CASC BULLETIN

THE CHARTERED ACCOUNTANTS STUDY CIRCLE

Prince Arcade, 2-L, Rear Block, Second Floor,
22-A, Cathedral Road (Next to Stella Maris College)
Chennai - 600 086. Phone : 044 - 28114283
Website : www.casconline.org

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MEETINGS

Date	Time	Speaker	Topic
13.12.2018 Thursday	06.30 p.m.	CA. Bharathkumar N. K.	GST Legal Issues - Post Annual Return Filing
20.12.2018 Thursday	06.30 p.m.	CA. Anand R.	CAs As Independent Directors

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

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H / P	:	98410 20581, 98416 20581
Tel	:	044 26184581 / 26184582
Direct	:	044 26186537
E-mail	:	esasbpo@gmail.com, esaskpo@gmail.com
Address	:	No 24/20, Thirumangalam Road, Villivakkam, Chennai - 600 049. (Near IOB Kambar Colony Branch)

EDITORIAL

Ease of Doing Business – GST – a Myth or Reality:

The Central Board of Indirect taxes and Customs (CBIC) had come out with a publication "Goods and Services Tax (GST) Concept & Status" which gives an insight into the current status of the GST implementation. According to this document in para 15 – "**EXPERIENCE OF REGISTRATION & RETURN FILING",** the following statistics have been tabulated.

S.No.	Details	As on 30th September, 2018
1	No. of transited (migrated) taxpayers	66,21,211
2	Total No. of new applications received for registration	62,88,429
3	No. of applications approved	53,90,154
4	No. of applications rejected	8,38,725
5	**Total No. of taxpayers; new + migrated (1 + 3)**	1,20,11,365

Based on the above statistics it worthwhile to note that it is almost 45% increase in the registered taxpayers with new applications approved which may be due to simplification in ease of doing business by allowing the registration through simplified procedures. However, the other statistics are not that encouraging which goes on to prove that doing business in not that easy. It is also worthwhile to note that the number of new applications rejected are 13.34% of the total new applications received. The total number of taxpayers opting for composition scheme is only 17.66 lakhs taxpayers which works out to 14.71% of total taxpayers - can this be considered as desirable considering the compliance requirement for regular taxpayers is much more and taxpayers reluctant to opt for composition scheme due to its inherent issues.

The number of taxpayers complying with filing of the so called monthly returns in Form GSTR3B has not shown major improvements over the period July 17 to Aug 18 hovering between 63.44% for July 17 to maximum 71.73% in September, 2017 (this is based on bare figures provided without considering the period in which the new applications were approved). The concept and status does not dwell upon why there is lapse on the part of taxpayers to comply with the law though it states in para 16.1 - "Lack of robust IT infrastructure and system delays makes compliance difficult for the taxpayers". In case the Government was aware of this then what steps have been taken or proposed to overcome the same is not discussed at all.

S. No.	Details	As on 30th September, 2018	
		In Nos.	In %
7	No. of 3 (B) returns filed for July, 2017	64,98,974	63.44%
8	No. of 3(B) returns filed for August, 2017	70,36,589	68.68%
9	No. of 3(B) returns filed for September, 2017	73,48,992	71.73%
10	No. of 3(B) returns filed for October, 2017	70,73,925	69.05%
11	No. of 3(B) returns filed for November, 2017	71,00,465	69.31%
12	No. of 3(B) returns filed for December, 2017	71,45,982	69.75%
13	No. of 3(B) returns filed for January, 2018	72,11,313	70.39%
14	No. of 3(B) returns filed for February, 2018	72,81,207	71.07%
15	No. of 3(B) returns filed for March, 2018	73,09,982	71.35%
16	No. of 3(B) returns filed for April, 2018	72,53,427	70.80%
17	No. of 3(B) returns filed for May, 2018	73,11,460	71.37%
18	No. of 3(B) returns filed for June, 2018	72,94,078	71.20%
19	No. of 3(B) returns filed for July, 2018	71,61,080	69.90%
20	No. of 3(B) returns filed for August, 2018	66,65,464	65.06%

Much worst is the statistics related to filing of GSTR 1 wherein the compliance has come down to 16.89% for the month of August, 2018 which attained the maximum of 63.04% in September, 2017. Hope this would have improved when GSTR1 filing date was extended up to 31st October, 2018

21	No. of GSTR 1 returns filed for July, 2017	58,59,007	57.19%
22	No. of GSTR 1 returns filed for August, 2017	23,96,415	23.39%
23	No. of GSTR 1 returns filed for September, 2017	64,57,830	63.04%
24	No. of GSTR 1 returns filed for October, 2017	24,49,611	23.91%
25	No. of GSTR 1 returns filed for November, 2017	24,69,650	24.11%
26	No. of GSTR 1 returns filed for December, 2017	64,00,495	62.48%
27	No. of GSTR 1 returns filed for January, 2018	24,13,439	23.56%
28	No. of GSTR 1 returns filed for February, 2018	23,89,232	23.32%
29	No. of GSTR 1 returns filed for March, 2018	62,38,263	60.89%
30	No. of GSTR 1 returns filed for April, 2018	23,91,538	23.34%
31	No. of GSTR 1 returns filed for May, 2018	23,74,142	23.17%
32	No. of GSTR 1 returns filed for June, 2018	57,76,882	56.39%
33	No. of GSTR 1 returns filed for July, 2018	21,56,605	21.05%
34	No. of GSTR 1 returns filed for August, 2018	17,29,999	16.89%

What could be the reason for the wild fluctuations in the statistics? The concept and status paper states in para "14.7 Ease of Doing Business**:** Simpler tax regime with fewer exemptions along with reduction in multiplicity of taxes that are at present governing our indirect tax system will lead to simplification and uniformity. **Reduction in compliance costs as multiple record-keeping** for a variety of taxes will not be needed, therefore, lesser investment of resources and manpower in maintaining records. It will result in simplified and automated procedures for various processes such as registration, returns, refunds, tax payments. All interaction shall be through the common GSTN portal, therefore, less public interface between the taxpayer and the tax administration. It will improve environment of compliance as all returns to be filed online, input credits to be verified online, encouraging more paper trail of transactions. Common procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods and services will lend greater certainty to taxation system."

The compliance level for the composition dealers are also moving down after touching 82.66% for the last quarter of financial year 2017-18, to 76.36% for the first quarter of the current financial year.

However, the ground reality is the taxpayers are required to incur more cost in compliance by way of investment in IT infrastructure as well as record keeping as all necessary documents are required to be stored by the taxpayers for production as when called for.

The ease of doing business should not stop with obtaining registration but has to percolate to complying with all other requirement like filing of returns / forms which should again be such the taxpayers is left with ample time to do business than to do the compliance related work.

Ruby Jubilee Celebration.

Members would be aware that CASC is presently in its 40th Year and will be completing the same in this month and to commemorate the same we are in the process of organizing a conference in the last week of December, the details of which will be communicated to all through mail and uploading on our website.

Appeal

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

For and on behalf of Editorial Board

CA. Uttamchand Jain

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

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RECENT JUDGMENTS IN VAT CST GST

Assessment: The CST assessment has been completed by the predecessor officer of the respondent. However, in the impugned orders, the new officer, who had taken charge, has not even dealt with the reply given by the petitioner nor considered the fact that the turnover has been assessed under the Central Act, but merely stated that the objections filed by the dealer were not acceptable and that they were overruled. It is seen that the proceedings are pending since 2010 and several letters have been sent by the dealer, which were referred to in the impugned assessment orders. Therefore, the respondent should have done a thorough exercise and then come to the conclusion as to whether the stand taken by the petitioner is proper or not. Without considering the objections, the respondent passed the orders in a single line and this approach cannot be considered to be valid. For all the above reasons, the Court held that manner, in which, the assessment has been completed does not stand the test of law. **M/s.Raja Steels Private Limited, Vs The Assistant Commissioner (CT), (FAC), Avarampalayam Circle, Coimbatore-18. Writ Petition Nos.2520 & 2521 of 2018 Dated: 06.2.2018**

CA. V.V. SAMPATHKUMAR

Industrial Input Certificate : The only test as to whether it is an industrial input or not, is to refer to Rule 6(3)(b) of the said TNGST Rules In terms of the said Rule, every registered dealer, who is a manufacturer or producer and in the instant case, M/s.Ford is the purchaser, and purchases industrial inputs to use them in the manufacture of taxable goods, shall issue a certificate to the seller - the petitioner in the instant case containing the details of the tax payer identification number, the details of goods purchased, details of goods manufactured and the name and the address and the tax payer identification number of the seller/the petitioner herein. A sample industrial input certificate has been filed, from which, it is seen that the purchaser's tax payer identification number etc states that the goods specified in the statement are industrial inputs for use in or in connection with the manufacture of goods i.e. passenger cars, its parts, components

and accessories, in the State, packing materials. Though the petitioner has complied with Rule 6 of the said Rules, it has to be seen as to whether the respondent can ignore the same and take a stand that industrial input certificate produced is of no value. Entry 67 of Part B to the First Schedule of the said Act states that the industrial inputs used in manufacture and for use in assembling, packing or labelling in connection with the manufacture inside the State are taxable at 4%. Admittedly; the goods imported by the petitioner are inputs for the manufacture of car inside the State. Therefore, the appropriate classification should be under Entry 67 of Part B to the First Schedule and not otherwise. The respondent took a stand that the industrial input certificates issued by the purchasing dealers do not contain the entire details as per Rule 6(3)(b) of the said Rules. However, this view is incorrect, as all the relevant details have been mentioned in the industrial input certificate. Even assuming that the certificate is incorrect, then, in terms of the decision of the Hon'ble First Bench of this Court in the case of Sree Murugan Engineering Products Vs. CTO, Coimbatore [reported in (2006) 148 STC 419], any contravention in the certificate can be attributed only to the person, who issued the certificate and not to the selling dealer. Stating so, the court allowed the writ petitions, set aside the orders and the matters are remanded to the respondent to redo the assessment. **Sanden Vikas India Private Limited, Vs The Assistant Commissioner (CT),Anna Salai Assessment Circle. Writ Petition Nos.25681 to 25684 of 2017 Dated: 08.2.2018**

