CASC BULLETIN

THE CHARTERED ACCOUNTANTS STUDY CIRCLE

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Volume 61 | Issue 1 | Monthly | April 2019 | Rs.25/-

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MEETINGS

Date	Time	Speaker	Topic
13.04.2019 Saturday	09.00 am*	CA.V. Srinivasan	Analysis of GSTR-9
25.04.2019 Thursday	06.30 pm**	CA. S. Sridhar	Global Tax Transparency and India - Transfer Pricing Impact

*Preceded with Breakfast half an hour before the scheduled time of meeting

** Preceded with High Tea half an hour before the scheduled time of meeting

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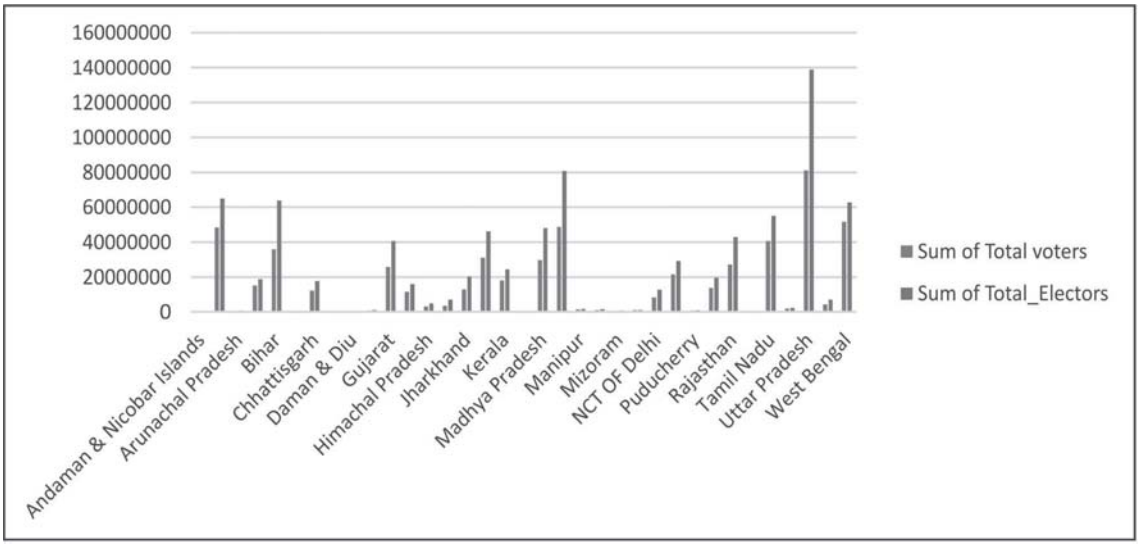
EDITORIAL

Election-mania:

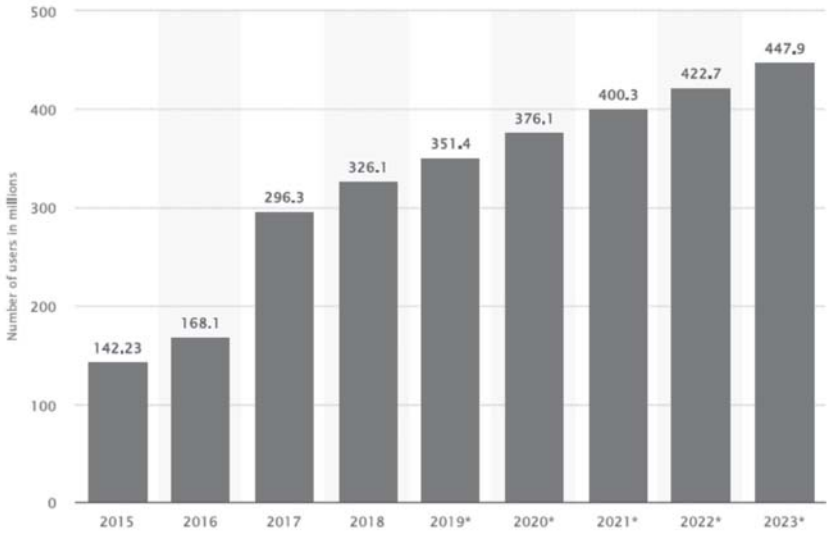
The world's fastest growing economy is going for the biggest festival of Pan India - General Elections 2019 which is one of the mammoth democratic exercise conducted anywhere in the world. This mammoth exercise is spread over 45 days. With the ever increasing advent and use of Social Media this election will be surely an acid test for the Election Commission of India. According to the last General Elections held in 2014 the total voters were around 83.40 Crores voters out of which 55.41 Crores only exercised their franchise. Even in the last election statistics it was only 13039 voters out of the total 83.40 Crores voters who are registered as NRIs.



[Contents source: **https://eci.gov.in/files/file/2838-statewise-number-of-electors**]

According to the news reports the above statistics would change and the total number of voters would be around 90 Crores. According to the website statista.com, in 2018, it was estimated that there was around 326 million social network users in India, up from close to 168 million in 2016. The **most popular social networks in India** were YouTube and Facebook, followed by social app WhatsApp. According to them the number of users have more than doubled in three years. This is one area which is going to create more challenges to the Election Commission of India.

Number of social network users in India from 2015 to 2023 (in millions)



Recently there were lots of forwards happening in the social media stating that "Those who hold Indian passport, can now vote online for 2019 elections." Which is a fake news going rounds. The Election Commission of India had warned about this on its website and how many of the people who had forwarded the earlier message would have or have forwarded the following warning by the Election Commission.

Beware of fake news in social media informing that "Those who hold Indian passport, can now vote online for 2019 elections."

There is no online voting facility for any category of voter. Overseas Indians may submit application for enrolment in form 6A online at nvsp.in or by using Voter helpline mobile app. To cast the vote on the date of poll, an overseas elector may come to his designated Polling station with his Passport as document for identification.

Surely the social media has changed the way people interact and communicate, whether individually or collectively in a group. But the social media is of late has been used for sharing viral contents. What is required is the users have to be "Caveat Lector" ["Caveat lector is Latin for "let the reader beware". One variant of this phrase is "caveat auditor", where the caveat is addressed to any receiver of a given (kind of) message (not necessarily a written one."]. This has become more relevant in the present world.

Not only the steps from Election Commission of India is required to stop the excessive use or misuse of Social Media but also every person who is on the social media and forwards any of the messages or pictures or videos has to be vigilant and should not forward without verification.

'Greater Participation for a Stronger Democracy'

The Election Commission is taking various steps to increase the voter's active participation in the election process. One of the flagship project in this arena is the Systematic Voters' Education and Electoral Participation program, better known as SVEEP, is the flagship program of the Election Commission of India for voter education, spreading voter awareness and promoting voter literacy in India. Since 2009, the Election Commission of India have been working towards preparing India's electors and equipping them with basic knowledge related to the electoral process.

Another initiative of the Election Commission of India is the cVIGIL app. A citizen can lodge a complaint through this Mobile App. Flying Squads will investigate the matter and the Returning Officer will take the decision. There is a commitment from the Election Commission that the status of cVIGIL complaint will be shared with the cVIGIL complainant within 100 minutes.

"cVIGIL, a user-friendly and easy to operate the android application, which can be used for reporting violations from the date of notifications for bye-election/ assembly/ parliamentary elections. The uniqueness of the app is that it only allows Live Photo/ video with auto location capture from within the app to ensure digital evidence for flying squads to act upon in a time-bound manner.

The app could be installed and used on any Android (Jellybean and above) smartphone equipped with a camera, good internet connection, and GPS access. By using this app, citizens can immediately report on incidents of political misconduct within minutes of having witnessed them and without having to rush to the office of the returning officer. cVIGIL connects vigilant citizens with District Control Room, Returning Officer, and Field Unit (Flying Squads) / Static Surveillance Teams, thereby, creating a rapid and accurate reporting, action and monitoring system.

All is required, is to click a picture or a 2-minute video of the activity violating MCC and describe it shortly, before registering the complaint. GIS information captured with the complaint automatically flags it to the concerned District Control Room, permitting flying squads to be routed to the spot within few minutes. The cVIGIL operating model will operate as follows:

Step 1- A citizen clicks a picture or records a 2-minute video. The Photo / Video is uploaded on the app, along with an automated location mapping by the Geographic Information System.

After its successful submission, the citizen gets a Unique ID to track and receive follow up updates on his mobile. A citizen can report many incidents in this manner and will get a unique id for each report for follow up updates. The app user has the option of registering complaints anonymously through cVIGIL App. In that case, the mobile number and other profile details are not sent to the system. However, in the case of anonymous complaints, the user will not be getting further status messages because the system will not be capturing the phone details. Citizens, however, have the option of following up on such complaints in person from the concerned returning officer.

Step 2 - Once the citizen has reported the complaint, the information beeps in the District Control Room from where it is assigned to a Field Unit. A field unit consists of Flying Squads, Static Surveillance Team, Reserve team etc. Each Field Unit will have a GIS-based mobile application called 'cVIGIL Investigator', which allows the field unit to directly reach the location by following the GIS cues and navigation technology and take action.

Step 3 - After a Field Unit has acted upon the complaint, the field report is sent by them online through the Investigator App to the concerned returning officer for decision and disposal. If the incident is found correct, the information is sent to the National Grievance Portal of the Election Commission of India for further action and the vigilant citizen is informed about the status within 100 minutes.

The app has inbuilt features to prevent its misuse. Some of the important features are listed below:

cVIGIL application will be usable only within geographical boundary of States where elections are being held. The cVIGIL user will get 5 minutes to report an incidence after having clicked a picture or a video. The app will not allow uploading of the pre-recorded images/ videos, neither would it allow users to save photos/videos clicked from this app into the phone gallery directly.

To prevent misuse of the system and to avoid repetitive complaints from the same spot, the system forces time delay of 5 minutes between successive complaints by the same person. District Controller has the option of dropping duplicate, frivolous and unrelated cases even before the cases are assigned to the field unit.

The cVIGIL application must be used for lodging MCC violation related cases only. District Controller could drop a cVIGIL complaint without any further recourse, in case personal grievances are registered through cVIGIL app or the digital attachment of a cVIGIL complaint is found to be unrelated to a MCC violation. Citizens are therefore, encouraged to use the ECI main website for lodging the complaints or call the National Contact Centre at 1800111950 or State Contact Centre at 1950." [Source: **https://eci.gov.in/cvigil/what-is-cvigil-r1/**]

Hope the election 2019 would see higher turnout and is fought by the political parties on healthy debate and issues.

