sec. 131 (1)	Revision of financial statement or Board's report on application of company	01.06.2016	New Matter
Sec. 140 (4)	Not sending the copy of representation of auditor to the members.	01.04.2014 Second proviso to sub-section 4 – 01.06.2016	Company Law Board
Sec. 140 (5)	Change of auditor for fraud.	01.06.2016	New Matter
Sec. 169 (4)	Not sending copies of representation of director	01.06.2016	Company Law Board
Sec. 210(2)	Investigation into company affairs on report of ROC, resolution of members or in public interest	01.04.2014	Company Law Board
Sec. 213	Investigation into company affairs in other cases	01.06.2016	Company Law Board
Sec. 216 (2)	Investigation into membership of company	01.06.2016	Company Law Board
Sec. 218 (1)	To approve action proposed against employee during investigation	01.06.2016	High Court
Sec. 218 (3)	Appeal in relation to action proposed against employee during investigation	01.06.2016	New Matter
Sec. 222 (1)	Imposition of restrictions on securities.	01.06.2016	Company Law Board
Sec. 224 (2)	Winding up in pursuance of inspector's report	15.12.2016	New Matter
Sec. 224(5)	Disgorgement of assets, property etc. and personal liability for fraud	01.06.2016	New Matter
Sec. 230 (1)	Meetings of Creditor / Members in connection with compromise or arrangement	15.12.2016	High Court
Sec. 230(9)	Dispense with meeting in connection with compromise or arrangement	15.12.2016	New Matter
Sec. 231(1)	To enforce compromise or arrangement	15.12.2016	High Court
Sec. 232(1)	Meetings of Creditor / Members in connection with merger or	15.12.2016	High Court

	amalgamation		
Sec. 233(6)	Fast Track Merger	15.12.2016	New Matter
Sec. 234	Cross Border mergers and amalgamations	13.04.2017	New Matter
Sec. 235 (2)	Application by dissenting shareholders	15.12.2016	New Matter
Sec. 237(4)	Appeal against assessment of compensation in relation to amalgamation of companies by Central Government in public interest.	15.12.2016	Company Law Board
Sec. 238 (2)	Appeal against order of Registrar refusing to register any circular	15.12.2016	New Matter
Sec. 241 (1), (2)	Oppression and mismanagement.	01.06.2016	Company Law Board
Sec. 242 (4)	Regulating the conduct of company.	01.06.2016	Company Law Board
Sec. 243 (1) (b)	Appointment as Managing Director	01.06.2016	Company Law Board
Sec. 244 (1)	Waiver of requirement specified in clause (a) or (b) of Sec. 244 (1)	01.06.2016	New Matter
Sec. 245	Class action suits	01.06.2016	New Matter
Sec. 252	Appeal or application under sub-section (1) and sub-section (3) of section 252.	05.07.2017	High Court
Sec. 270(1) and 271	Winding up of a Company	15.12.2016	High Court
Sec. 373	To permit initiation of suits during winding up	15.12.2016	High Court
Sec. 375(3)	Winding up of an unregistered company	15.12.2016	High Court
Sec. 441	Compounding of certain offences.	01.06.2016	Company Law Board
Sec. 459	To accord approval subject to conditions	12.09.2013	Company Law Board

## POWERS OF NCLT UNDER LIMITED LIABILITY PARTNERSHIP ACT, 2008

Section Number	Matter entrusted	Power of NCLT to pass order
Sec. 31	Whistle Blowing	The Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or where such information leads to such limited liability partnership being convicted under this Act or any other Act.
Sec. 41	Enforcement of duty to make returns etc.	If any limited liability partnership is in default in complying with any provisions of the LLP Act relating to filing of any form with the ROC or resubmitting any form already filed, the Tribunal may, on application by the Registrar, make an order directing that limited liability partnership or its designated partners or its partners to make good the default within such time as specified in the order.
Sec. 43	Investigation of the affairs of limited liability partnership	The NCLT may by order declare that the affairs of the limited liability partnership ought to be investigated
Sec. 51 and 64	Winding up of limited liability partnership	The Central Government may make an application to the Tribunal for winding up of a limited liability partnership on the ground that it is just and equitable that it should be wound up
Sec. 60, 61, 62	Compromise or arrangement of limited liability partnership	NCLT may order Compromise or arrangement of limited liability partnership and other matters incidental thereto