Attachment of property: The petitioner is the State Bank of India and the relief sought for is against the first respondent to remove the attachment effected by them in respect of the property, which has been offered as collateral by the third respondent/borrower to the petitioner/ Bank. Whether a Bank has priority over the dues of the Sales Tax Department. The issue is no longer res integra and has been decided by a Full Bench of this Court in the case of The Assistant Commissioner (CT) vs. the Indian Overseas Bank and another in W.P.Nos.2675 of 2011 etc., batch dated 10.11.2016, to which the Court held that financial institution, which is a secured creditor would have 'Priority of Charge' over the mortgaged property over and above the Department of the Government. Following the above order in this case, the court held that attachment of the mortgaged property by the Sales Tax Department is held to be without jurisdiction and accordingly, this writ petition to that extent is allowed and the

attachment effected by the first respondent shall stand removed forthwith. This order shall be intimated by the first respondent to the second respondent to make necessary entry in his records. **State Bank of India, Vs.The Assistant Commissioner, Commercial Tax, Ambur, Vellore District. and The Sub-Registrar, Ambur, Vellore District.W.P.No.30751 of 2017 DATED : 18.01.2018**

Section 3(4), TNGST Act: For the questions, Whether under Section 3(4) of the Tamil Nadu General Sales Tax Act, 1959, when the end product is sold in the course of export, liability to pay tax on the raw materials purchased against concessional levy, used in the manufacture of such end goods exported, can be fastened? and 2.On the facts and in the circumstances of the case and having regard to the language used in the charging section viz., section 3(4) of the Tamil Nadu General Sales Tax Act, 1959, whether liability under section 3(4) of the Act can be imposed on the petitioner ,raised in this WP, the Court held that since, the learned counsel for the assessee as well as the learned counsel for the respondent submitted that the questions of law framed for consideration in this case is squarely covered by the decision of the Division Bench in Tube Investments of India Ltd., Vs. State of Tamil Nadu reported in [(2010) 36 VST 67 (Mad)], accordingly the said questions of law are answered in favour of the assesse and against the Revenue. **M/s. C. Kalyanam & Co., Vs The State of Tamil Nadu, T.C.No.56 of 2009 DATED : 25.06.2018**

Classification: The Appellate Authority has referred to the technical write-up given by the assesse, as to the product but has not given any specific finding/ reasoning why the equipments viz., Gas Chromotograph and Servo Type Transmitter are treated as electrical equipment under Item 7 of the Part 'D' of the Ist Schedule of the Act and why the technical write-up produced by the assesse was rejected. The Appellate Assistant Commissioner has not discussed about the technical write-up though he has referred it in his order. There is no finding to establish that the equipments used by the petitioner are electrical items. Furthermore, we find that the Appellate Assistant Commissioner neither rendered an opinion that the technical write-up supports the case of the assessee or otherwise. Thus, stating so the Court held that a factual exercise is required to be done by going through the technical write-up, and if the equipments are still available, inspection of the equipments should also be done and remanded for fresh consideration. **M/s.Manali Petrochemical Ltd. Vs Deputy**

Commissioner of Commercial Taxes Chennai South Division Chennai.T.C.No.72 of 2009 DATED : 25.06.2018

Inspection, unsigned statement: The respondent completed the assessment by observing that the petitioner has not produced any document or original document in support of their contention. Furthermore, the respondent would state that whatever the petitioner has stated is liable to be rejected as afterthought, since they did not do so before the Enforcement Wing. This observation is wholly unsustainable and clearly shows that the respondent is not aware of the legal position that whatever has been said before the Enforcement Wing cannot operate as an estoppel against the petitioner while replying to the revision notice issued by the respondent. Furthermore, the statement, which was prepared by the Enforcement Wing, was not signed by the petitioner; therefore, such statement would not bind the petitioner. These are all elementary legal principle which the respondent should have noted. Thus, for the above reasons, the impugned assessment order is wholly unsustainable. **Vanijax Sales Pvt. Limited v. The Assistant Commissioner (CT) Pattaravakkam Assessment Circle W.P.No No.30605 of 2016 DATED: 20.06.2018**

Assessment: It is submitted that the Officer, who heard the petitioner was different officer than who issued the show cause notice. In any event, the petitioner appeared before the respondent, produced the party ledger statement and all other records to substantiate their case relating to claim of input tax credit. After the personal hearing got concluded on 31.05.2016, nothing happened almost eight months and the impugned order has been passed in February 2017. The discussion is only in the last four lines of the impugned order and the same is cryptic as it does not deal with the documents produced by the petitioner. The Division Bench in the case of the Assistant Commissioner (CT), presently Thiruverkadu Assessment Circle, Kolathur, Chennai (Mad) v. Infiniti Wholesale Limited reported in 2017 (99) VST 341 held that if the sales effected to the dealer were not disclosed by such a seller either in the form of return filed monthly or the tax collected from the dealer was not made over to the Department by such seller, action would lie against such defaulting seller and not against the purchaser. Instead of trying to cross verify the input-tax credit availed of by the dealer with specific reference to each component, action was directed by the assessing officer against the dealer. The Court observed that the above decision would apply to the case on hand

and that the impugned order is outcome of non-application of mind. Failure to consider the objections filed by the petitioner in a proper manner and undue delay are sufficient to quash the impugned proceedings and quashed the proceedings and remanded the matter to the respondent for fresh consideration. **Ashoka Buildcon Ltd., vs Assistant Commissioner (CT) Avadi Assessment Circle, W.P.No.11116 of 2017 DATE: 27.06.2018**

Alternative remedy, Pre-deposit: The Court is of the view that the issue relating to classification as well as rate of tax are not pure questions of law, but mixed questions of fact and law. The factual matrix has to be definitely gone into, which obviously cannot be done in a writ petition. The Court is conscious of the fact that the writ petition is pending since 2009. Nevertheless, the Court cannot embark upon a fact finding exercise as to what is the nature of product dealt by the petitioner, how it is different from gold bullion and what would be the rate of tax payable on the sale of such items. This issue has to be necessarily dealt with by the Appellate Authority. Therefore, this Court is inclined to relegate the petitioner to avail the appeal remedy provided under the Act. The petitioner had the benefit of an order of interim stay from the date when the writ petition was filed and the same was made absolute on 30.07.2010. Hence, the order of stay should continue till the appeal is disposed of by the Appellate Authority. But the learned Government Advocate pointed out that to enable the petitioner to avail the appeal remedy, pre-deposit of the disputed tax is required to be made. The Court observed that the case on hand can be treated as an exceptional case and relief can be granted to the petitioner to pursue the appeal remedy without effecting pre-deposit, since the petitioner is a nationalized bank and cannot be treated on par with a normal dealer, who is registered under the provisions of the TNGST Act. Thus, considering the exceptional circumstances in this case, this Court is inclined to issue the following direction and directing the petitioner to file an appeal before the Appellate Authority within a period of thirty days from the date of receipt of a copy of this order and if the appeal is filed, the Appellate Authority shall entertain the same without rejecting the same on the ground of limitation. **Indian Overseas Bank, vs-The Commercial Tax Officer, Anna Salai III Assessment Circle W.P.No.1124 of 2009 DATED : 14.06.2018**

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

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GST - ADVANCE RULINGS CASE LAWS

1. CENVAT Credit In Respect Of Inputs Held In Stock Or Contained In Semi-Finished / Finished Product As On 1.7.2017 – Restriction On Transfer Thereof To GST Credit In Respect Of Stock Issued More Than 12 Months Earlier U/S 140(3)(Iv) Of The CGST Act - Unconstitutional And To Be Struck Down

CA. VIJAY ANAND

In FILCO Trade Centre Pvt. Ltd. v. UOI 2018(17) GSTL 3 (Guj.), the petitioner company is engaged in trading of specialized industrial bearings of various types and also imports certain goods. Under the regime before the introduction of Goods and Services Tax ("GST" for short), the excise duty on local goods or the countervailing duty paid on imports was not to be borne by the petitioners& such credit could be utilized for payment of tax. The petitioner has to maintain sufficient stock of different kinds of such bearings, many of which items may not be immediately sold and would therefore, have longer cycle of such goods remaining with them after purchasing from the manufacturer before they are sold.

Before the introduction of GST, the petitioners' transactions of purchase and sale of goods were covered under the Central Excise Act, 1944, Central Excise Tariff Act, 1985 and CENVAT Credit Rules, 2004 ("the Rules of 2004" for short). Under such statutes, a manufacturer would not bear the burden of excise duty on the product manufactured by him. If the petitioners and other similarly situated first stage dealers were not granted similar benefits in some form or the other, the petitioners' business would become wholly unviable. Prior to enactment of IGST Act, the petitioner company as a first stage dealer was not burdened with the excise duty paid on the purchases and this was without any restriction on time during which the goods must be sold& a registered manufacturer could avail CENVAT credit of tax paid on purchases which could be utilized towards duty liability of goods manufactured by him. As against this, a first stage dealer or an importer

could pass on the credit of tax paid on their purchases to the customers who could utilize such credit against their duty liability on product manufactured by them. Clause(iv) of sub-section(3) of section 140 of the CGST Act has imposed a condition for availing of such a benefit which not only acts harshly and unjustly to the petitioners and other similarly situated first stage dealers but acts retrospectively. It is also arbitrary and discriminatory.

Thereafter, the assessee filed a petition before the High Court challenging Clause(iv) of sub-section(3) of section 140 of the CGST Act, which observed as under:

1. Rule 3(1) of the Cenvat Credit Rules, 2004 (CCR for short) empowered a manufacturer or producer of final products or a provider of input service to take CENVAT credit of the excise duty and other duties specified therein. Rule 9 of the CCR provided that credit shall be taken by the manufacturer on the basis of documents mentioned therein. Sub-clause(iv) of clause (a) of sub-rule(1) of Rule 9 of CCR pertained credit to be availed on an invoice issued by a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002.

2. Thus upon the first stage dealer issuing invoice, his purchaser-manufacturer would be entitled to take CENVAT credit of the duty paid. Like-wise clause(c) of sub-rule (1) of Rule 9 pertained to bill of entry. Sub-rule (4) of Rule 9 enables purchase of input or capital goods from a first stage dealer or second stage dealer, provided certain conditions are fulfilled.

3. As per sub-rule(8) of Rule 9 of CCR, a first stage dealer or a second stage dealer had to submit within fifteen days from the close of each quarter of a year to the Superintended of Central Excise, a return in the form specified by notification by the Board. In terms of the said rules, thus the incident of duty on manufactured goods was not to be borne by first stage dealer.

4. As per sub-section (3) of section 140 of the CGST Act, several classes of persons including a first stage dealer would be entitled to take in his credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day (01.07.2017) subject to fulfilment of conditions specified therein. The petitioners have no grievance about any of the conditions except condition no. (iv) Which

provides that such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day. This condition would limit the eligibility of a first stage dealer to claim credit of the eligible duties in respect of goods which were purchased from the manufacturers prior to twelve months of the appointed day.

