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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INDEX

MEETINGS

Date	Time	Speaker	Topic
13.09.2018 Thursday	06.30 p.m.	CA. Renuka Murali	GST Return - New Forms - An Analysis
Kindly Note there will only one meeting in the Month of September due to Tax Audit Season			

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

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Address	:	No 24/20, Thirumangalam Road, Villivakkam, Chennai - 600 049. (Near IOB Kambar Colony Branch)

EDITORIAL

Nature Fury – Kerala Floods

The nature is in full fury across India and in particular to our neighbouring States Kerala and part of the neighbouring state Karnataka. Whether it is created by human or otherwise, it has made the God's Own Country pray for God's help to come out of the despair. The effect of the same was also a point discussion even in Australian Parliament whereas it was otherwise politicking in India. Ms. Michelle Rowland, Member for Greenway, NSW on 26/8/*2018* spoke about the floods in Kerala and its impact in the Australian Parliament and said "I rise tonight to address the Parliament about the devastating floods that have be fallen southern India the state of Kerala hugs the southwestern coast of India. It is home to more than 33 million people. It is renowned as a tropical paradise of golden beaches picturesque canals and Ayurvedic rejuvenation. But today it is in the grip of catastrophe. 12 of its 14 districts have been impacted by what has been described as the worst floods this century. Reports vary on the precise scale and scope of the devastation but the impactis staggering. To appreciate the scale of this tragedy one need only look to the estimated more than 1 million people whohave been displaced by the floods. Sadly some 400 people have died and there are fears the toll will inevitably climb. 8 agencies have reported widespread destruction resulting from floods and landslides the damaged property has been disastrous homes remain submerged crops destroyed live stock lost an estimated 10,000 kilometres of roads and bridges havebeen washed away further frustratingdisaster relief efforts.The storm and flood damage is predicted to go inexcess of three billion dollars as I speak there is still fees for hundredsof thousands of people in Kerala who donot have access to clean water sanitation food and shelter approximately 4,000 relief camps havebeen set up to house people who havebeen displaced and provide emergency assistance hundreds of boats and dozens of helicopters have been deployed aspart of the rescue efforts in many townsand villages in Kerala rivers and lakes are the lifeblood of the communityun fortunately these waterways which provide water for residents live stock and crops alike can and have become deadly with monsoon rains swellin grivers and overflowing dams this is the **reality care alert** now faces. Kerala is also a popular location for tourists with its beaches rivers forests and mountains along with its temples and ports all major attractions for domestic and international visitors the impact of flooding on the local tourism industry will be significant Kerala is a drawcard for significant religious and cultural festivals including Onam which falls on the 25th of August this year an auspicious occasion which I have celebrated with my own local community whilst it is crucial that disaster relief support is provided immediately. It is also

imperative that ongoing support is given in the region to alleviate the damage to the local economy. Officials have reported that therain fall in some areas is well over double that of a typical monsoon season. **It's crucial we elevate discussionwithin the Asia-pacific and theindo-pacific region about preparation efforts for extreme climate events including flood mitigation**. Australia can and should lead this conversation labour has offered its support for the Australian Government to provide any assistance required in the wake of the floods but **we also understand the government of India is advanced in thedeployment of its own resources to coverdisaster relief and rehabilitation at anon-government level**……..."

In the meantime the CBDT came out with a circular extending the due date of filing return for assessees other than covered by audit, to 15th September, 2018. The press release uses the word "For all assessees in the State of Kerala", instead of stating the source of income in Kerala or income arising out of activity carried out in Kerala. Even in the Notification issued for GST, the words used are (i) registered persons in the State of Kerala; (ii) registered persons **whose principal place of business** is in Kodagu district in the State of Karnataka; and (iii) registered persons whose **principal place of business** is in Mahe in the Union territory of Puducherry. Accordingly any person having **additional place of business** in the said areas do not get the extended period even though are also equally effected. Hope we learn one day to draft in such a way that the confusion is at least avoided.