## POWERS OF NCLT UNDER IN SOLVENCY AND BANKRUPTCY CODE, 2016

<b>Section Number (under Part II)</b>	<b>Description</b>	<b>Effective Date of Notification</b>	<b>Earlier exercised by</b>
Sec. 4 to 32	Insolvency Resolution Process for Corporate Persons (Companies and LLPs)	01.12.2016	New Matter
Sec. 33 to 54	Liquidation of Corporate Persons (Companies and LLPs)	15.12.2016	High Court under Companies Act, 2013
Sec. 55 to 58	Fast Track Insolvency Resolution Process for Corporate Persons (Companies and LLPs)	14.06.2017	New Matter
Sec. 59	Voluntary Liquidation	01.04.2017	High Court under Companies Act, 2013

## POWERS OF NCLT UNDER RESERVE BANK OF INDIA ACT, 1934

<b>Section Number</b>	<b>Power of NCLT to pass order</b>
Section 45QA	Where a non-banking financial company has failed to repay and deposit or part thereof in accordance with the terms and conditions of such deposit, the NCLT, may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order.

## POWERS OF NCLAT

Name of Legislation under which power is exercised	Power granted by
Under Competition Act, 2002	The Finance Act, 2017 has made amendments to the Competition Act, 2002 and the Companies Act, 2013 notifying NCLAT as the Appellate Tribunal to hear and dispose of appeals against any direction, decision or order referred to in section 53N of the Competition Act, 2002 in accordance with the provisions of that Act.
Under Companies Act, 2013	NCLAT has been constituted under Section 410 of the Companies Act, 2013 to hear appeals the orders of the NCLT. Further, the Companies (Amendment) Act, 2017 has recognized NCLAT as the Appellate Tribunal for hearing appeals against orders passed by the National Financial Reporting Authority. These provisions of Companies (Amendment) Act, 2017 are yet to be notified to come into force.
Under Limited Liability Partnership Act, 2008	NCLT has certain powers under the Limited Liability Partnership Act, 2008, as are stated above. NCLAT is recognized as the Appellate Authority for hearing appeals against orders of NCLT passed under the Limited Liability Partnership Act, 2008 by virtue of Section 72 of the said Act.
Under Insolvency and Bankruptcy Code, 2016	NCLT has been recognized as the Adjudicating Authority for Part II of the Insolvency and Bankruptcy Code, 2016 to deal with matters relating to insolvency resolution process and liquidation of corporate persons (Companies and LLPs), as are stated above. NCLAT is recognized as the Appellate Authority for hearing appeals against orders of NCLT passed under the Insolvency and Bankruptcy Code, 2016.

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## EXCEL TIPS

### Opening windows on different sheets

The biggest problem with keeping your spreadsheet data on different worksheets rather than keeping it all together on the same sheet is being able to compare the information on the different sheets. When you use a single worksheet, you can split the workbook window into horizontal or vertical panes and then scroll different sections of the sheet into view. The only way to do this when the spreadsheet data are located on different worksheets is to open a second window on a second worksheet and then arrange the windows with the different worksheets so that data from both desired regions are displayed on the screen. The easiest way to do this is to use Excel's View Side by Side command to tile the windows one above the other and automatically synchronize the scrolling between them.

*Comparing worksheet windows side by side helps illustrate how the View Side by Side feature works. This figure contains two windows showing parts of two different worksheets (financials of Company A and company B) in the same workbook. These windows are arranged Vertically so that they fit one above the other and in order to show more data, I have unpinned the Ribbon in both windows so that only the row of tabs are visible.*

The screenshot shows two Excel windows side-by-side. Both windows have their ribbons pinned at the top. The left window is titled 'Excel Tips - Oct 2018 - Dungar Chand U Jain:2' and displays the 'Standalone Balance Sheet of A'. The right window is titled 'Excel Tips - Oct 2018 - Dungar Chand U Jain:1' and displays the 'Standalone Balance Sheet of B'. Both windows show financial data for various categories like Equity Share Capital, Reserves and Surplus, and Liabilities, with columns for Mar 18, Mar-17, Mar-16, Mar-15, and Mar-14. The data is presented in a tabular format with rows for different financial items.