5. In Budhan Choudhry v. State of Bihar AIR 1955 SC 191, seven Judge Bench of the Supreme Court observed that when Article 14 of the Constitution forbids class legislation, it does not forbid reasonable classification. However, for the classification to be reasonable, two conditions must be fulfilled viz. (i)that the classification must be founded on a intelligible differentia which distinguishes persons or things that are grouped together from this legal difference of the credit and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.

6. In State of Jammu & Kashmir v. Triloki Nath Khosa AIR 1974 SC 1, the Constitution Bench upheld the legislation classifying Assistant Engineers into Degree-holders and Diploma-holders for the purpose of promotion by observing that the classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances in order to judge the validity of a classification. It was observed that there is a presumption of constitutionality of a statute and that the burden is on one who canvasses that certain statute is unconstitutional to set out facts necessary to sustain the plea of discrimination and to adduce cogent and convincing evidence to prove those facts. In order to establish that the protection of the equal opportunity clause has been denied to them, it is not enough for the petitioners to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with other similarly circumstanced. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis.

7. A three Judge Bench in State of A.P. v. Mcdowell and Co.[1996] 3 SCC 709 had opined that the grounds for striking down a statute framed by the legislature are only two viz. (1) lack of legislative competence, or (2) violation of fundamental rights or any other constitutional provision. If enactment is challenged as violative of Article 14,

it can be struck down only if it is found that it is violative of the equality clause or the equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6). No enactment can be struck down by just saying that it is arbitrary or unreasonable. 'Arbitrariness' is an expression used widely and rather indiscriminately-an expression of inherently imprecise import. Hence, some or the other constitutional infirmity has to be found before invalidating the Act. An enactment cannot be struck down on the ground that the Court thinks it unjustified. Parliament and legislatures, composed as they are of the representatives of the people and supposed to know and be aware of the need of the people and every what is good and bad for them. The Court cannot sit on the judgment over their wisdom.

8. In Tata Motors Ltd v. State of Maharashtra [2004] 5 SCC 783, it was observed that levies can be imposed or withdrawn but if a particular levy is sought to be imposed only for a particular period and not prior or subsequently, it is open to debate whether the statute passes the test of reasonableness at all.

9. In Jayam and Co. v. Asstt. Commissioner [2016] 15 SCC 125, the Supreme Court noted as approval observations made in case of R.C.Tobacco (P.) Ltd v. Union of India [2005] 7 SCC 725, it was held that a right accrued to the assessee on the date when the paid tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. This concept was further elaborated in Dai IchiKarkaria Ltd 1999 (112) ELT 353 (SC) wherein it was held that if a manufacturer obtains credit for the excise duty he paid on raw material to be used by him in the production of an excisable product and immediately makes the requisite declaration and obtains an acknowledgment thereof, he is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. The Rules do not make any provision for reversal of the credit. The credit is therefore, indefeasible.

10. In Indsur Global Ltd v. Union of India 2014 (310) ELT 833 Guj, Rule 8 (3A) of the Central Excise Rules, 2002 (which provided that if an assessee defaults in payment of duty beyond thirty days from the date prescribed under sub-rule (1) then notwithstanding anything contained in the sub-rule(1), the assessee shall pay

excise duty for each consignment at the time of removal without utilizing the CENVAT credit till the assessee pays the outstanding amount including interest) was struck down as unconstitutional.

11. The aforesaid judgements would thus indicate that the right that the petitioner had to pass on the credit of excise duty paid on goods purchased at the time of sale of such goods was a vested right. It was as good as the duty paid by the assessee to the Government revenue which could be utilized by the purchasers of such goods from the petitioner against future liabilities of course subject to fulfilment of conditions.

12. When the new regime was therefore introduced through goods and service tax statutes, through migration these existing rights were being adjusted in terms of provisions contained in sections 139 and 140 of the CGST Act. The legislature also recognized such existing rights and largely protected the same by allowing migration thereof in the new regime.

13. In the process, a condition was imposed to enable the assessees in the nature of first stage dealer wherein the invoices or other prescribed documents on the basis of which credit was claimed were issued not earlier than twelve months immediately preceding the appointed day. In effective terms, this condition restricted the enjoyment of existing credit in respect of goods purchased not prior to one year of the appointed day. In relation to all goods purchased prior to such day, no credit would be available under the credit ledger to be maintained under the CGST Act. Such credit would be lost. This condition has retrospective operation and takes away an existing right.

14. The above condition itself may not be sufficient to hold the provision as ultra vires or unconstitutional. However, in addition to these findings, we also find that no just reasonable or plausible reason is shown for making such retrospective provision taking away the vested rights. Had the statutory provision given a time limit from the appointed day for utilization of such credit, the issue would stand on an entirely different footing. Such a provision could be seen as a sunset clause permitting the dealers to manage their affairs for which reasonable time frame is provided. The present condition however without any basis limits the scope of a dealer to enjoy existing tax credits in relation to purchases made prior to one year from the appointed day. No such restriction existed in the prior regime.

15. Arising out of the above, the impugned provision does not make hostile discrimination between

similarly situated persons but the same does impose a burden with retrospective effect without any justification.

Hence, clause (iv) of sub section (3) of section 140 of the CGST Act was declared unconstitutional and struck down and the petitions were allowed.

2. GST – Advance Ruling – Supply And Installation Of Car Parking System – Works Contract

In RE: Precision Automation & Robotics India Limited 2018(17) GSTL 90(A.A.R.-GST), the applicant is engaged in the business of design, manufacturing, procurement, erection and installation of various types of car parking system. Supply and installation of car parking system involves several components, out of which certain components are manufactured by the Company and remaining are bought out items. An application for advance ruling was filed as to whether the activity of supply and installation of 'car parking system' would qualify as immovable property and thereby 'works contract' as defined in Section 2(119) of the CGST Act. The authority observed as under:

1. A works contract under the GST Act is in relation to 'immovable property'.
2. A "composite" supply as defined under clause (30) of section 2 of the GST Act, with the supply of car parking system being the principal supply in the instant case.
3. It wouldn't require much wisdom to infer that the 'car parking system' is not supplied as chattel *qua* chattel. It is not brought as an identifiable set of goods. Dismantling one whole, to be assembled later, for the sake of convenience or transportation is one category where there is simple assembling without no further activity critical to the assembling. For example, we have various folding items such as kids wardrobes where the cloth to be attached and the rods to be laid in layers to form the wardrobe as a whole is often supplied in pieces.
4. The other category is that various items are carried to be assembled and which require various steps of activities to be performed on these items and only after which it is possible that they can be assembled. Even without going into the activities that go into the making, the impugned activity is such that the car parking system cannot be said to be supplied unless substantial work is carried out at the site where the same is to be installed. Rather whatever structure or item is brought to the site wouldn't serve any purpose unless the same is fitted, commissioned and made working.

5. The site would be an immovable property such as a building or it could be a standalone structure for car parking. Whatever be it, the system is to be aligned to the immovable structure by way of support system. Various electrical and electronic items play an important role to put the system in place. These would have to be integrated at the site. The site could be a building or independent vacant land. Irrespective of the location, a specific foundation is created and steel structure and/or RCC structure, which is a basic frame work of the parking system, is erected in such foundation. This specific foundation and structure is a pre-requisite for successful installation and effective working of the car parking system.

6. The definition of 'works contract' in the GST Act includes activities for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of the contract.

7. When the activity is to be performed in respect of a pre-existing building or an under-construction building, the plans showing the location of the car parking system, the load-bearing, etc. would have to be got approved from the jurisdictional urban bodies or revenue authorities. The same would also apply to a car parking system to be set up on a vacant plot of land. Such systems have a longevity of existence in terms of the aspect that these are not set up and removed frequently, barring of course the moderations or alterations to it. The impugned activity does not involve a supply as a chattel and, hence, it is not the case that in case it is desired to do away with it, one can remove the system and put it into place as it is at another location. The removal would always involve a total dismantling which cannot be without loss or damage. The question in these set of facts is whether the impugned activity could be said to be one as resulting into immovable property.

8. The term 'immovable property' has not been defined under the GST Act. The Supreme Court, in T.T.G. Industries Ltd. v. CCE , (2004)4 SCC = 2004 (167) ELT 501 (S.C.) while holding the machines as immovable property took into account facts such that the machines could not be shifted without first dismantling them and then re-erecting them at another site. It was

also sought to distinguish as to how a concrete base meant just to prevent wobbling of the machine would not place the machine in the category of 'immovable property' as something attached to the earth.

9. The aforesaid principles would indicate the following:-

- The impugned car parking system, be it installed on a vacant plot of land or in a building, does not result into supply as chattel. In fact, before installation, there can be no goods as such which could be called a 'Car parking system'.

- The system requires substantial work to be done at the site to be called a 'car parking system'.

- Once made operational the 'car parking system' obtains a state of permanency. It is not such as can be easily removed from the existing place and put into place at some other location.

- The definition of "works contract" under the GST Act is in relation to immovable property.

In view of the above, the authority held that the activity of supply and installation of 'car parking system' as 'works contract' as defined in Section 2(119) of the CGST Act.

3. GST – Advance Ruling – Maintenance of Parks to Local Authority – exempted under entry No. 3 of the Notification No. 12/2017 – C.T.(R) - not to apply where transfer of property takes place or supplied to a non-governmental body

In RE: Nurserymen Co-operative Society 2018(17) GSTL 140(A.A.R.-GST)the applicant is a wing of Horticulture Department of Government of Karnataka and is registered under the Co-operative Societies Act, 1957, with small and very small nurserymen as members and is entrusted with the works of formation of parks and landscaping on the lands belonging to the Government and other Government Undertakings and also execute the works of deweeding of the land, levelling of land, landscaping and formation of parks in the lands belonging to the Government and other Government Undertakings.

An application for advance ruling was filed as to whether landscaping and gardening work for government departments like BBMP, KSRTC, etc., through works contract attracts GST from this society?"

The authority observed as under:-

1. Entry No. 3 of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017 states that the tax rate in respect of the pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in in relation to a Municipality under Article 243W of the Constitution is "NIL". Bruhat Bengaluru MahanagaraPalike (BBMP) is a municipal corporation and hence covered under the term "Local Authority".

2. The activity of maintenance of Parks is covered under the entry 12 of the Twelfth Schedule to the Constitution of India which reads "Provision of urban amenities and facilities such as parks, gardens, playgrounds" and hence is an activity covered under Article 243W of the Constitution.

3. The activity of maintenance of parks done by the applicant for Government undertakings are not covered by the Entry No. 3 of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June 2017 as they are in the nature of works contract and composite supplies. It is only the pure services which are exempt from the levy of tax.