Appeal

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For and on behalf of Editorial Board

CA. Uttamchand Jain

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Opportunity : Aggrieved by the assessment orders dated 15.12.2016 passed under the provisions of the TNGST Act, 2006, for the assessment years 2013 -2014 and 2014- 2015 the petitioners filed writ petitions submitting that the tax recovery notices were not legal when the tax demands were not served on them. It is seen that the pre-assessment notice which was sent by registered post was returned undelivered. Similarly, the assessment order also returned undelivered. On enquiry, it was found that the petitioner was no longer carrying on business in the said place and had vacated at about 1 ½ years back. Thus, the respondent cannot be faulted for having completed the assessment on the best judgment basis. Considering the fact that the impugned assessment orders though passed in December 2016, till date, has remained a paper order and no recovery has been effected. Therefore, balancing the interest of the Revenue as well as that of the dealer, this Court is inclined to grant one more opportunity to the petitioner and accordingly, the writ petitions are disposed of by directing the petitioner to pay 15% of the disputed tax and if the same is paid within a period of

CA. V.V. SAMPATHKUMAR

15 days from the date of receipt of copy of this order, the petitioner is entitled to treat the impugned order as a show cause notice and submit their objections within a period of 15 days thereafter on receipt of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. **A.S.Enterprises vs CTO (Addl) Gudiyatham (West)-635803 W.P.Nos.3255 and 3307 of 2019 DATED 05.02.2019**

Natural Justice: A cursory glance at the impugned orders of assessment dated 16.10.2018 would show that various adjustments and modifications have been made to the returns filed by the assessee in relation to reversal of Input Tax Credit, non-payment of tax on packing materials, compliments and gifts and other incomes. Notices were issued calling upon the

assessee / petitioner to file objections to the proposal to revise the returns filed by it, in response to which the petitioner filed detailed objections dated 21.12.2017 enclosing various annexures in support of its stand. However, the orders of assessment, passed on 29.10.2018, after a gap of ten months from the date of submission of the objections reveal absolutely no application of mind to the objections raised. No personal hearing was afforded to the assessee to make his submissions prior to orders of assessment being passed. It is settled law that an order imposing a liability or raising a demand on a person should state the reasons for the adjustments and additions made. Seen in this light, the impugned orders are indefensible and liable to be set aside. Stating so, the Writ Petitions are allowed. **Tvl. Mangilal Jewellers (P) Ltd. Vs AC (ST) (FAC) Thirukazhukundram Assessment Circle. W.P.Nos.3356, 3363, 3368, 3372 and 3373 of 2019 DATED 05.02.2019**

Opportunity: An order of assessment has to be a speaking one, containing reasons for the adjustments and additions effected revealing application of mind to the objections raised by the assessee and for rejection thereof, if the officer is not inclined to accept the same. The orders impugned do not satisfy the requirements and are non-speaking and bereft of reasons. In this view of the matter, the impugned assessment orders are set aside. The Assessing Authority is directed to redo the assessment after affording an opportunity to the assessee who shall appear before him. The assessments shall be completed after affording due opportunity to the petitioner within a period of two (2) months from the date of conclusion of personal hearing. **Tvl. Uthamchand Jewellers, Thirukazhukundram, Kancheepuram District. Vs AC (CT), Thirukazhukundram Assessment Circle, W.P.Nos. 2173 Dated: 04.02.2019**

Opportunity: The appellant approached this Court under Article 226 of The Constitution of India challenging the assessment orders dated 14.10.2016 nearly after two years. However, it is seen that though the assessment orders were passed in October 2016, they continue to remain as paper orders and that the Department could not effect any recovery of tax and penalty as quantified by the Assessing Officer. Furthermore, the Court found that the revision of assessment done by the Assessing Officer was based upon the

details, which were culled out from the official website of the Department and based upon on allegation that there is a discrepancy in the transactions between Annexure I of the appellant and Annexure II of the other end dealer. The Court also found from the assessment orders that the details pertaining to the other end dealer have been furnished namely tax payer identification number, invoice number, commodity code, etc. Therefore, the assessee could have very well submitted their objections to the revision notices and reconciled the transactions before the Assessing Officer. However, the assessee failed to do so and did not respond to the revision notices. Hence, the Assessing Officer is well justified in completing the assessments on best of judgment basis. However, considering the fact that the assessment orders remained as paper orders since October 2016 and the fact that the assessee being an individual road contractor with the Public Works Department, the Court deem it appropriate to grant one opportunity to the assessee to go before the Assessing Officer, however, subject to a condition. **S.Rajendran, Vs AC (CT), Villupuram-I, Villupuram, W A Nos.158 & 159 of 2019 Dated : 24.1.2019**

Revision: In respect of freight charges, it was clarified by the Commissioner of Commercial Taxes, in circular dated 28.08.2007 that the freight charges are transport charges specified or charged for by the dealer separately without including the same in the price of goods sold do not form part of taxable turnover. In the revised assessment orders the AO says that the inspecting officials have verified and found that the assessee has not shown the freight and coolie charges and discount allowed in the sale bills issued by them. Also, the AO states that the assessee has not produced sale bills issued by them for verification before him. The next sentence in the revision orders speaks of verification from the bill wise details furnished in respect of discount, freight and coolie charges and it is stated that no uniform method has been followed. This is probably a part of the report submitted by the inspecting officials as the AO himself records that no sale bills were produced. Therefore, the AO could not have verified any bill, as he alleges that sale bills were not produced. Hence, the revision of assessments itself are based upon a report of the Enforcement Wing. It has been held in several decisions that if incriminating

material is unearthed during the course of inspection, it cannot form a basis of a revision of assessment. In other words, the AO would be entitled to issue show cause notice to the assessee calling upon the assessee to explain as to why the turnover should not be revised; and why higher rate of tax should not be levied and demanded. Upon issuance of such notice and receipt of the reply from the dealer, it is incumbent upon the AO to take an independent decision in the matter based on the materials placed before the AO. If the AO proceeds solely based on the findings of the inspecting officers without verifying the correctness of the stand taken by the assessee, then it would amount to abdication of the powers of an AO consequently, leading to an illegal and erroneous order of revision being bad in law. In the instant case, the AO did no thorough verification. Thus stating so, the Revision orders are set-aside. **Sri Aishwaryalakshmi Agencies, Vs JC (CT), Chennai Central Division, Tax Case Nos.4 and 5 of 2016 dated 21.01.2019**

Form XVII Purchases: The Hon"ble Tribunal held that the Batteries forming part of a machinery can be purchased against the cover of form XVII at concessional rate and also deleted the penalty levied by the AO In the Tax case filed in this regard the learned Additional Government Pleader vehemently contented that the batteries cannot be construed as forming part of the machineries namely, electrical operated material handling equipment and therefore, the findings of the Tribunal in favour of the respondent dealer is incorrect. The Court held that they do not agree for the simple reason that the product in question are traction batteries which are specifically designed to suit electrically operated material handling equipments and therefore, the Tribunal was right in holding that they can be purchased by issue of Form XVII declaration, thereby entitled for concession under Section 3(5) of the Act. With regard to levy of penalty under Section 16(2) of the TNGST Act, the Tribunal after taking into consideration that the revision of assessment was made under Section 16 (1) (b) and noting that there was a dispute as to whether the claim of exemption by the respondent dealer was correct or not and what is the correct rate of tax, held that there was no escapement of turnover and therefore, vacated the levy of penalty. **JC CT) Chennai (East) Division Vs M/s.Sharana Industries, Tax Case No.25 of 2015 Dated: 03.01.2019**

Form F: Initially, the Form F declarations, which were given by the assessee, were found to be bogus. Therefore, the appellant, having found that they were cheated, approached the Authorities of the Government of Tamil Nadu and obtained the original Form F declarations through the on line portal of the CT Department of the Government of Tamil Nadu. When the original Form F declarations were submitted to the Assessing Officer completed the assessment. Though the assessee stated that the assessment order dated 09.5.2018 was served on 09.7.2018 only in person, there is no proof to substantiate the same. Be that as it may, the purpose for issuing the Form F declarations is to avail concessional rate of tax. This is provided under the Statute and therefore, the Assessing Officer, on a technical plea, cannot refuse to accept the Form F declarations. In fact, the Commissioner of Commercial Taxes, Commercial Tax Department, Government of Tamil Nadu issued a circular stating that the Form F declarations can be accepted by the Assessing Officer even after completion of assessment. Therefore, we are of the view that one opportunity can be granted to the appellant to go before the Assessing Officer to submit the Form F declarations and put forth their contentions, so that the assessment can be done in a proper manner. **M/s.Olive Agencies, Vs ADCTO, Puducherry. Writ Appeal No.2780 of 2018 Dated : 21.12.2018**

Assessable value : The assessee, paid tax at the rate of 3%, against form XVII, on the excise duty payable on the assessable value of sales of carbon di oxide (CO2) against Form XVII declaration u/s. 3(3) of the Act to TAC. The AO concluded that since the assessee collected and paid tax at 3% on the excise duty portion only, the basic assessable value not covered by Form XVII at the rate of 3% is not applicable and the same is taxable at 12% and 16%. There has been transfer of the property in goods from the assessee to TAC and such transfer is in the course of business and it was for a consideration. Though the assessee may state that the consideration received is only to meet the central excise liability, it is still a consideration payable for the goods transferred. Further, the transaction would also fall within the definition of "turnover" as defined under Section 2(r), as goods have been supplied by the assessee to TAC and it has been for valuable consideration. The levy of excise

duty is on manufacture, while levy of sales tax arises at the stage beyond manufacture, viz, the sale of the article. The transaction also will not fall under section 12A (under invoicing) of the Act. [Moriroku UT India (P) Limited vs. State of Uttar Pradesh and Others, (2008) 4 SCC 548]. Merely because the assessee and TAC are sister concerns, no adverse inference can be drawn with regard to the transaction relating to the transfer of the excess CO2 by the assessee to TAC. As held by the Hon'ble Supreme Court in the case of M/s.H.M.Esufali, H.M.Abdulali, Siyaganj, the AO is to make an assessment to the best of his judgment against a person, who is in default as regards supplying information, he must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter and he must make what he honestly believes to be a fair estimate of the proper figure of assessment. The AO should have material before him to find out how much tax had escaped assessment and if the material is available, the estimation could be done. It was held that the estimate of the AO may be an overestimate or an underestimate, but if materials are available before him, it cannot be stated that the estimate was without basis. There was no material relied on by the AO to make a best judgment assessment on the assessee; the records produced by the assessee were not disbelieved; the accounts and the other documents produced by the assessee were not discredited. There is no specific finding recorded by the AO that there was suppression and the facts clearly disclose that the entire assessment was based on mere suspicion, which does not tantamount to proof. For the above reasons, these tax case revisions are allowed and the substantial question of law is answered in favour of the assessee and it is held that the assessee will be liable to pay sales tax on the amount collected towards the central excise duty component from TAC, which we have held to be a consideration, payable by TAC to the assessee for CO2 supply. **Southern Petrochemicals Industries Corporation Limited Vs AC (CT), Zone VI, Chennai-6. Tax Case (Revision) Nos.68 and 69 of 2015 DATED: 20.12.2018**

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

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CASE LAWS - SERVICE TAX / GST

1. RESTAURANT SERVICES PROVIDED IN GOLF COURSE FROM PREMISES RENTED BY ASSESSEE – MAINTAINING MENU CARD WITH PRICES FOR EVERY ITEM – NO INTERACTION WITH THE SERVICE RECIPIENT IN THE RESTAURANT – RESTAURANT SERVICES AND NOT OUTDOOR CATERING SERVICE

CA. VIJAY ANAND

In CCE& ST., Noida Vs. Fortune Cookie, 2019(21) GSTL 33(Tri.-All.), the assessee was providing food services in the premises of Noida Golf Course at Noida and was paying Rs. 3.00 Lakhs per month to Noida Golf Course and providing food to the members of Noida Golf Course. In May 2011 the 'restaurant services' came in the net of taxable services and since then, the respondent is paying Service Tax under 'restaurant services'. The adjudicating authority confirmed the demand under 'outdoor catering service', which was set aside by the Commissioner (Appeals). On further appeals, the Tribunal observed as under:-

1. An examination of the definition of "outdoor catering service" makes it clear that the service is to be provided at the premises of the service recipient at his own premises or the premises taken on hire by the service recipient whereas in the case of "restaurant service", the service to be provided by the service provider in its own premises.