Our Respects

The country lost some of the stalwarts in political arena in the month of August. Mr. M. Karunanidhi, former Chief Minister of Tamilnadu, at the age of 94, on 7th August, 2018. Mr. Atal Bihari Vajpayee, Former Prime Minister, at the age of 94, on 16th August, 2018 and Mr. Somnath Chatterjee, former Speaker – Lok Sabha, at the age of 89, on 13th August, 2018. On behalf of CASC & its members, we pay homage and respect to the departed soul. May their soul rest in peace.

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

Much Awaited 20th RRC is now scheduled in January 2019.
Await for further details and block your dates 25th - 28th January 2019.

DISCLAIMER

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ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.

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

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You may please send your Feedback Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to ***admin@casconline.org***

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RECENT JUDGMENTS IN VAT CST GST

Natural Justice: The petitioner has filed this Writ Petition, challenging the assessment order passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2010-11 on the ground of total violation of principle of natural justice, as no notice was issued to the petitioner, prior to the impugned assessment order, which is a revision of assessment. On a reading of the impugned assessment order, it is seen that there is no averment about the revision notice issued by the respondent. Though such point was specifically raised by the petitioner, and based on such submission, the Writ Petition was entertained and order of stay was also granted, till date, the respondent has not filed any counter affidavit, denying the said averment. Thus, going by the averment set out in the impugned assessment order, it is held that the assessment, having been issued without notice and opportunity to the petitioner, has to be held to be in violation of principles of natural justice. **M/s.Balu Spinning Mills (P) Ltd.,Vs The AC (CT), Bazaar Circle, Tirupur Writ Petition No.4994 of 2012 Dated : 30.01.2018**

CA. V.V. SAMPATHKUMAR

Interest: The interest liability is automatic on delayed payment of admitted tax. **Mahe Beach trading company, Palakkal, Mahe, Pondicherry, Vs The Commercial Tax Officer, Mahe, Pndicherry. W.P. Nos.50305 and 50306 of 2006 DATED: 08.01.2018**

Mismatch : Assessment has been completed ex - parte as the petitioner did not file their objections. The petitioner's case is that soon after they came to know the impugned assessment order, they approached the respondent and submitted a representation on 21.02.2012, clearly explaining as to how the error has occurred and there can be no discrepancies between the Annexure - I and Annexure II of the seller. On this ground the writ petition has been entertained and considering the factual

issue involved in this case and the bunch of documents produced by the petitioner, to establish that one of the dealers namely, Ingram Micro India Limited, is an existing dealer and on account of wrong TIN number has been mentioned, an error has occurred, this is a fit case, where the assessment could be redone after considering all the materials available with the petitioner. **Exelan Net Working Technologies Pvt. Ltd Vs. Commercial Tax Officer,Kilpauk Assessment Circle, Kilpauk, Writ Petition No.5868 of 2012 DATED : 29.01.2018**

Interest: Well within this thirty days period of receipt of assessment proceedings with demand notice, the application for settlement had been filed by the petitioner. Therefore, the question of levy of interest does not arise. This interpretation will be in consonance with Section 24(3) of the Tamil Nadu General Sales Tax Act, 1956 (in short the TNGST Act). Therefore, the impugned order of rejection of the application for settlement on the ground that the petitioner has not remitted 25% of the interest amount is incorrect, as no interest was leviable in terms of Section 24(3) of the TNGST Act. **M/s.Audinarayana Trading Company, Vs. Commercial Tax Officer, Kothawalchavadi Assessment Circle, W.P.Nos.5972 & 5973 0f 2012 DATED : 30.01.2018**

Declaration Forms: The petitioner seeks for issuance of a direction to quash the order passed by the respondent and extend the time for furnishing "C" Form declaration. Though the petitioner requested three months' time for furnishing the "C" Form declaration while submitting their reply, the respondent is stated to have passed the order without furnishing sufficient and reasonable time. In the absence of any specific stand taken by the petitioner, it is not a case where a Court can quash the impugned proceedings on the said ground, as it would amount to an academic exercise. Therefore, the writ petition is disposed of with liberty to the petitioner to file a petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 before the assessing officer and if forms are available, the same can be produced before the assessing officer, who on verification and on being satisfied as to the said Forms, is directed to re-do the assessment in accordance with law. The petitioner is directed to approach the authority by filing a petition within a

period of thirty days from the date of receipt of a copy of this order. **Kabirdass Motor Company Limited, Vs. The Assistant Commissioner (CT), Koyambedu Assessment Circle, W.P.No.8289 of 2012 DATED : 05.02.2018**