4. In view of the fact that the scope of exemption allowed in the Entry No. 3 of the Notification No. 12/2017 Central Tax (Rate) dated 28th June, 2017 is only to the extent of pure services of provision of urban amenities and facilities such as parks, gardens, playgrounds to the Governments and Local Authorities and does not cover any activity wherein transfer of property in goods is involved either in the form of a works contract or a composite supply.

5. The activities of the applicant can be divided into two different types:

(a) maintenance of parks not involving the transfer of property in goods; and

(b) Maintenance of parks involving the transfer of property in goods.

6. The first activity is of the nature of pure services and is squarely covered under the Entry No. 3 of the Notification No. 12/2017 Central Tax (Rate) dated 28th June, 2017, if it is provided to a Government or Local Authority and Governmental authority.

7. The second activity falls in the ambit of works contract and hence is not covered under the Entry No.3 of the Notification No.12/2017 Central Tax (Rate) dated 28th June, 2017 even if it is provided to a Government or Local Authority and Governmental authority.

Hence, the authority order as under:-

1. The service of maintenance of parks provided by the society to the State Government, Central Government or a Local Authority (including BBMP) or a Governmental Authority, not involving transfer of property in goods either as a component of a works contract or a composite supply is covered under Entry No.3 of the Notification No.12/2017 Central Tax (Rate) dated 28th June, 2017 and hence exempt.

2. This exemption is not available if there is any transfer of property in goods or if the service is made to persons other than State Government, Central Government or a local Authority or a Governmental Authority.

4. Service Tax – Reverse Charge Mechanism – 25% On Service Provider's Share Not To Be Demanded When The Service Receiver Has Discharged 100% Service Tax

In TranspekSilox Industries Pvt. Ltd. CCE, Vadodara-I 2018(17) GSTL 434(Tri.-Ahmd.), the appellant availed the services of 'Manpower Recruitment'in the month of July 2012 and paid 75% of the service tax under reverse charge mechanism as per Notification No. 30/2012-ST dt 20.6.2012 on being pointed out by the Department, except in an instance wherein the supplier had paid 100% Service Tax. The adjudicating authority confirmed the demand on the instance wherein the service provider had paid the entire service tax, against which an appeal was filed before the Tribunal which observed as under:-

1. There is no dispute that the appellant was required to pay 75% of the Service Tax on 'Manpower Recruitment Agency Service' availed, which was paid for the initial period, on pointing out by the Revenue.

2. For the other invoice on which the appellant did not pay Service Tax but the service provider paid the 100% of Service Tax, the appellant is not required to pay 75% of the Service Tax in terms of Notification No. 30/2012-ST dt 20.6.2012. In case any payment has made by the appellant, the same shall become double taxation against the appellant which is not permissible in the law.

Hence, the appeal was allowed and impugned order set aside.

5. GST – Advance Ruling – Services Provided By Educational Institutions Conducting Courses As Per Curriculum Of Affiliated Universities – Exempt

In RE: Emerge Vocational Skills Pvt. Ltd. 2018(17) GSTL 494(A.A.R.-GST), the applicant is providing specified educational services in the field of Hotel Management and have filed an application seeking advance ruling as to whether the services provided by the applicant in affiliation to specified universities and providing degree courses to students under related curriculums are exempt from Goods and Services Tax vide Entry No. 66 of the Notification No. 12/2017 - Central Tax dated 28.06.2017. The authority observed as under:

1. The applicant is getting the institution affiliated to a University in the State of Karnataka and is also proposing to impart education as a part of a curriculum provided by the University and the examination would be conducted by the University and qualifications which are recognized by law would be issued to the successful candidates.

2. Hence the institution would qualify as an "educational institution" for the purposes of such courses only which lead to a qualification recognized by any law for the time being in force and, hence, exempt vide Entry No. 66 of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

Hence the authority ruled as under:

a. The services provided by the applicant in affiliation to specified universities and providing degree courses to students under related curriculums to its students exempt from Central Goods and Services Tax vide Entry No. 66 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 subject to the condition that such education services provided must be as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.

b. The services provided by the applicant in affiliation to specified universities and providing degree courses to students under related curriculums to its students exempt from Karnataka Goods and Services Tax vide Entry No. 66 of the Notification No. 12/2017-State Tax (Rate) dated 28.06.2017 subject to the condition that such education services provided must be as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.

6. **GST – Advance Ruling – ITC On Goods And Services Used For Erection Of Infrastructure For Telecom Operators – Poles Of Heights Varying From 7m To 9m Affixed To Earth In Such Way That Without Any Damage To Entire Infrastructure It Can Be Moved To Another Place – Not Containing Antennae And Communication Equipment – Movable Property- ITC Not To Be Denied**

In RE: Vindhya TelelinksLtd. 2018(17) GSTL 649(A.A.R.-GST), the applicant is engaged in providing services including trenching, laying, jointing and installation of cables to companies operating in the telecommunication and power sector. An application for advance ruling was filed on admissibility of input tax credit (ITC) of goods and services used for erection of infrastructure to which fibre cables are connected for leasing to Telecommunication Operators. The authority observed as under:

1. The installation of structures encompasses the following:-

a. The poles erected by the applicant arc used for stringing of fibres

b. Height of the poles varies from 7m to 9m.

c. The poles do not contain antennas electronic communications equipment.

d. There is no cell site where antennae and electronic communications equipment are placed.

e. The infrastructure was affixed to the earth in such a way that without any damage to the entire infrastructure it can be moved to another place for use.

2. Telecommunication Tower is not defined in CGST/SGST Act, 2017. Relying on the decisions in GTL. Infrastructure Ltd v. State of Gujarat [Special Civil Application No. 4084 of 2012, dated 25-4-2013] and Ahmadabad Municipal Corporation v. GTL Infrastructure Ltd., [Special Civil Application No. 4084 of 2012, order dated 25-4-2013] one can state that the telecommunication towers are used for hoisting the antennae to predetermined and technically viable heights for optimum coverage of the cellular network. The towers are typically erected at the site and also comprise poles for mounting the antennae, shelters and housing for electrical and telecom equipment. Telecommunication Towers are in the nature of immovable property and are consists of:—

a. A pre-fabricated shelter made of insulating PUF material made of fibres;

b. Electronic Panel;

c. Base Transceiver Station (BTS) and other radio transmission and reception equipment;

d. A diesel generator set;

e. Six poles of 6 to 9 meters length each made of hollow steel galvanized pipes.

3. Each of the above goods had independent functions and hence, they cannot be treated and classified as single unit and that all goods are not eligible for credit and only those relatable to the output services would be eligible for credit. Since the towers merely enabled the antennae to function, they did not enter the composition of the antennae themselves and could not be construed as components or parts thereof.

4. The telecom equipments alone like BTS transmitters which are used in providing telecom services alone would be liable to input credit. The towers and Pre-fabricated shelter are in the nature of immovable goods and, hence, ITC is not admissible on the same.

5. In Central Excise in the case of Bharti Airtel Ltd. v. CCE (Bom.) 2014 (35) S.T.R (Bom.), it was held that tower and parts thereof are fastened and are fixed to the earth and after their erection become immovable and therefore cannot be goods.

6. If the goods are movable from one place to another in the same position or liable to be dismantled and re-erected at the later place, it will be movable property. But if erected permanently without being shifted from place to place, then it would be treated as permanently attached to the earth and the same will be treated as immovable property.

7. Telecommunication tower does not come within the purview of goods inasmuch as the same being an immovable property and the ITC on "telecommunication tower" is not admissible as per Explanation to Section 17(6) of the CGST/SGST Act, 2017.

Hence, the authority ruled as under:

In view of the above discussion we observe that the infrastructure provided by the applicant is different from "Telecommunication Tower" consequent to which the applicant can avail ITC on GST paid on the goods and services that are consumed while providing the said services.

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

SUMMARY OF THE RECENT CASE LAWS

Toll charges collected by the third party on behalf of Municipal Corporation not liable to service tax.

CA. DEBASIS NAYAK

In Case of *PKSS Infrastructure Private Limited [TS-634-CESTAT-2018-ST]* the taxpayer has been awarded a contract by the Municipal Corporation of Delhi for collection of toll charges from the specified vehicles. The department alleged that collection of toll charges on behalf of Municipal Corporation will be treated as providing the support services and accordingly covered under the definition of Business Support Services and liable to service Tax.

Tribunal observed that Municipal Corporation of Delhi is a statutory body, which is allowed by law to levy certain duties and taxes, toll tax being the one such levy. Seeing from this angle, the function of collecting toll tax is a function sovereign in nature. Hence, the activity being done by MCD itself or being delegated to be done by someone else authorized in this respect, the activity still retains the character of it being sovereign in nature. Therefore, the element of any Business or commerce cannot be attributed to such an activity.

Further, the also held that the adjudicating authority has travelled beyond the SCN by confirming the demand under BAS. The SCN was initially made proposal to demand tax under the category of Business Support Service, however, in the final paragraph demanded the tax under BAS is nothing more than a typographical error as the show cause notice is discussing about the features of Business Support Service.

CENVAT Credit relating to 'commercial or industrial construction service' can be utilized for payment of service tax on 'renting of immovable property services

In case of *Commissioner of GST & Central Excise, Chennai outer, Chennai ('Assessee') Vs. M/s. Dymos India Automotive Private Limited (2018-VIL-501-MAD-ST)*, the assessee is engaged in the manufacture of PU foam meant for automobile seat cushion. On the other side, the assessee leased out a part of the factory premises and paid service tax towards 'renting of immovable property services'. Accordingly, the assessee has taken CENVAT credit on 'commercial or industrial construction services'. Department was of the view that the input services relating to the portion leased does not relate to the manufacture of their finished products and accordingly availment of credit is not proper.

Issue for consideration before the high court was whether the CENVAT Credit relating to 'commercial or industrial construction service' can be utilized for payment of service tax on 'renting of immovable property services?

Madras high court reiterated the facts observed by the tribunal that definition of input services during 2008-09 made it clear that in case of service provider, the service tax paid would be eligible input services if the service is used for providing output service and there is no dispute on eligibility of credit of construction services to the extent, portion of

the building used for manufacturing activity as the assessee were engaged in manufacturing as well as providing services. With respect to the leased property, reliance is placed by the in the case of of CCE, Coimbatore vs. Lakshmi Technology & Engineering Indus Lts. (2011-VIL-66-CESTAT-CHE-ST) and Navaratna S.G. Highway Property Private Limited vs. CST (2011-VIL-31-CESTAT-AHM-ST). wherein it is held without construction of the building, the renting of immovable property services cannot be provided and that therefore, construction service is an eligible service for credit for providing output service of renting of immovable property.

Extended period of limitation can be invoked only when show cause notice indicates any of the circumstances mentioned in Section 73 of the Finance Act, 1994.