2. In this case the place of service had been provided by the respondent as taken on rent from Noida Golf Course consequent to which the place where the service has been provided is premises of the respondent.

3. Furthermore, the Apex Court in the Tamil Nadu Kalyana Mandapam Assn. v. Union of India 2006 (3) S.T.R. 260 (S.C), held that the service of restaurant and outdoor caterer are distinguishable.

4. Consequently, the services provided by the respondent in a restaurant of Noida Golf Course are in the nature of 'restaurant service' as respondent is maintaining menu card, prices fixed in every item and there is no interaction with the service recipient in the restaurant.

Hence, no demand is sustainable against the respondent under the category of "outdoor catering service" and the departmental appeal was dismissed.

2. SERVICE TAX – LOGISTICS SERVICES PROVIDED IN INDIA TO A COMPANY IN CHINA – PAYMENT RECEIVED IN CONVERTIBLE FOREIGN EXCHANGE – EXPORT OF SERVICES

In MAS Logistics Vs. Commr. Of C.T. &C.Ex. GST, Chennai, 2019(21) GSTL 37(Tri.-Chennai) the appellants have registered with the service tax department under the category of Clearing & Forwarding Agent and for GTA services. They rendered Logistic Support service to the shipper namely M/s. Jinneng Energy Technologies Ltd., China (JETL) and received consideration in convertible foreign exchange. While executing such service, they availed various input services for export of logistics services and hence filed a refund claim on 28.02.2017 under Rule 5 of Cenvat Credit Rules, 2004 for the quarter ending 30.09.2016 which was denied by the adjudicating authority and sustained by the Commissioner (Appeals) holding that the activities of the appellant did not appear to be in relation to export of services. On further appeal, the tribunal observed as under:

1. The main contention of the department is that the appellant is an intermediary and therefore the place of provision of service is within India.The department has relied on Rule 9 of Place of Provision of Rules 2012, and held that since, the appellant who is an intermediary is within India, the place of providing service is within India.

2. On a perusal of the facts, it is evident that the appellant was engaged by M/s.H&H, China for which the invoices were raised on H & H, China by the appellant. The only conclusion therefore possible is that H & H, China is the intermediary if at all, and not the appellant.

3. The recipient of logistic services being situated outside India, and the consideration having received in convertible foreign currency, the transaction has to be treated as export of service.

4. The records indicate that the appellant has facilitated the re-export of the goods.

5. The goods are imported into India and kept at the CFS, under proper storage facility had to be presented for examination/verification of Customs department etc., instead of being taken for delivery by the importer.

The inputs services availed for doing such return of goods to China are services availed for exports of goods only which were to be carried back to China.

6. For this re-export/return of goods, various legal formalities and procedures are required to be complied.

7. The rejection of refund alleging that input services having not been availed for export of services cannot sustain and the appellant was eligible for refund of cenvat credit availed on input services used for export of logistic services.

Hence, the impugned order was set aside the appeal was allowed with consequential relief.

3. <u>CONSULTING ENGINEER SERVICES – TRANSFER OF TECHNOLOGY BY FOREIGN COMPANY IN PURSUANCE OF INTERGOVERNMENTAL AGREEMENT FOR TRANSFER OF TECHNOLOGY AND TECHNICAL ASSISTANCE FOR THE PRODUCTION OF AIRCRAFT – RCM DEMAND ON CONSULTING ENGINEERING SERVICES – SET ASIDE</u>

In Hindustan Aeronautics Ltd. Vs. CCE, Lucknow, 2019(21) GSTL 46(Tri.-All),the appellant entered into an agreement with Federal-State Unitary Enterprise Rosoboronexport, Moscow, Russia in conformity with the Inter-governmental agreement between the Government of India and the Government of Russian Federation on the organization ofSU–30 MKI aircraft license production in India. The terms of agreement provided for transfer of technology in the form of technical documentation, technical assistance for setting up the manufacturing facility and training of employees, etc. The Supt of Central Excise sought to furnish the details of fees or consideration paid for transfer of technology and technical assistance agreement entered with Rosoboron export, for production of aircraft and its parts, which were provided by the appellants. However, the applicant could not produce a copy of the agreement, due to national security reasons.

Thereafter, the adjudicating authority confirmed the demand on reverse charge mechanism on the extended period too under "Consulting Engineering Services" for payment made for transfer oftechnology and technical assistance fees. On appeal, the Tribunal observed as under:

1. When the elements for invoking the extended period like fraud, collusion, willful misstatement, suppression of facts or contravention of the provisions of the Act and the Rules are not available. The issue of show cause invoking extended period is bad andagainst the provisions of the Act.

2. Furthermore, when the issuerelates to interpretation of statutes, the extended period of limitation cannot be invoked. The appellant is a PSU (Navratan) and hence, without anystrong allegation, mala fide cannot be alleged against it. The transaction is duly recorded in the books of accounts maintained in the ordinary course ofbusinessand they are subject to audit by the CAG.

3. W.r.t. the merits, the technical assistance and training provided is towards transfer of technology and not in isolation and the transfer of technology envisages transfer of technical documentation, technical assistance for setting up the manufacturing and overhaul facility including training of employees, etc. The payments have been made by the appellant on specific elements of the technology transfer like documentation, deputation of technocrats, training activities, etc.

4. During the period in dispute, the appellant has made payments towards technology transfer and on-site/offsite training rendered to the appellant's employees which have been made in pursuance to the Inter-Governmental Agreement (IGA) as per the direction of the Ministry of Defence for its need. There is no element of business or commerce in the said transaction.

5. The transfer of technology under agreement should not be looked into isolation. The fees relating to technical assistance rendered while setting up a manufacturing plant, training of employees, etc. are to fulfil the main objective or intent of Technology Transfer. It is not a separate or distinct service.

6. In Nova Chemicals (International) SA Vs. CCE, Kanpur –2008 (11) STR 281, it was held that agreement for transfer of technology/know-how would not fall under the category of "Consulting Engineer Service", in spite of certain components of service like technical assistance, training being imparted in pursuance of the agreement. It was held that the relationship between M/s. GAIL and the applicant may not fall under the category of "Consulting Engineer as the relationship between them is of licensor and licensee which is also the one in the instant case.

Hence, the impugned order was set aside the appeal was allowed with consequential relief.

4. GST – ADVANCE RULING – THIRD PARTY INSPECTION SERVICES TO TWAD AND CMWSB IN RESPECT OF PIPES, OPEN WELL SUBMERSIBLE PUMP SETS, ETC. SUPPLIED BY THE SUPPLIER TO TWAD AND VARIOUS CORPORATIONS AND MUNICIPALITIES – COVERED UNDER ARTICLE 243W OF CONSTITUION – EXEMPTION UNDER SL.NO.3 OF NOTIFICATION NO.12/2017-C.T.(RATE)

In RE: Dr. Amin Controllers Pvt. Ltd., 2019(21) GSTL 178(AAR.-GST), the applicant isproviding Third Party Inspection services to their clients viz.,

M/s.Chennai MetroWater Supply and Sewerage Board (CMWSSB) and M/s. Tamil Nadu Water Supplyand Drainage Board (TWAD) for the water related projects. They are also renderingConsultancy Services to others and pay CGST taxes and SGST taxes duly, besidescarrying on services to common Effluent Treatment Plant. An application was filed seeking advance ruling as to the following:

1. Whether the services rendered by them to CMWSSB and TWAD is exempted under Sl. No. 3 of Notification No. 12/2017-CT (Rate) dated 28thJune 2017.

2. As the Notification is effective from 1-7-2017 -if Advance Ruling rulesthat the services are exempt, then for the Invoices already raised on theclient with levy of 18% GST can be taken credit of SGST by issuing CreditNote.

The authority observed as under:

1. The applicants have entered into Agreement with M/s. CMWSSB and M/s.TWAD forrendering the services of Third Party Inspection on being empanelled. The applicant believes that those fall within the ambit of "Pure Services", as it is anactivity in relation to any function entrusted to a Municipality under Article 243Wof the Constitution, consequent to which there will be no GST component in the invoice. Theissue to be decided is whether the Applicant is rendering "pure Services" andwhether M/s.CMWSSB and M/s.TWAD are 'Governmental Authority'as definedin the Notification No.12/2017 Central Tax (Rate) dated 28th June, 2017.

2. In the case at hand, M/s.CMWSSB is created vide The Chennai MetropolitanWater Supply and Sewerage Act, 1978 (Tamil Nadu Act 28 of 1978) with 100% contribution by way of Government (i.e. by way of takeover of Assets and Liabilitiesfrom Chennai Municipal Corporation and Tamil Nadu Water Supply and DrainageBoard) and controlled by the Government by way of appointing Directors of theCMWSS Board, to carry out the functions of supplying water for Domestic,industrial and Commercial purposes as well as Sanitation Conservancy by way ofdisposal of Sewerage.

3. M/s.TWAD Board is a Board, constituted by an Act of TamilNadu State Legislature called Tamil Nadu Water Supply and Drainage Board Act, 1970 with 100% contribution by way of Government and controlled by Governmentby way of appointing Directors of the TWAD Board entrusted with the developmentof Water supply and Sewerage facilities in Municipalities and Panchayats in the State of Tamil Nadu, except Chennai Metropolitan Development.

4. The TwelfthSchedule or Article 243W of the Constitution list, the functions of the Municipalityat Sl. No.5 as "Water Supply for Domestic, Industrial and Commercial purposes"and at Sl. No.6as "Public Health, Sanitation Conservancy and Solid WasteManagement". The Eleventh Schedule or Article 243G of the Constitution list thefunctions of the Municipality at Sl. No. 5 as "Water Supply for Domestic, Industrialand Commercial purposes "and at Sl. No.6 as "Public Health, Sanitation Conservancy and Solid Waste Management".

5. Thus, it is clear that in theConstitution list, the functions of the Panchayat at Sl. No. 11 as "Drinking Water"and at Sl. No.23 as"Health and Sanitation" and that in respect ofservices received in relation to functions pertaining to Municipality, M/s.CMWSSB and M/s.TWAD is a 'Governmental Authority' as defined under 2(zf) of the Notification No.12/2017-CT (Rate) as amended.

6. However, in respect of Servicesreceived in relation to functions pertaining to Panchayat, TWAD is a 'GovernmentalAuthority'only from 13.10.2017 as defined under 2(zf) of the Notification No.12/2017-CT (Rate) as amended.