Revision, intranet data: Notices were issued and the revision of assessment is based on the details culled out from the intranet website of the Department, which was pursuant to an inspection conducted in the place of business of the petitioner by the officials of the Enforcement Wing. Though the petitioner received the revision notices, they failed to file any reply. Therefore, the assessment has been completed on account of the fact that the petitioner has not submitted their objections to the revision notices The Assessing Officer cannot be faulted for having completed the assessment. The petitioner contend that details were not furnished and therefore, the petitioner could not explain to the Assessing Officer that there is no case for revision of assessment. No request in this regard was made by the petitioners. However, considering the above facts this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer, however, subject to a condition of payment of 15% of disputed tax **M/s. R.K.Enterprises, Vs The Commercial Tax Officer, Broadway Assessment Circle, Writ Petition Nos. 984 to 993 of 2018 Dated : 17.1.2018**

Stay Orders: An interim order of stay subject to the condition that the petitioner should furnish bank guarantee to the satisfaction of the Assessing Officer for the balance tax of and that the bank guarantee should be kept valid for a period of six months. The second respondent restricted the stay order for a period of six months or till the disposal of the case, whichever is earlier from the date of issue of the order. Aggrieved by such condition, the petitioner filed W.P.Nos.7896 and 7897 of 2017 in respect of the appeals for two assessment years and this Court, disposed of the said writ petitions modifying that portion of the condition imposed by the second respondent by directing the petitioner to execute a personal bond instead of bank guarantee. The second respondent though restricted the order of interim stay for a period of six months, was unable to dispose of the appeal. Taking advantage of this, the first respondent has now issued the demand notice. This Court finds that the procedure adopted by

respondents 1 and 2 is wholly arbitrary. If the second respondent was confident of disposing of the appeal within a particular date, he should have done so and if he was of the opinion that he could dispose of the appeal within six months, he should have passed final orders within such time. However, he was unable to dispose of the appeal within such time. In such circumstances, the second respondent should have granted an order of interim stay for a period of six months or till the disposal of the appeal, whichever is later. This Court made such observations in its earlier orders. But, the Appellate Authority has not paid any heed to such observations. At least, in future, the Appellate Authorities should adhere to the same while restricting the order of stay and should state that it shall be for a period of six months or till the disposal of the appeal, whichever is later. **M/s. Manali Petrochemicals Ltd., Vs 1.AC (CT), Alandur Assessment Circle, Chennai-16. 2. ADC (CT) (East), Greams Road, Chennai-6.Writ Petition No.1104 of 2018 Dated : 18.1.2018**

Opportunity: After furnishing the copies of stock statement and without affording a personal hearing the assessment has been completed and the court held that the manner, in which, the assessment has been completed, is incorrect and will not stand to scrutiny of law and set aside the impugned order. **M/s.The Western India Plywoods Ltd., Vs The Assistant Commissioner (CT),Choolai Assessment Circle, Chennai-8. Writ Petition No.1170 of 2018 Dated : 19.1.2018**

Mismatch : There was no procedure involved under the provisions of the Tamil Nadu Value Added Tax Act, 2006 to guide the assessing officer as to how the assessment should be completed, when mismatch between the purchases and sales uploaded by buyer and seller occurs on account of informations culled out from the Departmental website. Therefore, the Court observed that a set of procedure has to be evolved to consider these type of cases, viz., mismatch cases. Since there were no guidelines in force at the relevant time, the Court issued certain guidelines as to how the assessing officer has to go about while considering the revision of assessment, when mismatch occurs. The main grievance of the petitioner is that the above referred decision has not been followed by the respondent while issuing the impugned notices. On a perusal of the impugned notices, the Court held that the