In Case of *Commissioner of Service Tax Vs M/s BST Limited [2018-TIOL-2361-HC-KAR-ST]* the issue under consideration was whether extended period of limitation can be imposed even if the show cause notice did not specifically invoke allegation of the section 73 of the Finance Act, 1994.

High Court held that Section 73 of the Finance Act, 1994 is clear as to under what circumstances extended period would apply. That is, where the service tax has not been levied or paid or short-levied or short-paid by reason of fraud or collusion or willful misstatement or suppression of facts or contravention of any of the provisions or of the rules with an intent to evade payment of service tax. But in the present case, show-cause notice does not remotely indicate any of the above circumstances under which, time to demand would get extended. On perusal of show-cause notice, it is seen that there is no allegation with regard to fraud, collusion, and willful misstatement, suppression of fact nor contravention of any provisions or rules to evade payment of service tax. The ingredients of Section 73 of the Act are conspicuously absent in the show-cause notice. Hence, court opined that the Tribunal has rightly rejected the appeal filed by the revenue and no ground is made out to interfere with the order passed by the Tribunal.

Service Tax proceeding initiated under Finance Act, 1994 can be done post implementation of Goods and Services Tax

In Case of *Laxmi Narayan Sahu Vs. Union of India & ORS [TS-564-HC-2018-Gauhati-ST]* the assesse filed writ petition before the high court challenging the validity of issuance of demand cum show notice for initiating the proceeding under the section 73(i) of the Finance Act, 1994 on the ground that Chapter V of the Finance Act, 1994 has been omitted by Section 173 of the Central Goods and Service Tax Act, 2017 and therefore no proceedings initiated under Chapter V can further be continued, in view of the legal implication of a statutory provision being omitted.

High Court held that as the provisions of Section 174(2) also is clearly applicable in respect of an omission of the enactment under Section 173, therefore, any such investigation, enquiry, etc., that was instituted, continued or enforced under Chapter V of the Finance Act of 1994, continues to remain in place inspite of such omission of Chapter V of the Finance Act. In other words, Section 174(2)(e) is a savings clause in respect of any

investigation, enquiry etc., that was/to be instituted under Chapter V of the Finance Act of 1994. A conjoint reading of Section 173 and 174(2)(e) would show that while bringing an omission to the provision of Chapter V of the Finance Act of 1994, a savings clause for continuing with the proceedings initiated/to be initiated was also duly provided. Existence of the savings clause in respect of omission of Chapter V of the Finance Act of 1994 clearly brings it within the purview of the provisions laid down by the Constitution Bench of the Supreme Court in paragraph 37 of Kolhapur Canesugar Works Ltd.

A conjoint reading of the provisions laid down in paragraph 37 of Kolhapur Canesugar Works Ltd. (supra) and Section 173 and 174(2) (e) would lead to a conclusion that although Chapter V of the Finance Act of 1994 stood omitted under Section 173, but the savings clause provided under Section 174(2)(e) will enable the continuation of the investigation, enquiry, verification etc., that were made/to be made under Chapter V of the Finance Act of 1994. In view of the above, the writ petition stands dismissed.

Mere suspicion or doubt is not sufficient for rejecting the transaction value 'between the related parties and proceed for valuation under alternative valuation methodologies.

In case of *HD Motors Co. (India) Private Limited Vs. CCE New Delhi TS-620-CESTAT-2018-CUST,* Deputy Commissioner holding that the importer and foreign supplier are related persons and that the invoice value of the goods imported by the importer from foreign suppliers is not influenced by their relationship. However, Commissioner Customs vide his review order had directed for filing Appeal with Commissioner(Appeals) in this matter on the ground that Adjudicating Authority has merely relied upon the declaration made by the importer and no other data has been verified before reaching the conclusion. The said Order was held to be a non speaking order.

The Tribunal held that as per the valuation rules it abundantly clear that the detailed inquiry into the transaction value is not required to be conducted at every instance except where the proper officer has previously examined the relationship between the parties or where the proper officer has detailed information about the buyer and the seller.

The law has been settled that onus to prove that the declared price did not reflect the true transaction value is always on the Department and that Department is bound to accept the transaction value entered between the two parties, unless and until, Department has a cogent evidence that identical or similar goods were imported by other importers at higher price as it was held by Supreme Court in the case Commissioner of Customs, Mumbai Vs. Prodelin India Limited 2006 (202) E.L.T. 13 (S.C.)

Therefore, the Tribunal opined that the order under challenge has wrongly rejected the transaction value at the time of reviewing order dated 09.03.2011 merely for want of its comparison with NIDB data. There is no evidence otherwise for supporting the doubt that the relationship of the parties herein had influenced the transaction value. Mere suspicion or doubt is not sufficient as discussed already above. As a result, we hereby set aside the order under challenge.

The author is a Chennai based Chartered Accountant. He can be reached at debases.nayak@pwc.com.

COMPANIES (AMENDMENT) ORDINANCE, 2018 - AN OVERVIEW

CA. C.S. DHANAPAL

The Companies (Amendment) Ordinance, 2018 was promulgated by the President of India on the 02nd of November, 2018 to further amend the Companies Act, 2013. It shall be placed before the houses of Parliament once they are in session to be notified as an Act. However, it has already come into force w.e.f. 02.11.2018.

The Companies (Amendment) Ordinance, 2018 has made a number of significant changes in the Companies Act, 2013 which have already come into force as stated above. More changes are on the anvil as the Ministry of Corporate affairs, during examination of the recommendations made by "Committee to review the offences under the Companies Act, 2013" noted that certain other amendments of urgent nature would be required to strengthen the corporate governance and enforcement framework.

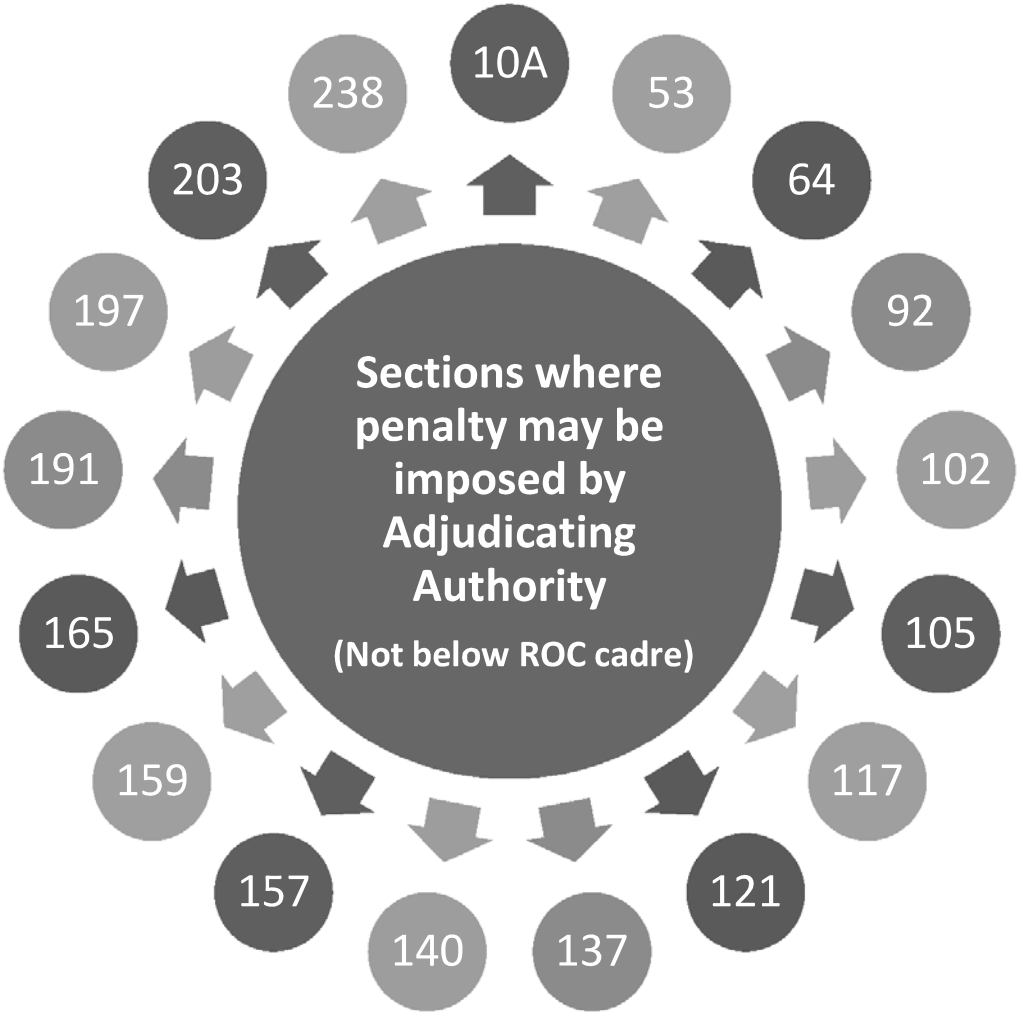
In this write up, an attempt has been made to highlight the changes introduced by the Companies (Amendment) Ordinance, 2018, which have come into force w.e.f 02.11.2018. The supporting Rules, Orders etc. for these amendments are yet to be notified.

Readers are requested to refer to the Ordinance in case of any doubts, which may be downloaded from the web link:

http://www.mca.gov.in/Ministry/pdf Notification Companies(Amendment) Ordinance_05112018.pdf

A QUICK LOOK AT THE AMENDMENTS

- Different financial year
- Matters transferered to CG from NCLT
- Conversion of Public Company into Private
- Default in filing declaration by director for commencement of business
- New Grounds for removal of name of Company
- Default in maintaining a proper registered office by Company



HIGHLIGHTS OF THE AMENDMENTS

Nature of Amendment	Description of the Amendment
A. Revision of a number of offences from being subject to Compounding to an Adjudication framework.	The penal provision in the following sections has been revised to be subject to Adjudication by an officer not below the rank of Registrar (ROC) as against compounding by Regional Director / NCLT prior the Ordinance:

	10A, 53, 64, 92, 102, 105, 117, 121, 137, 140, 157, 159, 165, 191, 197, 203, 238
	The same is likely to be implemented shortly and will reduce the pendency of matters before NCLT thus enabling the Tribunal to concentrate more on IBC matters.
B. Decongestion of Benches of NCLT and enlarging scope of jurisdiction of Regional Director (RD)	The monetary limit of fine upto which offences may be compounded by RD has been enhanced from Rs. 5 Lakhs to Rs. 25 Lakhs.
	The requirement of seeking permission of Special Court for compounding of any offence which is punishable under the Act, with imprisonment or fine, or with imprisonment or fine or with both has been omitted.
	The authority to permit a company to follow a different financial year and to permit conversion of a public company to private company has been changed from NCLT to Central Government.
	This will also help to reduce the burden of NCLT allowing them to dispose of other matters under which NCLT has jurisdiction.
C. New grounds introduced for removing name of Company from Register of Companies maintained by ROC	If on a physical verification by the ROC, company is found not to be maintaining a proper registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

	Commencement of business is not filed within the stipulated time.
	In both the above cases, the company"s name be struck off by ROC from the register of Companies maintained by it.
D. Other amendments to enhance corporate governance norms, accountability and transparency	Requirement of filing „commencement of business" with ROC has been re introduced. It shall be applicable only for companies incorporated on or after 02.11.2018 and having share capital.
	Time period for registering Charges with ROC has been curtailed.
	Limit of one year introduced for making of application by the Company / aggrieved person to NCLT for lifting / relaxation of any restriction imposed by the NCLT on securities of the Company in relation to which securities details of their beneficial holding was not forthcoming / sufficient. If no application is filed during such time, such shares will be transferred to IEPF
	Additional ground for disqualification for appointment of director introduced – Person shall not be eligible to be appointed as Director if he already holds directorship in specified number of companies.
	Stricter penalty introduced for second or subsequent defaults.