7. Onperusal of the scope of work in the empanelment agreements furnishedby the applicant, the applicant is selected forconducting Third Party inspection for procurements of Pipes, Open WellSubmersible Pump sets Panel Boards, Transformer, Water Meters and otherequipment supplied by the L&T Ltd., Chennai to M/s.TWAD under CWSIS toVellore Corporation and various Municipalities and Towns of Vellore districtrequired for implementing Water Supply Schemes and Sewerage Schemes to ensureQuality Assurance.

8. The applicant will also submit a final report on the quality of the equipment based on their inspections. The applicant will be paid as apercentage of the value of materials inspected at various slabs.

9. Consequent to the above, the Applicant is rendering pure services to TWAD in respect of its functions with respect to Municipalities.

10. In the other contract with CMSSB, the applicant was selected wasempanelled for conducting Third party Inspection for procurements of Pipes, Pumpsets, Electronic Equipment, Chemicals of works involved in extension of Desalination, iron conveying water main from Medavakkam Junction to Alandur Water Distillation Station. The applicant will also submit a final report on thequality of the equipment based on their inspections. The applicant will be paid asa percentage of the value of materials inspected' Therefore, the applicant isrendering "pure services" to CMWSSB in respect of its functions with respectto Municipalities.

11. In view of the foregoing, the applicant is supplying 'pure services' of Inspection to TWAD andCMWSSB which is a 'Governmental Authority" relating to water supply and sewerage which are covered under Twelfth Schedule of article 243 W of theconstitution, consequent to which the same are exempted under Sl.No. 3 of the Notification No. 12/20I7-CT (Rate) dated 28th June2017 as amended.

12. The second question raised before us regarding raising of credit notes is ofprocedural nature and therefore not answered.

Hence, the authority ruled that the activity of the applicant as per the two contracts i.e. entered into with TWAD for conducting Third Party Inspection for procurements of equipment supplied by

L&T, Chennai to TWAD under CWSIS toVellore Corporation and various Municipalities and Towns of Vellore Districtrequired for implementing water supply schemes and sewerage schemes andentered into with CMWSSB and TWAD for conducting third party inspection forprocurements of equipment and chemicals of works involved in extension ofDesalination, iron conveying water main to the water distillation station are exempted from CGST under Sl.No. 3 of theNotification No. 12/2017-CT (Rate) dated 29th June 2017.

5. <u>SERVICE TAX – IT INFRASTRUCTURAL SERVICES PROVIDED BY OVERSEAS GROUP ENTITY TO UNITS WORLDWIDE BY WAY OF PRIVATE WIDE NET WORK SERVICES – NOT CLASSIFIABLE UNDER OIDAR</u>

In Philips Electronics India Ltd. V. CST, Chennai, 2019(21) GSTL 420 (Tri.-Chennai.), appellants are engaged in manufacturing and marketing of lighting consumer life style and healthcare products. They entered into several agreements with their overseas group entity in the Netherlands under which they avail infrastructure services for which payment was made by the former. The adjudicating authority confirmed the demand on the same under the category of "Online Information and Database Access or Retrieval" (OIDAR) services. On appeal, the Tribunal observed the following IT Infrastructure services were centrally provided by Philips Netherlands to all their locations worldwide:

i. Managed Backbone infrastructure to enable communication by means of electronic mail for its employees;

ii. Managed Desktop and managed server service offerings;

iii. Maintenance of software of users' desktops;

iv. Email services for non-employees;

v. Services to manage personal calendar, share calendar, personal contacts, corporate directory, to do offline delegation, mail back-up and restore services;

vi. IT Infrastructure by way of Private Wide Network Services.

1. A perusal of S.65 (75) defining (OIDAR) indicates that services provided should facilitate not only online information but also Database Access or Retrieval. Infrastructure

services are nothing but a spider web group which connects Philips Netherlands to all its locations worldwide through the Wide Area Network (WAN) of internet protocol. For such Philips Global Network Services, payment is made on the basis of invoices raised by Philips Netherlands towards maintenance of server / portal, license fees, server software maintenance cost, infrastructure for global platform, hiring of web space for storing data, management and maintenance of web portal, licence cost for access for wireless WAN environment, Directory services for listing etc. Some of these services which can be availed by Philips locations and employees are of the nature of "Calendaring and Scheduling Directory, Philips e-mail, file backup etc.

2. All these infrastructure services are only in the nature of providing intra connectivity between Philips locations worldwide and the payments made are obviously then for sharing of the maintenance cost between the Philips' units and not as fees for supply of online information or retrieval of data from the portal.

3. Consequently, the infrastructure services cannot by any stretch of imagination be brought within the fold of "Online Information and Database Access or Retrieval" and the impugned order to the contrary will therefore not sustain

Hence, the appeal was allowed with consequential relief.

6. <u>SERVICE TAX – MARGIN RECEIVED ON ACCOUNT OF HEDGING IN BUSINESS – NOT COVERED UNDER BUSINESS AUXILIARY SERVICES</u>

In Sri Kumaran Trading Co. V. CCE &ST., Chennai, 2019(21) GSTL 512 (Tri.-Chennai), the appellants entered into an agreement with

M/s.Viki Industries Pvt. Ltd., who is in agreement with the Government for supply of steel items for further work wherein the appellants are arranging contracts with the Govt. to the clients in pursuance of the execution of the contract they are supplying steel materials on a fixed tender price. Depending upon the market fluctuation the appellants sometimes make a profit which accrues as a difference between lesser than a market price vis-à-vis the fixed tender price which is crudely considered as commission. The adjudicating authority

confirmed the demand on this 'commission' under Business Auxiliary Services (BAS), against which an appeal was filed with the Tribunal which observed as under:-

1. While sourcing the material, the market fluctuation will make the appellant liable to pay such consideration, which may be sometimes higher than the fixed tender price or lower. This is what depends on the typical market pattern. It is not a commission paid by any client for promoting their business.

2. The appellants are not engaged in the promotion of the business of the client for which the profit earned on hedging can be considered as a taxable value. There is no nexus for such operation.

3. Accordingly, there is no justification in the confirmation of service tax liability under BAS in the present case.

Hence, the appeal was allowed with consequential relief.

7. SERVICE TAX – HEALTH CLUB AND FITNESS CENTRE – THERAPEUTIC MASSAGES – HOLISTIC AYURVEDIC TREATMENT INCLUDES MASSAGES GIVEN BY QUALIFIED PROFESSORS UNDER MEDICAL SUPERVISION FOR CURING DISEASES – NOT EXEMPTED

In CCE, Cochin V. Coconut Lagoon Kumarakom, 2019(21) GSTL 548 (Tri.-Bang.), the respondents are engaged in running resorts wherein they run different ayurvedic centres that are run under the supervision of a qualified ayurvedic doctors. The adjudicating authority confirmed the demand under "health club and fitness centre" under Section 65(52) of the Finance Act, 1994 which was set aside by the Commissioner (Appeals). On departmental appeal, the Tribunal observed as under:-

1. The precise issue to be decided in these cases is as to whether the treatment given by the ayurvedic centres run by these resorts would come under therapeutic massages, etc.

2. CBEC Circular No. B 11/1/2002-TRU dated 01.08.2002 has clarified that therapeutic massage wherein massage is provided by qualified professionals under medical supervision for curing diseases such as arthritis, chronic low back pain and sciatica etc. is excluded. If the massage is performed without any medical supervision or advice but for the general physical well being of

a person, such massages do not come under the purview of therapeutic massages and they would be liable to service tax.

3. On perusal of the records of the case, it is found that the different ayurvedic centres have the following common credentials:

i. They are run under the supervision of a qualified ayurvedic doctors.

ii. Having a license from Municipal Council or Gram Panchayat to run such ayurvedic hospitals

iii. They have certificates given by the Department of Tourism also.

4. The department has attempted to contradict the claims of the respondents by saying that these resorts are only for pleasure and holidaying and massages are optional and invariably are of general well-being than treatment of a particular disease.

5. On perusal of the records maintained by these ayurvedic centres, it is seen that they are maintaining case-sheets/ treatment files and the treatment process schedule which is a normally done by hospitals also.

6. Mere fact that the ayurvedic centres are located in the premises of the resorts, it cannot be said that they cease to be ayurvedic centres coming to ayurvedic treatment *per se*.

7. The learned Commissioner (Appeals) has given a clear finding that the District Medical Officer of Kerala Government have certified that the ayurvedic kriyas (procedures) imparted by the respondents are based on ayurvedic method of treatment which is a system of medicine approved by Central Government of Indian Systems of Medicine. The duration is one week to four weeks and in some cases, patients return back for a repeat of the treatment.

8. Specific ailments like back pain, shoulder pain, knee pain, frozen shoulder, blood pressure, blood circulation problems, etc. have been cured successfully as per the certificates of the patients. The ayurvedic doctors attached, supervise the treatment, prescribes food restrictions and the type of oil that should be used. The prescribed treatments are contained in Ayurvedic Pharmacopeia like Astanga Hridayam, Charaka Samhita and Susrutha Samhita, etc.

9. These centres provide a holistic ayurvedic treatment which includes massages given by qualified professors under medical supervision for curing diseases.

10. In the literature meant for therapies, it is also mentioned that the therapies at the centre are ayurvedic massages like Dhara, Pizhichil for curing all kinds of ailments are offered. It is also mentioned that the therapies at the centre are under the guidance of an export Vaidyan (Physician) who may be consulted for fuller understanding of symptoms and treatment.

11. The duration and type of treatment depends on the diseases, the conditions of the patient, and the expertise of the doctor. It is not always necessary that the treatment should be only in the dull / dreary atmosphere of hospitals alone. If some well to do patients prefer to have treatment in a better circumstances and are willing to pay for the same, such treatments cannot be for that sole reason, held to be no treatment.

12. It is common knowledge that a good number of foreign tourists visit Kerala during a particular season for pleasure as well as medical reasons. Not all the people who stay in the resort may take the treatment. What is important is whether such treatments are given by a qualified Doctor/Doctors and whether the procedures are prescribed under therapeutic tests. It is not the department's contention that the massages and panchakarma and other treatments provided by the respondents are not mentioned in ayurvedic texts.

13. Consequent to the above, all the required conditions for such treatments to be treated as therapeutic are satisfied and will fall under the exclusion provided by the Board Circular cited above.

Hence, the appeals were dismissed and the impugned order sustained.

8. SERVICE TAX – REAL ESTATE AGENT SERVICE – DOES NOT COVER INVESTMENT ADVISORY SERVICES – MANPOWER RECRUITMENT OR SUPPLY AGENCY – NOT TO COVER EMPLOYEE SECONDMENT AGREEMENT WHEREIN EXPATS ARE TO BE EMPLOYEES OF INDIAN COMPANY AND ON AMOUNTS COVERED AS SALARIES FOR INCOME TAX PURPOSES

In Ivanhoe Cambridge Investment Advisory India (P) Ltd. V. C.ST., Delhi 2019(21) GSTL 553 (Tri.-Del.), the appellant is registered for providing various services including banking and other financial services. During the course of audit of the account of the assessee by the Departmental Officers, it was noticed that the appellant has rendered non–binding investment advisory service to its holding company i.e. M/s Ivahone Hoardings Mauritius (IHM). The adjudicating authority confirmed the demand under "Real Estate Advisory Servicers" on the services provided to IHM. The appellant also employed expatriates who are experts in the area of investment advisory. Such expatriates were provided by their principal (IHM). The adjudicating authority confirmed the demand under Manpower Recruitment Supply Agency Service holding that the appellant had been supplied manpower by their principal and the said service is liable to Service Tax falling under Section 65 (88).