notices are bereft of particulars and it has not been disclosed as to what are discrepancies noticed by the respondent while securing the details through departmental website. Unless the dealer is furnished with adequate information, he would not be in a position to give an effective reply. Notices, which are vague, have to be held to be not satisfied the test of reasonableness and also held to be in violation of principles of natural justice. Therefore, the petitioner should have reasonable information being furnished to him to put forth an effective information and I find that the impugned notices do not contain sufficient material for the petitioner to place a defence. Therefore, this Court is inclined to direct the assessing officer to issue fresh notice with full details. However, for that reason, it may not be necessary for this Court to set aside the impugned notices. However, fresh notices can be issued in supersession of the impugned notices. **Real Talent Engineering Pvt. Limited,Arakkonam Taluk-632 505.Vs.Assistant Commissioner (CT),Ranipet (Sipcot), W.P.Nos.13019 to 13022 of 2017 DATED : 05.02.2018**

Inspection: The Assessing Officer has verbatim adopted proposal of the Enforcement Officer. Further, it is submitted that the objection filed by the dealers were not considered and by a single line it has been over ruled. On a perusal of the impugned assessment orders, the Court held that the Assessing Officer has not been given any reasons for rejecting the objection and by on the single line stated that the objections are over ruled. This is a case, where the Assessing Officer has abdicated his quasi-judicial powers. Furthermore, the Assessing Officer cannot be solely guided by the report of the Enforcement Officer and at best, such report can be a starting point for issuance of a revision notice and once the dealer submits his objection, that the Assessing Officer has to independently consider the matter unbiased and uninfluenced. In this regard, usual reference can be made to the judgment of the Hon'ble Division Bench in the case of State of Tamil Nadu Vs. A.N.S.Guptha and Sons reported in [2011] 38 VST 45 (Mad). **Tvl Gennext Auto World Vellore.Vs. The Commercial Tax Officer Vellore (North) Writ Petition Nos.13927 to 13930 of 2013 DATED : 02.02.2018**

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

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GST - ADVANCE RULINGS CASE LAWS

CA. VIJAY ANAND

1. G – SOLAR POWER GENERATING SYSTEM (SPGS) COMPOSITE SUPPLY – ITEMS SUPPLIED UNDER TWO DIFFERENT AGREEMENTS WHICH ARE ASSEMBLED, SYNCHRONIZED AND MADE OPERATIVE AT SITE – ENTIRE THING TO BE VIEWED AS SINGLE SUPPLY OF WORKS CONTRACT

In RE: Fermi Solar Farms Pvt. Ltd. 2018 (14) GSTL 35 (A.A.R.-GST), the applicant is engaged in the operation of renewable energy power plant projects which include operation of solar power plants set up across India for generation and distribution of electricity generated. The applicant is established under Independent Power Producer ('IPP') category for setting up and sale of power produced from Fermi's power plant to third party. The applicant renders the following activities:-

- Construction of complete buildings including control rooms and inverter rooms, roads and drainage system, boundary walls/fencing, bore walls.
- All civil and foundation works for switchyard, solar plant and all other equipment.
- Site enabling facilities
- Leveling and grading
- Erection, commissioning and testing for solar modules, mounting structures, power transformers, inverters SCADA, Complete Switchyard, Inverter transformers, connectors, earthing lines etc.

The following scenarios arise in the context of the applicant's activities:

- Case 1 - All goods may be supplied by EPC contractor - In such case, entire contract is executed by EPC contractor and all goods required are supplied by the contractor (including PV modules); and
- Case 2 - Certain goods supplied by EPC contractor - In such case, modules may be procured directly by Project Developer and balance goods would

be supplied by EPC Contractor (i.e. the Project Developer procures/imports PV modules on its own and only awards contract for balance goods

In the above context, an application was filed seeking advance ruling in respect of the following:-

1) Whether in case of separate contracts for supply of goods and services for a solar power plant, there would be separate taxability of goods as 'solar power generating system' at 5% and services at 18%?

2) Whether parts supplied on standalone basis (when supplied without PV modules) would also be eligible to concessional rate of 5% as parts of solar power generation system?