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

TAX TREATIES : SWORD OR SHIELD?

Mr. SUDARSHAN
Advocate

Prelude

Recently the Federal Court of Australia ('FCA') in the case of an Indian tax resident, Satyam Computer Services Limited[1] ("assessee", now amalgamated with Tech Mahindra Limited) was faced with a question as to *"Whether tax treaties are a **shield** for the taxpayers or used as a **sword** by the Government to extend taxation"*. Put in other words, can tax treaties generate taxing rights when the domestic law does not have any taxation rights? (Hence the sword analogy).

Analysis of the Judgement

The assessee is a resident of India for tax purposes and carries on a business providing computer technology services to customers across the World. In the income years ended 30 June 2009, 30 June 2010 and 30 June 2011, the assessee had offices in Sydney and Melbourne through which it provided software products and information technology services to entities in Australia. The services provided by the assessee to entities in Australia were performed partly by employees located in Australia and partly by employees located in India. In this regard, the assessee contended that the payments received by it for the services provided by the employees located in India ('the Indian services) were not taxable in Australia. However, the assessee's plea was rejected by the Australian tax office and by the FCA in an earlier case in 2016. The FCA had held that[2] the payments received by the assessee for the Indian services provided by the employees located in India were "royalties" as defined in Article 12(3)(g) of the India-Australia tax treaty and Australia was given the right to tax those payments under Article 12(2) of the India-Australia tax treaty[3]. Further, the FCA also held that the said income is an Australian source by the deemed source clause present in Article 23 of the India-Australia tax treaty. It is imperative to note here that Article 23 of the India-Australia tax treaty is unique and can be seen majorly in Australia's bilateral tax treaties. Article 23 of the India-Australia tax treaty is as follows:

[1] Satyam Computer Services Limited v Commissioner of Taxation [2018] FCAFC 172
[2] Tech Mahindra Limited v Federal Commissioner of Taxation (2016) 250 FCR 287
[3] Analysis of the 2016 judgement can be accessed here:
http://taxsutra.com/news/16507/Australian-Court-holds-Tech-Mahindra-s-offshore-software-service-receipts-taxable-as-royalty-

Article 23: Source of income

(1) Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 20 and Article 22 may be taxed in the other Contracting State, shall for the purposes of the law of that other ***State relating to its tax be deemed to be income from sources in that other State.***

(2) Income, profits or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, Articles 10 to 20 and Article 22 may be taxed in the other Contracting State, shall for the purposes of Article 24 and of the law of the first mentioned State relating to its tax be deemed to be income from sources in that other State.

The assessee having accepted the characterisation of income as royalty, has however in the present appeal[1] raised an interesting ground wherein it has challenged the validity of Australia's right to tax the income as royalty. According to the assessee, under the domestic tax law of Australia, the impugned income is not taxable as royalty since the income is not an Australian source as per Section 6-5(3) of the Income Tax Assessment Act (ITAA), 1997[2]. Further Australia gets to tax it only by Article 23 of the India-Australian tax treaty and therefore contends that tax treaty cannot generate a tax liability. The assessee contends that the tax treaties can only be a shield to taxpayers by avoiding double taxation or allocation of taxing rights, it cannot act as a sword for triggering a domestic tax liability especially when the domestic law does not envisage such a levy. The assessee had relied on Indian jurisprudence to hammer its contention that tax treaties cannot impose tax liabilities[3]. It is also imperative to note here that Australia's ITAA and its tax treaties are reconciled into single legislation viz. International Tax Agreements Act, 1953. This is to give effect to International treaties in its domestic law as Australia follows a *dualist model,* unlike India which follows the *monist model* for tax treaties. The International Tax Agreements Act, 1953 will override the domestic ITAA in-case of any inconsistency.

[4] Refer note 1 (Supra)

[5] Section 6-5(3) relevantly provides:

If you are a foreign resident, your assessable income includes: (a) the ordinary income you derived directly or indirectly from all Australian sources during the income year; and

(b) Other ordinary income that a provision incudes in your assessable income for the income year on some basis other than having an Australian source.

[6] Union of India v Azadi Bachao Andolan (2003) 263 ITR 706 (SC) , Verizon Communications Singapore Pte Ltd v The Income Tax Officer (2014) 361 ITR 575 (Mad), Wipro Ltd v DCIT (2016) 382 ITR 179 (Karn), CIT v P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654 (SC)

Verdict

The assessee's contention that tax treaties can only be a shield was not rejected by the tax authorities or by the FCA. The FCA however while providing its verdict addressed that the issue lies on the inconsistency of International Tax Agreements Act and the ITAA 1997. It went on to analyse the International Tax Agreements Act 1953 and held that the impugned payment is an Australian source since Article 23 of the India-Australia Tax Treaty gets transposed into the International Tax Agreements Act., thereby the impugned income is an Australian source. Accordingly, the tax liability arises from the domestic law, i.e. the International Agreements Act 1953 and not from an International law (tax treaties). Therefore, Australia has the rights to tax the impugned income.

Epilogue

Many countries in the world have various ad-hoc statutory sources and origin rules to determine a source of income. Especially in common law countries, there is a heavy reliance on the determination of source through legal principles. India is no exception to it either. Further, the source rules have also led to tax avoidances and have given room for tax evasions. In this context, the current verdict by Australia's highest court FCA treating an income as an Australian source by taxation rights allocation present in a tax treaty will indeed open Pandora's Box. Countries following the dualist model may resort to this approach and use tax treaties as a sword.

According to renowned tax commentator Prof Klaus Vogel, the tax treaty provisions are a stencil which limits state rights to apply its domestic rules. The stencil metaphor is to convey that the domestic tax rules shall be restricted or limited by the tax treaties. However, it appears that the metaphor will soon become archaic. It appears that the sword-shield analogy for tax treaties may be inspired from reel life Game of Thrones or maybe Baahubali, as the current case pertains to an Indian taxpayer (pun intended). Nevertheless one hopes that the swords and shields remain as mere analogies in the tax world.

The author is a Practising Advocate as well as a Chartered Accountant. The author can be reached @ sudarshan@inbox.com.

[7]Section 4(2) of the International Tax Agreements Act, 1953

VOICES WILL ACCOUNTANTS BECOME THE WEAVERS OF THE 21ST CENTURY?

By Jon Lukomnik

Published

- **November 19 2018, 9:00am EST**

I am an investor, not an accountant. But sometimes the view from the outside is useful. And from where I stand, accountants are facing a slow-moving existential crisis.

A profession, any profession, needs two things to thrive. First, it needs to be relevant, that is, to fulfill a needed purpose for society. Second, it needs professionalism and competence.

So, in the case of accounting and auditing, the profession needs to be reporting and assuring relevant information. I'll define that as information that the users find valuable in making investment decisions. It needs to be professional in doing that, meaning accountants need to be educated, independent, and ethical.

Though there are exceptions, the profession generally gets professionalism right. So why do I say the profession is facing a slow-moving existential crisis that, left unchecked, will reduce accounting and auditing to a fragment of its current import?

Today's drivers of value are largely intangible assets, such as data, intellectual property, branding, code, and business model. These are notoriously difficult to discern from traditional accounts. That is understandable; our accounting system was created when capital — in the form of tangible assets — was king. But understandable doesn't mean acceptable. Make no mistake, it is not acceptable anymore. Consider these statistics:

- Intangible assets now make up 84 percent of the market value of the S&P 500. That's up from just 17 percent in 1975. We investors clearly value things like investment in brands, new business processes, skills development for employees, R&D, etc., as drivers of future value. In other words, we believe these investments will create revenues in the future. But accounting can't figure out how to value those non-tangible assets, so it treats those investments as expenses. That just doesn't make sense.

- Here is a specific example: As of when I wrote this, Amazon was trading at a price/earnings ratio of 149 and a price to book of more than 26. This is a company with an enterprise value of $940 billion and is followed by 44 sell-side analysts and thousands

of buy-side ones. Clearly, either we investors have collectively lost our minds, or book and earnings are understated in economic terms.

- What makes that understatement so important is that services now are more than 80 percent of the US economy and growing.