On appeal, the Tribunal observed as under:

1. The definition of "Real Estate Agent" covers any service only in relation to sale/purchase/leasing, etc., of real estate. Upon perusal of the Advisory Service Agreement, dated 10.03.2009 between the appellant and IHM, the appellant is required to render investment advisory services in connection with investment opportunities in India. Such services have been rendered relating to various companies engaged in the business of real estate. The scope of the agreement does not cover such advisory services in connection with any piece of real estate.

2. Consequently, the activities rendered will not be covered within the definition of "Real Estate Agent".

3. W.r.t. the demand of Service-Tax under Manpower Recruitment or Supply Agency Service, IHM have made available the service of certain experts to the appellant in India. The adjudicating authority took the view that the amounts paid to the expatriates are to be considered as consideration for manpower supply and liable to Service-Tax, on reverse charge basis.

4. The "Employment Secondment Agreement" governs the terms and conditions under which the expatriates have been placed at the disposal of the appellant.

5. A perusal of certain payment letters issued by the appellant to the expatriates makes it clear that such expatriates will be employees of the appellant during the period of their assignments to the appellant. Furthermore, the Income-Tax returns filed by the expatriates clearly shows the appellant as their employer and Income-Tax has also been paid for the amounts received by the expatriates in India, under the category of salary.

6. In view of the above, there can be no levy of Service-Tax under the category of manpower supply since the expatriates were enjoying the employee-employer relationship with the appellant.

Hence, the appeal was allowed with consequential relief.

9. <u>SERVICE TAX – EXPORT OF SERVICES – REGISTRATION OF PROJECT OFFICE OF FOREIGN RECIPIENT COMPANY IN INDIA CANNOT BE A GROUND FOR DENIAL OF REFUND</u>

In Holtec Asia P. Ltd. V. CCE,GST, Pune-I, 2019(21) GSTL 561 (Tri.-Mumbai), the appellant has rendered 'Consulting Engineer Services' to its parent company M/s Holtec International, USA for which they received payments in convertible foreign exchange. The appellants have filed refund claims under Rule 5 of Cenvat Credit Rules, 2004 (CCR) which was rejected by the adjudicating authority holding that a project office of the holding company had obtained registration at Wakad, Pune, hence as per definition of service recipient in Rule 2 (i) of the Place of Provision of Services Rules, 2012 (PPS), the location of service recipient is premises for which such registration has been obtained i.e. India and as per rule 8 of PPS, the place of provision of services shall be the location of the recipient of service. The condition (b) and (d) of Rule 6A of STA Rules has not been satisfied and therefore the impugned service do not qualify as export of service. This was also sustained by the Commissioner (Appeals). Of further appeals, the Tribunal observed as under:

1. As per of Rule 6A (1) of the Service Tax Rules, 1994 the services are treated as export of service when : -

(a) the provider of service is located in the taxable territory,

(b) the recipient of service is located outside India,

(c) the service is not a service specified in the section 66D of the Act,

(d) the place of provision of the service is outside India,

(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act.

2. The adjudicating authority has refused to allow the refund claim on the ground that in terms of provisions of Rule 2 (i) of PPS Rules the location of the service recipient automatically becomes the 'premises for which service tax registration" is obtained and once the recipient is not located outside India, the vital condition of the Rule 6 A (1) of service tax rules is not satisfied.

3. PPS cannot be applied to the refund being claimed in terms of Rule 5 of Cenvat Credit Rules and to interpret the export of service.

4. In the present case, the services were rendered to service recipient who is located outside India. The Indian Project office of M/s Holtech International Ltd, USA was not at all concerned with such services.

5. In terms of Explanation 3 to Section 65B (44) different establishment located in non taxable territory and taxable territory are to be treated as establishment of different persons.

6. It is thus clear that the office of M/s Holtech International situated in USA is different establishment from its project office in India. In the present case it is the US establishment of M/s Holtech International, USA who has availed the services from the appellant and therefore the services rendered by Appellant would clearly fall under the category of Export of Service in terms of Rule 6A of Service Tax Rules, thereby making them eligible for refund claimed by them.

Hence, the appeal was allowed with consequential relief.

(The author is a Chennai based Chartered Accountant. He can be reached at reachanandvis@gmail.com)

INTRODUCTION OF NEW E-FORM ACTIVE BY MCA

CA. C.S. DHANAPAL

The Ministry of Corporate Affairs (MCA) has vide the Companies (Incorporation) Amendment Rules, 2019 introduced a new rule 25A which provides for a new requirement of filing e-form ACTIVE, i.e. form INC-22A. After requiring a KYC for directors, this appears to be a KYC for Companies.

This new requirement appears to be an attempt from MCA's side to identify companies which are active and which are maintaining proper registered office in accordance with the requirements of the Companies Act, 2013 besides being compliant towards appointment of directors, KMP, filing of forms etc.

The word ACTIVE in this context denotes "Active Company Tagging Identities and verification".

The detailed requirements and procedure for filing this new form INC 22A (ACTIVE) are discussed below:

Applicability of filing

This form needs to be filed by Every Company incorporated on or before 31.12.2017 except the following

- Companies which are struck off
- Companies which are under process of striking off
- Companies under liquidation
- Companies which have been amalgamated or dissolved

Due date of filing

Form needs to be filed on or before 25.04.2019.

Pre-requisite to file the form

- There should be no default in filing of Financial Statements and/or Annual Return with ROC except in case of management dispute for which ROC's register should be updated

- DIN of all directors of the Company should be in "Approved" status only. DIN should not be "deactivated due to non-filing of DIR 3 KYC" or "Disqualified u/s 164(2)

- If paid up capital is Rs. 5 Crores or more, Company Secretary should have been appointed and form DIR 12 for appointment should have been filed.

- In case of public companies having paid up capital of Rs. 10 Crores or more, KMP (MD/CEO/WTD AND CFO) should have been appointed and form DIR 12 for appointment should have been filed.

- Form ADT 1 for statutory auditor appointment for FY 2018-19 or after should have been filed.

- If cost audit is applicable, Form CRA 2 should have been filed.

- Digital signature of One director + One KMP or Two directors should be available – DSC to be valid and registered with MCA as on date of filing

- Company should have minimum number of directors

Details required to be provided / reflected in form

- CIN, Name and status of Company (whether listed or not)

- Registered Office Address indicating its Latitude and Longitude

- Email ID of the Company (OTP will be sent to this ID which will have to be provided in the form)

- Number of Directors in the Company, their Name, DIN and Status of DIN

- Details of Statutory Auditor - name, PAN, Membership No., FRN, Period of appointment

- Details of Cost Auditor, if applicable - Name, Membership No., FRN, Period of Audit

- Details of KMP (MD, CEO, Manager, WTD - DIN/PAN, Name, Designation

- Details of Company Secretary & CFO, if applicable - Name, PAN, Membership No.

- SRN of Form MGT 7 & AOC 4 for FY 2017-18

Documents required to be attached to form

- Photograph of the Registered Office showing external building and inside office, showing therein at least one director / KMP who has signed this e-form

Signing & certification Requirements of the form

Form to be digitally signed by:

- One Director in case of OPC

- Two Directors or One director + One KMP in case of company other than OPCs

- Form need to be certified by a practicing professional - CA/CS / CMA

Consequences of non-filing of form

- Company shall be marked as "ACTIVE non-compliant"

- Filing of following forms will be not be permitted: SH-7, PAS-3, DIR-12, INC-22, INC-28 until the e-form ACTIVE is filed

- Fees of Rs. 10,000/- will be levied for delayed filing beyond 25.04.2019

- ROC may cause physical verification of the Registered Office and where he has cause to believe that the company is not carrying on any business or operations, it may cause name of the Company to be removed from ROC Records.

(The author is a Chennai based practicing Company Secretary. He can be reached at csdhanapal@gmail.com)

GST ON REAL ESTATE SECTOR

CA. DEBASIS NAYAK

The Indian real estate sector contributes almost 9-10% of the GDP of our nation. It is one of the most moving and fast developing sector backed by the various government incentives and policies. With the increased urbanization, growth of this sector is not expected to static in the time to come. Therefore, it is imperative for the Government to keep a close eye on this sector as it is directly related with the end consumers.

Taxation on real estate sector before the introduction of GST era is overloaded with different taxes by the center and States. A transaction involving the sale of property which included the supply of materials is chargeable under VAT and the supply of labour is chargeable under Service Tax.

Taxing structure before introduction of GST

S.No.	Nature of Transaction	Nature of Tax	Value
1	Service portion in case of construction of complex, building or civil structure	Service Tax	30% of the consideration received was deemed as value for service
2	Service portion in execution of works contract	Service Tax	40% of value to be deemed as the taxable value for computing Service Tax
3	Goods Portion of works contract	VAT	70% of construction value arrived at after standard deduction of 30%

Some states applied the above methodology to tax construction services, others taxed the entire contract value under a composition scheme of between 1-5%. Further, there was also an abatement under the VAT laws for determining the value of goods.

Need of GST for real estate sector

Under the erstwhile law, there was inconsistency in determining the value of supply, overlapping of center and State levies, restriction on availment of Cenvat credit, deeming fiction for determining the value. Due to this prices, charged to end customers was not consistent as tax was also becoming the part of cost.

The need for implementing GST was felt in order to make the entire taxation system consistent and less complicated and to pass on the benefit of reduced prices to customers.

Taxing structure of real estate sector after introduction of GST

In order to simply the rate of taxes on sale of buildings and apartment post GST, the government has maintained a single tax rate of 18% as follows:

Particulars	Rate of Tax	Effective Rate
Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier	18%	12%*

* In case of Supply involving transfer of property in land, the value of supply shall be equivalent to the total amount charged for such supply less the value of land and the value of land in such supply shall be deemed to be one third of the total amount charged for such supply (18%*1/3 = 12%)

With the introduction of GST, since the impact on pricing will not be much, many developers was of the view that Instead of applying GST @18% and then availing of input tax, flat rate of 5% without input tax credit should be levied.

Considering the challenges and boosting the real estate sector, GST council in its 32th meeting held on 10th Janurary 2019 has constituted a group of minister for analyzing the tax rate of GST, examining the various ways of composition scheme or any other scheme, examining the levy of GST on transfer development rights in joint development agreement, examining the legality of inclusion or exclusion of value of land.

Recommendation of 33rd GST Council Meeting

The GST council in its 33rd meeting held that there are reports of slowdown in the sector and low off-take of under-construction houses which needs to be addressed. Based on the recommendation of group of ministers, the GST council has recommended the new tax rate for the real estate as:

i). GST shall be levied at effective GST rate of 5% without ITC on residential properties outside **affordable segment;**

ii). GST shall be levied at effective GST of 1% without ITC on **affordable housing properties.**

The new rate shall be applicable w.e.f 1st April 2019.