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*As we see, the left window shows the top portion of the first worksheet with the financials of A Company, while the adjacent window shows the top portion of the second worksheet with the financials of B Company. Note that both windows contain the same sheet tabs (although different tabs are active in the different windows) but that only the top, active window is equipped with a set of horizontal and vertical scroll bars. However, because Excel automatically synchronizes the scrolling between the windows, you can use the single set of scroll bars to bring different sections of the two sheets into view.*

Here is the procedure I followed to create and arrange these windows :

1. Open the workbook file for editing and then create a new window by clicking the New Window command button on the View tab of the Ribbon – you can also do this by pressing Alt+WN. Excel appends the number 2 to the workbook's filename displayed at the top of the screen (as in Excel Tips - Oct 2018 - Dungar Chand U Jain:2) to indicate that a new window has been added to the workbook.
2. Arrange the windows one on top of the other by clicking the View Side by Side command button (the one with the pages side by side to the immediate right of the Split button) in the Window group of the View tab or by pressing Alt+WB. In Arrange All Tab, Select Vertical radio button.
3. Click the window (indicated by the “:2” after the filename on its title bar) to activate the window and then click the data in the sheet tab to activate it and the Unpin the Ribbon button to display only Ribbon tabs in the first window.
4. Click the window (indicated by the “:1” following the filename on its title bar) to activate the window and then click its Collapse the Ribbon button to display only Ribbon tabs in the second window.

You can also switch between windows open in a workbook by clicking the Switch Windows button on the View tab followed by the name (with number) of the window you want to activate.

Immediately below the View Side by Side command button in the Windows group on the View tab of the Ribbon, you find these two command buttons:

- Synchronous Scrolling: When this button is selected, any scrolling that you do in the worksheet in the active window is mirrored and synchronized in the worksheet in the inactive window beneath it. To be able to scroll the worksheet in the active window independently of the inactive window, click the Synchronous Scrolling button to deactivate it.

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- Reset Window Position: Click this button if you manually resize the active window (by dragging its size box) and then want to restore the two windows to their previous side-by-side arrangement.

To remove the side-by-side windows, click the View Side by Side command button again or press Alt+WB. Excel returns the windows to the display arrangement selected (see “Window arrangements” that follows for details) before clicking the View Side by Side command button the first time. If you haven’t previously selected a display option in the Arrange Windows dialog box, Excel displays the active window full size.

Note that you can use the View Side by Side feature when you have more than two windows open on a single workbook. When three or more windows are open at the time you click the View Side by Side command button, Excel opens the Compare Side by Side dialog box. This dialog box displays a list of all the other open windows with which you can compare the active one. When you click the name of this window and click OK in the Compare Side by Side dialog box, Excel places the active window above the one you just selected.

**Window arrangements :** After creating one or more additional windows for a workbook (by clicking the New Window command button on the View tab), you can then vary their arrangement by selecting different arrangement options in the Arrange Windows dialog box, opened by clicking the Arrange All button on the View tab (or by pressing Alt+WA). The Arrange Windows dialog box contains the following four Arrange options:

- Tiled : Select this option button to have Excel arrange and size the windows so that they all fit side by side on the screen in the order in which you open them (when only two windows are open, selecting the Tiled or Vertical option results in the same side-by-side arrangement).
- Horizontal: Select this option button to have Excel size the windows equally and then place them one above the other (this is the default arrangement option that Excel uses when you click the View Side by Side command button).
- Vertical: Select this option button to have Excel size the windows equally and then place them next to one other, vertically from left to right.
- Cascade: Select this option button to have Excel arrange and size the windows so that they overlap one another with only their title bars visible.

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After arranging your windows, you can then select different sheets to display in either window by clicking their sheet tabs, and you can select different parts of the sheet to display by using the window's scroll bars.

When you want to resume normal, full-screen viewing in the workbook window, click the Maximize button in one of the windows. To get rid of a second window, click its button on the taskbar and then click its Close Window button on the far right side of the menu bar (the one with the X). (Be sure that you don't click the Close button on the far-right of the Excel title bar, because doing this closes your workbook file and exits from Excel!)

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