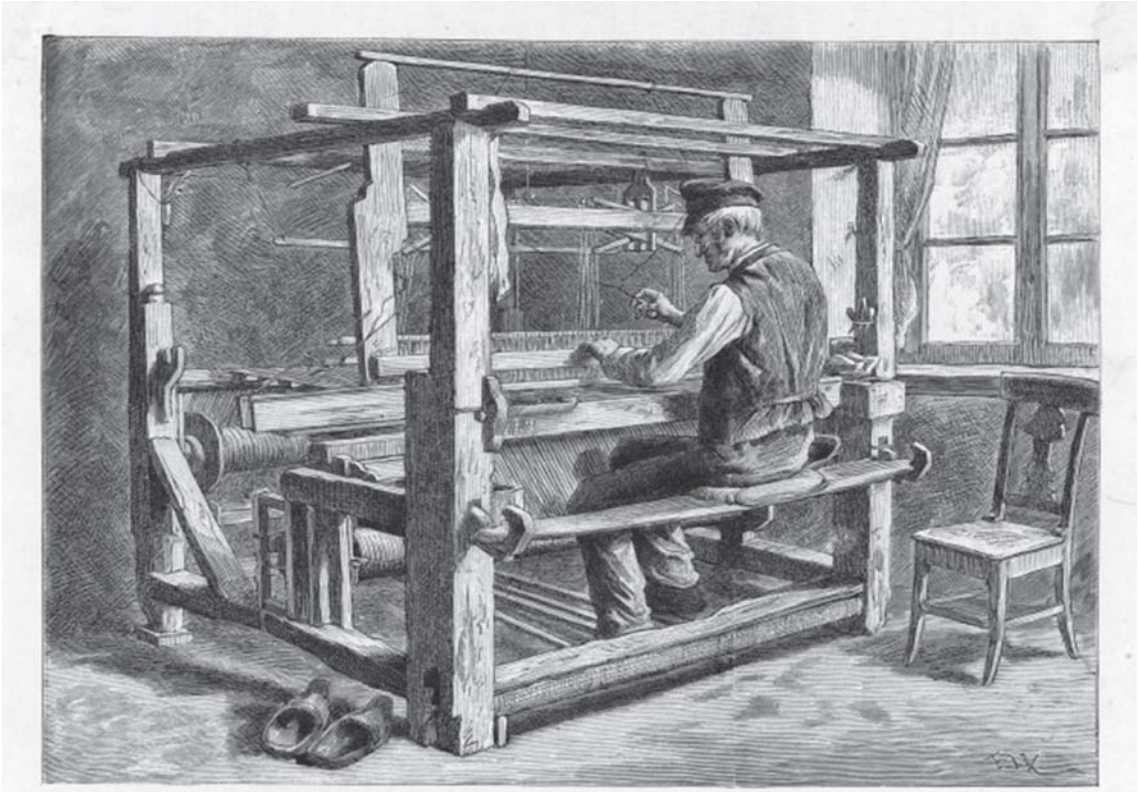
- A Google search for "same store sales" yields 359 million hits. Search for "EBITDA" and you'll return 16 million citations. Neither of those measures, one a key performance indicator and one a non-GAAP metric, are defined by the Financial Accounting Standards Board. Yet they drive investment decisions. Unfortunately, the profession seems to prefer going deeper into the rabbit hole of fine-tuning financial-statement accounting standards – seven years for revenue recognition and now who knows how many years for lease accounting – rather than poking their heads out from the burrow and saying: Investors are using these types of non-GAAP metrics and KPIs, wouldn't it be nice if they were actually defined? And then we could account for and assure against those definition? (Now that is a relevant business opportunity.)

  We have a culture clash. Capital markets are, by nature, innovation machines. And the real economy is dominated by disruptive technologies and new entrants. The average lifespan of an S&P 500 company was 33 years in 1965. It was down to 24 years in 2016. The pace of innovation continues, so that the lifespan is projected to be down to just 12 years a decade from now. By contrast, accountants and auditors are, and should be, conservative by nature — not in the political sense, but in the "holding to traditional values" dictionary definition. For each individual engagement, that's not only appropriate, but good. There is value to professional skepticism and to using precedent as a guide. But for the profession as a whole, it creates a problem: What is being accounted for and attested is an ever-decreasing share of the information available and used.

  Investors are information junkies, and the amount of data available is stunning. The "digital universe" (i.e., all the data in the world) grew from 0.13 zettabytes in 2005 to 16 zettabytes in 2016, a 12,300 percent increase. (A zettabyte is 1 trillion gigabytes.) And it's predicted to grow to 163 zettabytes by 2025, or another 1,000 percent increase. Equally amazing is that artificial intelligence and computer power will enable we investors to take an ever-increasing portion of that unstructured data and turn it into decision useful information.

  Ideally, we'd like more of that data to be standardized, structured and assured, because that's better-quality data. But if that's not available, we're still going to use it.

Here's the analogy. When I was in London recently, I was honored to be asked to speak at the Guild Hall of the Worshipful Company of Weavers, Spinners and Dyers. The hall was huge, located in prime real estate in the square mile of the City of London. Even the bathrooms were wood-paneled and decorated with 15th century silk weavings, any one of which I would be proud to own and display on the largest wall of my living room, though I probably could not afford any of them. Judging by the display of wealth, weaving was obviously central to the medieval and early industrial economy of England. But it's not today. Weaving is still a viable craft and business, but on a much smaller, less central scale. Other parts of the economy grew faster and weaving did not keep up.



"We ply the shuttle and pass away."

Already, there are investors using artificial intelligence, crossed with risk algorithms, to create live portfolios. Even in that world, traditional accounting is still valuable -- but of less value than it was a decade ago, a year ago, a month ago, a day ago, a minute ago. The trend is not going to reverse. Limiting the focus of the profession to traditional financial statements will, by definition, limit accounting to reporting and assuring a shrinking share of the information investors use.

If that happens, accounting will be the Worshipful Company of Weavers of the 21st century. Once important, still an honorable calling, but nowhere near as central to the capital markets as it used to be, or could be.

What does the profession have to do to avoid that fate?

- First, broaden what is accounted for and assured, so as to increase relevance to investors. This is not an easy process. I have sympathy for the standard-setters. On the one hand, no one wants to be reactive to the newest fads, lest the standard-setters spend time on things like "eyeballs" in the lead-up to the dot-com crash. But there are time-tested non-GAAP metrics investors use, like EBITDA, and KPIs, like same store sales. Perhaps the profession should adopt the rules the Rock and Roll Hall of Fame uses: If a metric is still important after 25 years, it should be considered for induction into a FASB Hall of Standards.
- Second, create an industry-wide effort to rethink the entire area of intangible assets. There are scores of great thinkers and researchers looking at this already, but there is no consensus toward fundamentally reforming accounting to accurately reflect them on financial statements.
- Third, look at what we can be done to standardize sustainability metrics. Yes, this is controversial, but I am not suggesting it for political reasons. The signatories to the Principles for Responsible Investment comprise the vast majority of the world's largest asset owners and asset managers, with aggregate assets under management of some $80 trillion. That is four times U.S. GDP. The very first requirement of being a signatory is, "We will incorporate [environmental, social and governance] issues into investment analysis and decision-making processes." While there may be some signatories who only pledge but don't act, even if you assign a gargantuan 50 percent discount on how many of those firms actually use ESG metrics, there is a need for better information and a major opportunity for the profession. Last year, 395 of the S&P 500 put out some type of sustainability report. But only 38 percent are assured, and 90 percent of those are only partially assured. And even those are often not assured by accountants.

Accounting faces a choice: Increase relevance, or become the 21st century equivalent of the Worshipful Company of Weavers. Still viable, but not central to the economy of today. Yes, the profession faces a slow-moving, but existential crisis for the profession. But it's also an opportunity.

Jon Lukomnik

Jon Lukomnik is a long-time institutional investor. This article is adapted from a talk he gave recently to CPA Canada.

Source: https://www.accountingtoday.com/opinion/will-accountants-become-the-weavers-of-the-21st-century

EXCEL TIPS

MATCH & INDEX FUNCTIONS

The MATCH function searches for a specified item in a range of cells, and then returns the relative position of that item in the range. (Covered in the preceding month's bulletin)

The INDEX function returns the **value** at a given position in a **range** or **array**. You can use index to retrieve individual values or entire rows and columns.

Also, There are two ways to use the INDEX function:

- If you want to return the value of a specified cell or array of cells, see Array form.
- If you want to return a reference to specified cells, see Reference form.

Syntax :

INDEX(array, row_num, [column_num])

The INDEX function syntax has the following arguments.

- Array Required. A range of cells or an array constant.

  If array contains only one row or column, the corresponding Row_num or Column_num argument is optional.

  If array has more than one row and more than one column, and only Row_num or Column_num is used, INDEX returns an array of the entire row or column in array.
- Row_num Required. Selects the row in array from which to return a value. If Row_num is omitted, Column_num is required.
- Column_num Optional. Selects the column in array from which to return a value. If Column_num is omitted, Row_num is required.

Remarks

- If both the Row_num and Column_num arguments are used, INDEX returns the value in the cell at the intersection of Row_num and Column_num.
- If you set Row_num or Column_num to 0 (zero), INDEX returns the array of values for the entire column or row, respectively. To use values returned as an array, enter the INDEX function as an array formula in a horizontal range of cells for a row, and in a vertical range of cells for a column. To enter an array formula, press CTRL+SHIFT+ENTER.

- Row_num and Column_num must point to a cell within array; otherwise, INDEX returns the #REF! error value.

EXAMPLE :

Given below is the performance rating of the employees working in a Bank.

	A	B
1	**Name**	**Performance**
2	Varun	Good
3	Ajay	Excellent
4	Vishal	Fair
5	Rina	Good
6	Khushi	Very good
7	Sejal	Poor
8	Dimple	Excellent
9	Sanjana	Poor
10	Jitender	Good
11	Raina	Very good

We can now use the combination of Match and Index formula to arrive at the rating given to any individual.

=INDEX(A1:B11,MATCH(D1,A1:A11,0),2)

*cell D3 refers to the individual whose performance we would like to glance.

Using the above formula to find the ratings given to Vishal -

D	E	F
Employee Name	Performance Rating	
Vishal	=INDEX(A1:B11,MATCH(D2,A1:A11,0),2)	

We get the below results -

D	E
Employee Name	Performance Rating
Vishal	Fair

Therefore we can use this formula and get the details of any individual by just updating the name of the person we require.

O/o Inspector General of Registration,
Chennai – 600 028.

CIRCULAR

No.49282/P1/2018 dated 20.11.2018

Sub: Indian Stamp Act, 1899 – Transfer of property taking place under Companies Act – stamp duty – leviable – clarification – reg.

oOo

The Companies Act, 2013 provides for formulating scheme for merger, amalgamation or reconstruction of companies and the same is filed with the competent authorities functioning under the said Act. Previously such schemes were sanctioned by High Court under the provisions contained in Companies Act, 1956. After the inception of the Companies Act, 2013, such schemes are filed with the competent authorities empowered under the later Act. Such schemes also provide for transfer of property from one company to another company and the same is presented by the companies for registration before the concerned Sub Registrar.

2) It has come to notice that registering officers are having doubt as to whether such schemes sanctioned by High Court or filed with the Authorities functioning under companies Act which are presented before the registering officer would attract stamp duty under the Indian Stamp Act, 1899. The primary point to be addressed in this regard is whether scheme sanctioned by court/filed with competent authority is an 'instrument' within the meaning of section 2(14) of the Indian Stamp Act, 1899 read with section 2(10) and Article 23 of the Indian Stamp Act, 1899. In this regard legal position

stated in various judgments is brought to the notice of the registering officers;

(a) Hon'ble Supreme Court of India in 'Hindustan Lever & Anr Vs State of Maharashtra & Anr' ((2004) 9 SCC 438) have held that order passed by High Court relating to transfer of property between two or more companies under the provisions of Companies Act will very well fall within the inclusive definition provided for 'Conveyance' under Stamp Law and consequently such court orders become leviable with stamp duty. In the said verdict various questions of law have been discussed in detail.