Meaning of Affordable housing

Particular	Metropolitan cities/towns	Non-metropolitan cities/towns
Meaning	A residential house/flat in Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).	Other than metropolitan cities
Area requirement	60 Square Meter	90 Square Meter
Value requirement	Upto 45 lakhs	Upto 45 lakhs

However, this was only the recommendation and GOM would determine the mechanism for operationalize this.

Advantages of new rate of tax for real estate sector

i). The buyer of house gets a fair price and affordable housing gets very attractive with GST @ 1%.

ii). Interest of the buyer/consumer gets protected since ITC benefits being passed to end customers

iii). Cash flow problem for the sector is addressed by exemption of GST on development rights, long-term lease (premium), FSI etc.

iv). Unutilized ITC, which used to become cost at the end of the project gets removed and should lead to better pricing.

v). Tax structure and tax compliance becomes simpler for builders.

Outcomes of 34th GST council meeting

GST Council on the 34th council meeting held on 19th March 2019 discussed various operational aspect for this reduced tax rate of 1% for affordable housing and 5% for others.

Particulars	Projects opting for Existing rates	Projects opting for new rates
Meaning of projects	Ongoing Project (Buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019)	❖ All houses in new projects. ❖ All houses in ongoing projects regardless of whether they were booked prior to or after 1 April 2019. ❖ Commercial spaces (e.g., shops, offices etc.) in a residential real estate project in which the carpet area of the commercial areas is not more than 15% of the total carpet area
Tax rate	12% for non affordable housing and 8% for Affordable housing	5% for non affordable housing and 1% for Affordable housing New rate shall be available on installments payable on or after 01.04.2019.

Conditions for paying taxes under new rate

1. ITC shall not be available if the developer has opted for new tax rate
2. 80% input and input services [other than capital goods, TDR/ JDA, FSI, long term lease (premiums)] shall be purchased from registered persons. If purchases from registered person is below 80%, tax shall be paid by the builder @ 18% on RCM basis (other than capital goods and cement)
3. Tax on cement purchased from unregistered person shall be paid @ 28% under RCM. Tax on capital goods purchased from unregistered person shall be paid at applicable rates under RCM.

Options to the developers in respect of the ongoing projects

The GST council has decided to give onetime options to the developers

- ❖ in cases where ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) have not been completed by 31.03.2019;
- ❖ Option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply

Input Tax Credit mechanism for the ongoing projects opting for the new tax rate

- Total available ITC would be calculated by extrapolating the input tax credit available on 1.04.2019 and eligible ITC for transition would be determined based on percentage booking of flats and percentage invoicing.

- For mixed project (commercial and residential) transition of input tax credit shall be allowed on pro-rata basis in proportion to the carpet area of the commercial portion.

Treatment of TDR (Transfer Development Right)/ FSI (Floor Space Indes) and Long-term lease for projects commencing after 01.04.2019

- The treatment proposed is in respect of New Projects commencing from 01.04.2019. Hence, the scheme shall not be applicable for the On-going Projects.

- Supply of TDR/ FSI/ Long Term Premium by the landowner to a developer shall be exempted subject to condition that:

a) All the constructed flats are sold before the issuance of the completion certificate.

b) Violation of the Conditions- the Developer shall be liable to pay tax on supply of TDR/ FSI/ Long Term Premium on the unsold flats. Tax Rate shall be 1% in case of Affordable Houses and 5% in case of houses other than Affordable Houses.

c) Liability to pay the tax on supply of TDR/ FSI/ Long Term Premium shall be on the builder under Reverse Charge;

d) Date of Payment of such tax shall be the date of issue of Completion Certificate.

- **Flats given to land owner in case of Joint Development agreement**

  The liability of builder to pay tax on construction of houses given to land owner in a JDA is the date of completion.

Please note that this article has been prepared based on the press releases issued by the GST council. The notifications giving effect to the above are likely to be issued soon and accordingly need to be validated.

(The author is a Chennai based Chartered Accountant. He can be reached @ debasis.nayak@pwc.com)

EXCEL TIPS

SUBTOTAL

CA DUNGAR CHAND U JAIN

Subtotal function should not be mixed up with subtotal formula. Both are achieving similar objectives but are different in nature.

As a function, it is able to insert subtotal into different groups of data. As a formula, it can help you derive subtotal in filtered records.

Subtotal formula works within a cell while the other works within a set of data. For example, subtotal function can calculate the total sales turnover for each Department. Assuming you have a set of data records as shown below.

	A	B	C	D	E
1	S. No.	Employee	Turnover	Department	
2	1	Ram	10000	A	
3	2	Lakshman	40000	A	
4	3	Yudhishtra	34000	B	
5	4	Arjun	59000	B	
6	5	Bhima	70000	B	
7	6	Nakul	34000	B	
8	7	Sahadev	20000	B	
9	8	Krishna	90000	C	
10	9	Radha	65000	C	
11	10	Meera	70000	C	
12					

And you want to insert the total sales turnover, t otal employees below each Department.

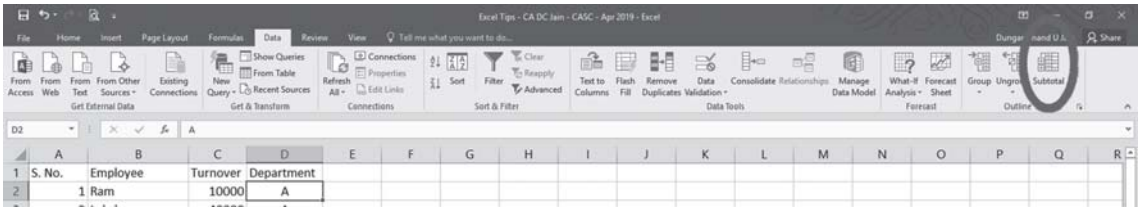
The Conventional way if one is not knowing the Subtotal function would be to insert rows manually after each category. Then use the sum formula to sum up the sales turnover and the total employees into the inserted rows.

Alternative easier method is to use the subtotal function.

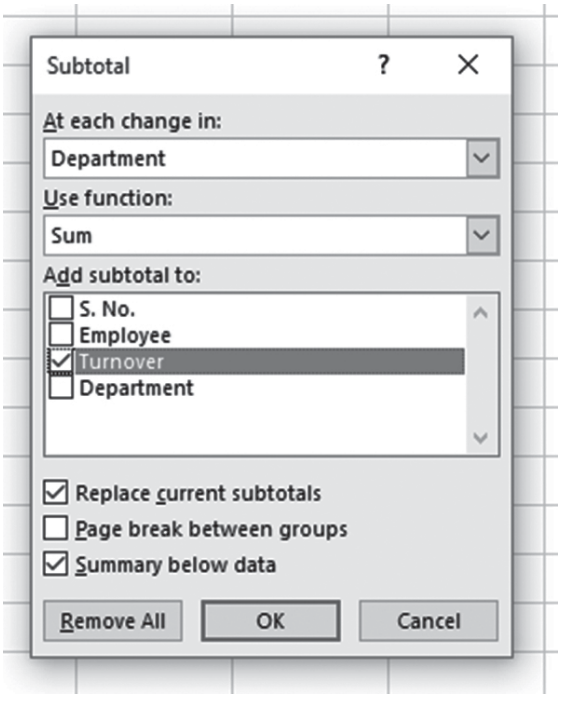
Here is what you do.

1. Select a cell within the data set.

2. Go to ribbon bar, select Data -> Subtotal



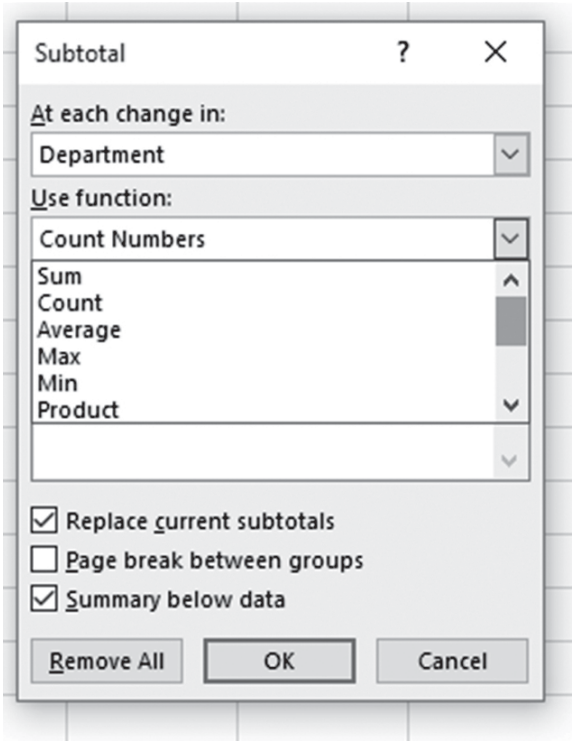
3. The following dialog box will appear.



a. At each change in, select "Department". This is to indicate where Excel should insert the subtotal formula.

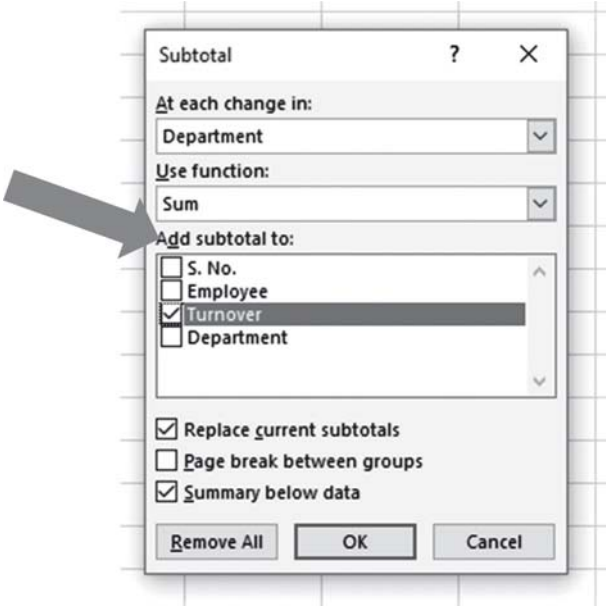
b. For Use function, choose "Sum". You can use a number of functions such as

i. Sum	ii. Count	iii. Average	iv. Max	v. Min	vi. Product
vii. Count Num	viii. StdDev	ix. StdDevp	x. Var	xi. Varp	



On Further Scroll….

c. In the Add Subtotal to section, check the box on "Turnover". This would be sum up at the end of the subtotal function.



d. Replace current subtotal as the description implies will replace any previous subtotals. In our case, this is the first subtotal and therefore, it has no effect in the function.

e. The subtotal function will also insert a page break after every category, namely A, B, C and D if the checkbox "Page break between groups" is checked.

f. Summary below data will place the subtotal below the data. If the option is unchecked. The grand total and the subtotal will appear at the top of the data.

4. Click OK and you will get result given below. Shaded lines are the lines wherein the subtotal is inserted.

	A	B	C	D	E
1	S. No.	Employee	Turnover	Department	
2	1	Ram	10000	A	
3	2	Lakshman	40000	A	
4			50000	**A Total**	
5	3	Yudhishtra	34000	B	
6	4	Arjun	59000	B	
7	5	Bhima	70000	B	
8	6	Nakul	34000	B	
9	7	Sahadev	20000	B	
10			217000	**B Total**	
11	8	Krishna	90000	C	
12	9	Radha	65000	C	
13	10	Meera	70000	C	
14			225000	**C Total**	
15			492000	**Grand Total**	
16					

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LEARNING SERIES ON MULTILATERAL INSTRUMENT UNDER TAX TREATIES LS # 2: - DECODING BASICS OF MULTILATERAL INSTRUMENTS

Objectives

1. Prelude
2. Multilateral Instrument - What is it?
3. Operation of MLI with DTAA
4. Debrief

Mr. SUDARSHAN RANGAN
Advocate
&
CA. VIGNESH KRISHNASWAMY

A. Prelude

Having discussed the metamorphosis to Multilateral Instruments in the first edition to the learning series, we have endeavoured through this edition to decode into the basics of Multilateral Instrument. In order to defragment the important concepts in the context of the Multilateral Instruments ('MLI'), we shall focus on the basics, the operation of MLI and the key concepts around the understanding of MLI when read with the existing Double Tax Avoidance Agreements (DTAAs) that India has signed with other nations.

To put it in a nutshell, we shall look into the (a) 'What is a Multilateral Instrument (MLI)?' (b) 'Operation of MLI in the context of Double tax Avoidance'. The object of this edition is to enable strengthen the next foundational pillar on MLI.

B. What is MLI?

Continuing the introduction from the earlier edition, Action Plan 15 of the OECD on the BEPS project aimed to bring in one signal document containing, the standard set of regulations to be followed on Treaties of double tax avoidance, reduce inconsistencies in treaty practise, renegotiating treaties across all taxing jurisdictions is time consuming, to have consensus and reservations built in through a single instrument.

Exploitation of tax treaties and the domestic law of the other treaty partner has led to Base Erosion and Profit Shifting. The MLI is aimed to help in the fight against BEPS by implementing the tax treaty-related measures through the existing bilateral tax treaties. These measures will prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of permanent establishment status and neutralize the effects of hybrid mismatch arrangements

The MLI, to begin with is also a treaty form of International tax law. It is an agreement or a convention that enables jurisdictions (sovereign states) to modify their bilateral tax treaties for implementing measures designed to better address multinational tax avoidance and **as well as double non-taxation**. This convention, unlike any other treaty, is not adopted as it is. The bilateral tax treaties will be modified in a synchronized and consistent way. It is based on the principle of *lex posterior derogat legi priori* (new law shall replace the earlier law).

Over time, the tax treaties which were originally met for limiting a contracting states' taxing rights, intending to prevent double taxation of income and capital, have become less effective due to the domestic law situations giving rise to avenues of tax planning and evasion. More so, the domestic law giving priority to its taxing rights, such laws became not being effective due to the existence of tax treaty protecting these rights exercised by a state through its domestic tax law. The lack of consistency in the domestic tax law policies framed by each contracting state lead to the mismatch and leaving hope for effectively minimising tax on profits from such state (i.e. leading to operation of tax laws and treaties against the economic allegiance principle).

Recognising the lack of synchronous approach towards tax policies, the BEPS action plans were formulated. If one ought to incorporate these policies under the BEPS framework, it was felt appropriate to have a coordinated approach. If each country ought to give effect to the policies independently through renegotiation of treaties, then, it would mean more than 3,000 individual tax treaties tax treaties to be renegotiated and modified. This would take years for the changes to be incorporated through and treaty. Thus, the implementation of the BEPS actions may not be effective nor would reach the efficiency[1] as desired by its makers. Therefore, it was thought fit that by implementation of policies through single instrument would mean an effective way of implementing the BPES actions.

[1] Source: Preamble to MLI

…….. the need to ensure that existing agreements for the avoidance of double taxation on income are interpreted to eliminate double taxation with respect to the taxes covered by those agreements without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance…..

http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf

The MLI will, therefore, operate to modify tax treaties between two or more Parties to the Convention. Upon coming into effect, the MLI will not replace the existing treaties completely. Instead it will apply alongside existing double tax avoidance agreements and either supplement, complement, supersede or modify their application so as to bring it in line with the measures set out in the BEPS action plan. This means there would be swift, co-ordinated and consistent implementation of the treaty-related BEPS measures in a multilateral context. With this introduction about 'what is MLI?' we shall proceed to understand the operation of MLI.

C. Operation of MLI with DTAA

MLI is an instrument which provides a standard language for modification of all the existing DTAAs. This enables elimination of disputes arising on account of different terms being used differently or distinctively in each of the DTAA between contracting states.

The concept of MLI emphasised on One Negotiation, One Signature and One Ratification. As on 27 September 2018, 87 countries (including India) have signed the MLI and 6 countries have expressed their intention to sign the instrument. Therefore, the MLI already has a significant impact on the worldwide network of tax treaties. With this basic prelude, we step in to understanding how MLI works

In the context of MLI, a DTAA is referred to as a 'Covered Tax Agreement' (CTA). A CTA is defined to be :

'an agreement for avoidance of double taxation with respect to taxes on income that is in Force between two or more parties and/or jurisdictions with respect to which each party has notified to the Depository as a listed agreement under the MLI'.[2]

It is extremely relevant therefore, that in order to make the MLI operational between two parties (or) jurisdictions/ states, it is important that each contracting state **must notify** each other's bilateral tax treaty while becoming a signatory to the convention. For Instance, India is a signatory to MLI. Further India has to notify the relevant DTAA with the other country under the MLI for replacing the treaty provisions. Similarly, the other country has to also notify the DTAA with India in order make the MLI provisions operative as a 'Covered Tax Agreement'. India and Australia have notified each other and, consequently, MLI provisions replace the CTA between India-Australia.

[2] Article 2 of MLI - http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf

Each country before becoming a signatory is required to adopt certain 'mandatory minimum standards', make 'notification' of MLI provisions, choose 'other optional provisions' under the MLI, 'make reservation' to certain provisions of MLI and also provides for 'compatibility clauses' to 'opt in and opt out' of MLI provisions. Hence under the convention, a 'contracting jurisdiction' can exercise its right to modify and adopt such regulations in accordance with this domestic tax positions. This action point is to streamline the implementation of the tax treaty-related BEPS measures. A brief summary of what each of these terms stands for in the context of MLI is provided below:

Term[3]	Stands for
Mandatory Minimum Standards (MMS)	These are standards that form the genesis of MLI and without which the object of MLI may not be fulfilled. For eg, Prevention of Treaty Abuse is a mandatory minimum standard to be adopted under the MLI. However, in case where the contracting states together agree to reflect the minimum standard provisions into their existing DTAA, then such treaty partner may opt out the minimum standards.
Other Optional Provisions (non-mandatory provisions)	Choice of adoption of MLI provisions is at the will of each jurisdiction. Hence those provisions other than the mandatory provisions can be opted by the contracting state at their will.
Notification	The process of notification is to identify the provisions that match with those which have been adopted by the other contracting states and notify those provisions.
Compatibility Clauses	These combability clauses help determine, if a particular MLI provision would modify a provision in the CTA or replace such existing provision with the MLI provision.
Reservation	The reserved provisions of MLI shall not apply to a CTA, if either of the parties make such reservation.

Further, the working of MLI may only be truly operational only when each of the contracting jurisdiction choose to opt for the same MLI position and on such a matching of provisions, the MLI provisions gets added/ replaced in the CTA between the two states. More each of the MLI positions adopted by India and its working in the context of DTAA is aimed to be covered in the upcoming editions of this learning series.

[3] http://www.oecd.org/tax/treaties/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf

The countries are also left to the option, where one party does not notify the another country, they are free to renegotiation the existing DTAAs through the Protocol in line with the common BEPS standards set out by the OECD under the MLI (DTAA between India-Mauritius, which recently got amended is an example of such renegotiation and both countries have not notified each other under the MLI).

Further, it may be interesting to note that in some circumstance there may be provisions of the MLI on which a contracting state may have neither notified nor would have made any reservations to such provision. In such scenarios the question arises, "whether on such provisions which have neither been notified nor have been reserved, would it be included as part of the MLI provisions adopted/ opted by such country?" It would be interesting to see interpretations with reference to these positions in our discussions to follow later.

The coverage of MLI through its articles in light of the BEPS action plans is structured in the manner provided below. Articles 3 to 17 are recognised as substantive provisions under the MLI convention.

Part I	Scope and Interpretation of terms	Article 1-Article 2
Part II	**Hybrid Mismatches**	**Article 3-Article 5**
Part III	**Treaty Abuse**	**Article 6-Article 11**
Part IV	**Avoidance of PE Status**	**Article 12-Article 15**
Part V	**Improving Dispute Resolution**	**Article 16-Article 17**
Part VI	Arbitration	Article 18-Article 26
Part VII	Final Provisions	Article 27- Article 39

D. Debrief

With the introduction of MLI, the existing approach towards interpretation of tax treaties may become less significant. Unlearning and relearning of concepts, terminologies, application of provisions, interpretations of CTAs and its reference to the domestic tax law is necessary. The operation of MLI as part of this edition of the learning series is aimed to bring out the key aspects relating to it. Our next edition of MLI series is aimed at introducing and provide insights on how the MLI will operate.

(The authors are Chennai Based Advocate and Chartered Accountant respectively. They can reached at sudarshan@inbox.com and vignesh.krishnaswamy@outlook.com respectively)

PANEL DISCUSSIONS ON GST - HELD DURING THE 20TH ANNUAL RESIDENTIAL CONFERENCE - 23rd to 27th JANUARY' 2019

1. GST – Good and Simple Tax – Did it lead to ease of doing business – "Upload, Lock, Pay", Sms , returns, etc., The E-return filing procedures for small and large tax payers are not reasonably different hitherto. Are there any serious change in return filing formalities of small tax payers in the days to come?

CA. V. V. SAMPATHKUMAR & CA. K. VIJAYARAGHAVAN

With reference to the Procedural aspects there is a difference between small and large Tax Payers. For Taxpayers having aggregate turnover above Rs.1.50 Crores we need to file GSTR – 1 on a Monthly basis. For Taxpayers below Rs.1.50 Crores we have the option to file GSTR – 3B on a Quarterly basis. The declaration of HSN code in Tax Invoices and returns are required only if the Aggregate T.O is above Rs.1.50 Crores for Supplier of Goods. We are also awaiting for the GST 2.0, where there is only ONE single return facilitating upload of Invoices on a unidirectional basis. This will be implemented on a Trial basis from 01/04/2019 onwards and Live from 01/07/2019. Regarding the E-Way bill, if the Taxpayer has not filed his returns for 2 consecutive periods, then he will be unable to Generate E-Way bills for the movement of his Goods. The Timing of compliance of GST returns should be given due weightage in the process of preparation and filing of GST returns.

2. Reverse Charge – A Boon or Bane?

2a) Without "mandatory reverse charge" (reverse charge on all purchases from Unregistered suppliers), whether GST is really a new Indirect Tax Law?