The basic questions that arise for consideration in such cases and the portions of said verdict relevant to these questions are depicted as follows:

Whether order passed by the Court under Section 394 of the Companies Act which is based upon the compromise between two or more companies can be construed as Conveyance.	*".....It is an instrument which transfers the properties and would fall within the definition of Section 2 (1) of the Bombay Stamp Act which includes every document by which any right or liability is transferred....."*
Whether in absence of a provision similar to section 2(g) of the Bombay Stamp Act, (which includes a decree in the definition of 'Conveyance'), High court order under section 394 can be construed as 'Conveyance'	*"..... It clearly shows that the Court* was of the opinion that consent decree which purports to convey the title in the property was in an instrument liable for stamp duty at all times and it was only by way of abundant caution that the Legislature had included the consent decree in the definition of the word "conveyance".* *In view of the aforesaid discussion, we hold that the order passed by the Court under Section 394 of the Companies Act is based upon the compromise between*

	two or more companies....." *Ruby Sales and Services (P) Ltd. & Anr. Vs. State of Maharashtra & Ors., 1994 (1) SCC 531
Whether a decree can be construed as Conveyance only if it is based on consent of parties.	*It was held to be an instrument because it had the effect of conveying the title and not because it was a consent decree. Once this definition is kept in view it would be clear that consent or no consent when the decree or order of the Court purports to transfer title in the property, it becomes an instrument.*
Whether transfer between companies under Companies Act can be considered to be *'inter vivos'*, .i.e., between two living beings, so as to be construed as a 'Conveyance'	*It was contended that since the transaction was not between the 'living beings' the same was not "inter vivos" as the transfer of property had not taken place between the living beings. We do not agree. "Transfer of Property" has been defined in Section 5 of the Transfer of Property Act, 1882 to mean an act by which a living person conveys property, in present or in future to one more other living persons. Company or association or body of individual, whether incorporated or not, have been included amongst the "living person" in this Section. It clearly brings out that a company can effect transfer of property. The word "inter vivos" in the context of Section 394 of the Companies Act would include within its meaning also a transfer between two "juristic persons" or a transfer to which a 'juristic person' is one of the parties.*

Thus from the law laid down in and by the above Supreme court order, it is clear that any court order resulting in transfer of property between two companies under the aegis of Company Law will fall under residue Article 23 of the Indian Stamp Act, 1899 viz., 'Conveyance '.

(b) The High Court of Calcutta in Gemini Silk Ltd Vs Gemini Overseas Ltd (MANU/WB/0215/2002:2003 (53) CLA 328 (Cal) held that :-

"an order sanctioning a scheme of reconstruction amalgamation under Section 394 is covered by the definition of the words 'conveyance' and 'instrument' under the Indian Stamp Act and therefore liable to stamp duty. I therefore direct that the Registrar of Companies shall not take on record an order sanctioning a scheme until the same has been duly stamped."

(c) In the case of Delhi Towers Ltd Vs G.N.C.T of Delhi in CA No. 466/2008 in Company Petition No. 50/2003 reported in [2010]159CompCas129(Delhi), it was held by the High Court of Delhi as under:-

"8.21 The very reasoning noticed hereinabove applies to the present consideration. Merely because the legislature has not amended the existing statutory provision as applicable to Delhi to specifically include transfer of property under an order approving a scheme of amalgamation in the definition of conveyance, it is of no consequence at all. The same does not amount to exclusion from applicability of the Indian Stamp Act and chargeability to stamp duty thereon. The statutory definition of "conveyance" under Sub-section 10 of Section 2

is an inclusive definition of wide import which cannot be confined to specific instruments mentioned in the statute."

3) Thus the aforesaid judicial pronouncements lead to the following conclusions:

(i) Scheme of arrangements submitted by companies and sanctioned by High Court / registered by competent authorities evidencing transfer of property are classifiable under Article 23 of the Indian Stamp Act, 1899.

(ii) Consequently such instruments / copy of instrument when presented for registration shall not be registered unless it is unequivocally evident that original instrument is duly stamped.

(iii) If such instrument is found to be not duly stamped, the instrument presented shall be returned to the Presentant, by clearly explaining the aforesaid legal position through a check slip, and also requiring the presentant to produce evidence as to the duly stamping of the original instrument.

20/11/2018

Inspector General of Registration

To

All Registering Officers.
All Deputy Inspector General of Registration.
All District Registrars (Admin).

Copy to

1. Senior PA to Hon'ble Minister for Commercial Taxes and Registration Department.
2. Principal Secretary to Government, Commercial Taxes and Registration Department.

Circular No. 11 /2017
Rc. No. RA.5(3) /180 / 2017

Revenue Administration
Disaster Management and
Mitigation Department
Chepauk, Chennai – 600 005.

Dated 09.08.2017.

Present: Dr. K. Satya Gopal, I.A.S.,
Principal Secretary /
Commissioner of Revenue Administration

CIRCULAR

Sub: Legal heirship Certificate – Issuance of Legal heirship Certificate through online – Certain Instructions issued – Reg.

Ref: 1) G.O. (Ms.) No.2906/Rev.Dept. dated 04.11.1981.
2) G.O. Ms. No.581/ Rev. Dept. dated 03.04.1987.
3) The Govt. Lr. No.1534/Rev. Dept. dated 28.11.1991.

- - - - - -

The Government have issued detailed instructions vide G.O. (Ms.) No.2906, Revenue Department dated 04.11.1981, G.O. (Ms.) No.581, Revenue Department dated 03.04.1987 and Government letter No.1534, Revenue Department dated 28.11.1991 on the guidelines to be followed for issue of Legal heir Certificate manually.

2) It is proposed to issue the Legal heir Certificate through online web based application in addition to the other Revenue certificates. In order to enable quicker processing and for effective implementation, the following procedures and guidelines are issued to be followed.

3) Direct Legal heir

Direct Legal heirs are sons, daughters, husband, widows, mothers, sons of a pre-deceased son, widows of a pre-deceased son, son of a pre-deceased sons of a predeceased son, and widows of a pre-deceased son of a predeceased son. Son of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a pre-deceased daughter, daughter of a pre-deceased daughter of a pre-deceased son.

4) Procedure to be followed

Legal heir certificates shall be issued by Tahsildars for all direct legal heirs applying for certificate through online. The petitioner can apply electronically from any of the CSCs or online to the Tahsildar in whose jurisdiction, the deceased person ordinarily resided before his death. (If the person has resided for less than 6 months, then the Tahsildar shall obtain a report from the Tahsildar in whose jurisdiction the deceased resided for more than a year).

5) The applicant should compulsorily submit the following details while submitting the application

- Death certificate of the deceased or Late Registration Certificate from RDO.
- Any one of the following documents should be submitted as Proof of residence of the deceased person
  - (i) Aadhaar Card
  - (ii) Voter ID Card
  - (iii) Passport
  - (iv) Bank Pass Book / Postal Savings Book
  - (v) Driving License
  - (vi) Pension payment Order

5-1) If any one spouse survives – then they shall be the applicant and submit the following documents :

- Marriage Registration Certificate or Passport or Voter ID or Aadhaar cards or NPR document should be submitted to establish relationship.
- Birth Certificate of all children or T.C. of all children.
- Self declaration of the spouse indicating all other legal heirs (including Mother-in-law if wife is the applicant).

5-2) If parents are deceased, then any one child shall be the applicant and submit the following documents.

a) If applicant is a Major

- Death certificate of the parents
- Birth certificate or Community Certificate or Passport or Aadhaar (all eligible heirs) or T.C. or NPR or Employee Service Record.

b) If applicant is a Minor, Guardian can apply and submit the following documents.

- Death certificate of the parents
- Birth certificate or T.C. or NPR or Employee Service Record or Community certificate or Passport or Voter ID or Aadhaar of all eligible heirs

- Guardianship order issued by the Hon'ble Civil Court to prove relationship to the heirs.

5-3) In case of unmarried Children - Parents or Siblings shall be the applicant and submit the following documents.

- Death certificate of deceased
- Any proof to establish relationship of deceased (i.e) Birth certificate / T.C. of deceased etc.
- Self-declaration of the parents / siblings

6) Legal heir applications will be processed by the following system

On an application fee of Rs. 60/-, the applicant shall apply at the CSC or online, the certificate will be issued within 15 working days.

The work flow will be CSC –>VAO->RI-> HQDT-> Tahsildar

The VAO must verify the documents and recommend with reasons for acceptance or rejection and forward to the Revenue Inspector in 5 Days Revenue Inspector has to enquire in 4 days and the certificate will be issued by Tahsildar in 6 days on receipt of report from the RI after conducting necessary enquiry.

The applicant can download the legal certificate from CSC or from anywhere on receipt of an SMS.

The District website should have an exclusive window for viewing Taluk wise issued legal heirship certificates.

A copy of the issued legal heir certificate should be marked to Department of Registration to be linked to the Reginet Software.

7) General instructions:-

Tahsildars shall not issue legal heir certificates for the following cases and to inform the applicants to approach the Competent Court for obtaining the legal heir certificates.

(i) If more than one wife / husband exist for the deceased
(ii) When there is a dispute for settlement / partition of proprieties of the deceased
(iii) In case of the person treated as death who is missing for the period of 7 years or staying away from the family.
(iv) In the case of adopted child or No children
(v) No certificate shall be issued under Indian Succession Act, 1925

8) Appeal Provision:-

If any legal heir disputes the issued legal heir certificate, an appeal petition shall be filed to the respective Revenue Divisional Officer within a period of one year from the date of issue of the certificate for making alterations, corrections – deletions or inclusions.

9) Power of Revision

The power of revision lies with the District Collector and Revision Petition shall be filed by the applicant within a period of 3 years from the date of issue of the appeal order.

All the District Collectors are instructed to follow the circular and communicate to the concerned subordinate officers and instruct them to follow the procedures and guidelines scrupulously without fail. The receipt of the circular may be acknowledged.

Sd/- K. Satyagopal
Principal Secretary /
Commissioner of Revenue Administration

To

The District Collectors
All Districts.

Copy to:

1. The Secretary to Government,
   Revenue Department, Secretariat, Chennai – 9.
2. The Commissioner of e-Governance,
   Directorate of e-Governance,
   Kavignar Bharathidasan Road, Alwarpet, Chennai – 16
3. Deputy Commissioner (SSS)
4. Assistant Commissioner (I, II, III, IV, V & VI)
5. Personal Secretary to CRA,
6. Personal Assistant to JC (RA)
7. Personal Assistant to Director (SSS)

Assistant Commissioner - VI
for Principal Secretary /
Commissioner of Revenue Administration

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