The RCM under section 9(4) dealing with the Inward supply from unregistered Dealers, it has been deferred till 30/09/2019. The Council has been given a recommendation that the RCM is not applicable for all, but only to Specified Categories of Taxpayers. RCM was already given under the erstwhile Service Tax and VAT laws, and hence it is not a New Indirect Tax Law. RCM is only a small section in the entire gamut of GST Laws.

2b) GTA's GST rate is 5%(Without GST ITC). Reverse charge is there on the specified recipients with all responsibilities of such supplier(GTA). Whether recipient cannot take GST ITC if 5% rate is followed? Should he follow higher rate?

The RCM under section 9(3) is a mandatory provision without any changes till now, except with a Few additions. The Taxes are to be paid by the Recipient as if he is the person liable to pay Tax with respect to the Supply of Goods/Services. The Interpretation of the Law is that the Liability to pay the TAX is shifted from the Supplier to the Recipient, will in No way affect the Eligibility of the Recipient to claim the ITC. Hence the Service Recipient paying either 5% or 12% is eligible for availing ITC. If the Service Provider charges GST @ 12% then he is also eligible to avail the ITC on his inward services.

2c) What is the GST liability of a recipient towards payments to Government? Whether GST is applicable on various State levies (Fees/Charges paid to Pollution Control Board, City Development Authorities, Motor Vehicle Taxes, Seigniorage Fees, Government lab charges for specified industries etc) also?

Services provided by the Government are subject to RCM except 4 Services (Renting, Postal Department, Aircraft/Vessel services, Transport of Goods/Passengers). As per section 15, Valuation Provisions of the CGST Act, any Taxes,Duties, Cesses,fees and charges levied under any other Laws except anything paid under GST should be included in the Value of Taxable Supply. Hence GST is applicable on the above state levies also. Therefore RCM under GST is a Boon because Mismatch will not be a problem and the Taxpayer gets his instant credit. RCM is also a Bane to the extent of raising Self Invoices for the payment of RCM, proper classification of Goods/Services, by mentioning the correct HSN Code, and pay tax at appropriate rate.

3. Input – When Government can collect its revenue, irrespective of filing of returns, maintenance of records – input is not allowed for procedural lapse of non – filing of forms, returns

3a. Should GST ITC not counted for the purpose of deducting the GST dues on which interest is to be calculated?

In order to avail ITC the Taxpayer has to comply with 4 subsections of section 16 of CGST Act. Possess a Valid Invoice/Debit note, Goods or Services should have been actually received, Section 39 Filing of Returns (GSTR- 3B and GSTR – 1) within Due date, Section 41 Taxes have been actually paid to the Government. As per Payment of Tax u/s 49 of CGST Act, the ITC can be set off against the Output Tax liability and only the Net Output Tax is paid.

The Law as on date prescribes that for the purpose of calculation of Interest , the ITC available cannot be considered if the return is filed after the Due Date. However as per the recommendations of the 31st Council meet, it has been recommended to calculate Interest only on the Net Output Tax liability instead of the Gross Output Tax Liability, because the Erstwhile Laws have not charged Interest on the Gross liability.

3b. GST paid voluntarily but GST return filing delayed, whether it shall cause interest liability on Gross GST liability only?

Yes - Interest is to be calculated only on the Gross liability only.

3c. Whether Government is to reconsider the above mentioned or not?

Recommendations have been made and awaiting for the Notification from the Government.

4. Rectification of Returns – under GST

4a. Whether annual return GSTR 9 in any way helps to rectify the mistakes voluntarily by the assesse?

Earlier the GSTR – 9 was only a consolidation/summary of GSTR – 3B/GSTR- 1, which does not admit for any additional liability to be paid. Subsequently the Form has been modified so that the mistakes/errors/omissions can be rectified. This modifications allows the Tax Payer to pay any further liability.

4b. Whether any GST revised return is to be introduced by the Government?

So far, we do not have any provision for revised return, but any mistakes/errors/ omissions can be rectified by way of Amendment Table in the subsequent month's return. In that way, every return is a revised return to rectify the errors in earlier returns.

4c. If no revision is open to the assesse, is the intention of the law to collect more penalties only than the original GST?

No, even though Revision of return is not possible, rectifications can be made in the subsequent month's return.

5. Responsibility of Auditors under GST regime, Considering VAT, Service Tax, GST and Income Tax for FY -17-18.

5a. I filed Tax Audit report without disallowing significantly anything U/S 37 of the I.T Act 1961. As GST auditor, now I find explicitly disallowance GST ITC on club expenses, personal foreign tours, dress and personal utilities etc., What should I do in GST audit report?

5b. In GST audit I confirm the reverse charge GST payments in respect of payments to Non-Resident service providers. However I have not made any qualification in my Tax Audit report as to TDS defaults U/S 195 RTW 206AA of the I.T Act 1961. Am I in trouble?

5c. I report in GST Audit report the GST ITC reversal in respect of impairment of assets. Unfortunately due reference was not ensured in I.T audit report. Is it in any way serious?

All the above said cases are very similar. If there is a possibility of revision of Tax Audit Reports then, such revision can be made in order to ensure that both the Tax audit report and GST Audit report comply with the same transactions without any mismatch between them.

5d. Purchase invoices of a branch not available for my verification during GST audit at all. I make due mention thereof in GST audit report. But in any way, have I taken risk from I.T audit angle?

Since each and every invoice of an entity cannot be verified, audit is conducted on a sampling basis. If the documentations are proper and the sampling prepared is representative, scientific and distributed sampling, there is no issue with the Tax Audit report, even though it is not matching with the GST Audit report. That particular purchase invoice could have been available at the time of time of I.T audit. Hence considering the facts and circumstances of the case, this may not be a risk from the I.T audit angle.

6. Matching concept – uninterrupted flow of ITC – Refund (Centralised Processing) – Impact on working capital.

6a. All my GST officers ask for print out or manually filled GST RFD 01A. Then what for the GSTIN is there?

Earlier the system allowed to file Refund only on a monthly basis. But later it was modified to apply for Refund for more than a month. But this modifications were made available only on the Front end for the Taxpayer and not at the back end for the Department. In cases of Refunds applied for more than a month the proper officer did not have a proper view to see what is being filed at the backend. In such cases in order to ensure quick process of the Refund application, it is better to submit the Physical copies.

6b. If data in GSTR 2A does not have a ITC of a supplier, should I not take that GST ITC? What does the Law say?

Earlier there was a matching mechanism between GSTR – 1, GSTR – 2A and GSTR- 2. But now we are currently filing only GSTR – 3B and GSTR – 1, which does not require for matching concept. Moreover as per section 16 of the CGST Act, ITC can also be claimed on satisfying the other conditions. Hence ITC can be claimed.

6c. Does the law prescribes any time limit for GST refunds from the date of my application or not? If I delay GST payment, I pay with interest and also penalty. Whether higher interest is prescribed for the belated GST refunds?

The Taxpayer has to apply for refund within 2 years from the relevant date. The proper officer also has the time limit of 60 Days to pass an order for the filed refund application. In case the delay is more than 60 days, the department has to pay an Interest of 6% on the Eligible Refund amount. In cases where the claim attains it finality where appeal cannot be made further, Interest at the higher rate of 9% has to be paid.

7. Concept of Supply

7a. If hospital supplies food to patient and bills it along with health care services, it is exempted. But if it supplies stent/valve/medicine along with health care services whether the gross bill is exempted or not?

Being a composite supply, food supplied to patients are exempted , since the Principle supply of health care services are exempted supplies. All these stents/valves/medicines are part of the health care services, being health care services are the principle supply, the Gross bill are also exempted.

7b. Land cannot be taxed under GST law since it is purely state subject. However by compulsion the taxable value is arrived at by adding the value of land with an adhoc reduction (1/3 rd of gross value) in case of construction services. Is it not unconstitutional?

The valuation for supply is arrived as per Section 15 of the CGST Act. The value of Land can be included in the Valuation of Taxable supplies. The Tax is not levied on the Land directly. But its value alone has been included in the Taxable supplies. Per se the levy is not on the land. Hence it is constitutionally valid.

7c. The Head office pays salary for all branch personnel on centralized basis. I read some ruling of AAR that in such case HO has rendered Inter State "manpower supply to branches. It is not a Pandora box on All India basis for lakhs of assesses?

The AAR that is referred here is Columbia Asia Hospitals Pvt Ltd. The Employees of the HO has rendered services to the Branch. The employees are attached to the Company and not to the Physical location. It has to be categorised only under the Schedule III of the CGST Act, and hence no Taxes can be levied on such supplies, in our opinion.

8. E-Way bills

8a. The State Tax officers have not come out of VAT time period at all. If spot penalty not paid they never bother to release the vehicle. What is the practical remedy?

The vehicle cannot be detained beyond a particular time. There should be a protest against detention of vehicle beyond the time limit.

8b. If the goods carriage is heading to unload at unregistered premise of registered tax payer, the state tax officers intercept and levy penalty. What is the defense?

Within a time period of 30 days from the date of becoming liable to registration, any tax payer can apply for registration. So even before registration of a premise the tax payer can unload the goods which are taxable.

Hence the time limit of 30 days can be a point to defense. The additional points of defense can be track record of the tax payer such as proper filing of returns and payment of taxes.

8c. If the transporter transporting goods by buses, is not able to fill up part B in EWB with vehicle details why and how I (a genuine consignor) should be punished?

E-Way bill can be generated only after filling of Part B. This part can be updated as and when the goods are in movement also. A perfect E-Way bill can be raised and as and when the goods are in Transit Vehicle number can updated by the consignor.

9. SEZ / EOU

9a. I am a designer designing the logo of SEZ. How can i know that it is covered by authorized operations list of the SEZ?

The SEZ unit Development Commissioner has the list of authorised operations., and the services provided are to be specified in the list in order to avail exemption.

9b. I supplied to EOU the goods at concessional rates prescribed by CTR Notification issued in October 2017. What are the documentary evidences that shall safeguard my concessional rate claim?

The situation is covered under Notification 41/2017, nine conditions specified has to be satisfied.

The supplier must have a cordial relationship with the recipient, and if the supplier and recipient is not comparable in size, this may not work out, since most of the conditions will be satisfied post supply only.

10. GST Tariff

I am unhappy that I spent about an hour to decide the GST tariff of particular product, even after 1 ½ years after introduction of GST law. Am i not in comfort zone in GST consultancy?

The main crux of GST lies in the proper classification of the Goods / Services, and identifying the relevant HSN / SAC codes of such supplies, in order to arrive at the right rate of applicable tax. If these are done rightly, then sure we are in the Comfort zone of our GST consultancy.

Registered with Register of News Paper of India - TNENG/2002/9058 Postal Regd.No.TN/CH/(C)/170/15-17
Licenced to Post at Egmore RMS/1 (Pathirka Channel) Publication 26th of Every Month.

Published by : Anil Kumar Khicha on behalf of the Chartered Accountants Study Circle,
2-L, Prince Arcade, 22-A, Cathedral Road, Chennai - 600 086. Phone : 2811 4283
Printed by : D. Srikanth at Super Power Press, No.1, Francis Joseph Street, Chennai - 600 001. Phone : 6536 1540
Editor : Anil Kumar Khicha