3) Whether benefit of concessional rate of 5% of solar power generation system and parts thereof would also be available to sub-contractors?

The authority observed as under:

1. The agreement very clearly mentions that the buyer desires to purchase an end to end SPGS with various integral components from the supplier. Thus, the buyer has expressed a clear intent to purchase the SPGS with the various components &not the components merely.

2. The supplier is appointed not merely to supply equipments but there is design and engineering work even before the supply of equipments. The agreement does not stop at supply of equipments but extends to implementation, operation and maintenance, as well. When the supplier is to implement, operate and maintain the plant, on what basis could such a contract be termed as a contract merely for 'supply of goods'.

3. There is a clause which says that the supplier acknowledges that time is of the essence for this agreement and shall provide the entire solar generating system including all equipment, spare parts and materials in accordance with the supply schedule. The agreement clauses reveal that the contract is certified to be completed only after the system has been put into place. One can also see that the risk and liabilities accruing in relation to all the equipment shall remain with the supplier till the completion of the project. Thus, it can be seen that though it has been contended that the agreement is for supply of equipments, it actually is a contract for the supply of the entire solar power generating system which requires the supplier to provide goods as well as services to the buyer.

4. The payment is linked to the successful completion of the project. This should not have been the criterion if the contract was for supply of 'goods' only. It can be seen that works contract involves activities of building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning. However, these activities are in terms of an immovable property. The term 'immovable property' has not been defined under the GST Act. However, there are plethora of judgments of the Supreme Court and the high courts which have helped understand the term 'immovable property'.

5. In T.T.G. Industries Ltd. V CCE2004(167)E.L.T 501 (SC) , it was held that the expression "attached to the earth" has three distinct dimensions - (a) rooted in the earth as in the case of trees and shrubs (b) imbedded in the earth as in the case of walls or buildings or (c) attached to what is imbedded for the permanent beneficial attachment of that to which it is attached. The attachment of the plant to the foundation at which it rests does not fall in the third category for the reason that an attachment to fall in the third category it must be for permanent beneficial enjoyment of that to which the plant is attached.

6. This agreement may be executed in one or more parts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. Both the agreements are for the single works contract of setting up of a solar power plant. The contracts would have different consideration but that should not change the way one looks at such agreements. The bifurcation into such agreements which themselves reveal the real intent would not impede the interpretation and applicability of the provisions.

7. The contention as made by the applicant reveals that the applicant desires to treat the first agreement as one being for supply of goods, a composite supply for which the principal supply is providing a solar power generating system which attracts tax at 5% as 'solar power generation system'. However, the contract of setting up of a solar power generation plant is a "works contract" in terms of clause (119) of section 2 of the GST Act. Since the transaction is treated as a "works contract" and not as a "composite supply", there would be no relevance of "principal supply".

8. Hence, w.r.t. the first question, it is observed that first agreement which was claimed to be for supply of goods was in fact a "works contract" whereas the second agreement claimed to be for supply of services was also involved in the supply of goods and services to be categorized as a "works contract". The rate would be governed by entry No.3(ii) of the Notification No.8/2017-Integrated Tax (Rate) under the Integrated Goods and Services Tax Act, 2017 (IGST Act) which would be 18% under the IGST Act and 9% each under the CGST Act and the MGST Act.

9. W.r.t. the second question, no details have been brought to support the fact that the transaction is a supply of "goods". In the absence of any documents, this question cannot be dealt with.

10. W.r.t. the third question too, no details have been brought to support the fact that the transaction is a supply of "goods". In the absence of any documents, this question cannot be dealt with.

Hence, the authority held as under:-

a. The agreements tendered in support of the first question reveal that the impugned transaction of setting up and operation of a solar photovoltaic plant is in the nature of a "works contract" in terms of clause (119) of section 2 of the GST Act. Schedule II [Activities to be treated as supply of goods or supply of services] treats "works contracts" u/s 2(119) as supply of 'services'. Depending upon the nature of supply, intra-State or inter-State, the rate of tax would be 18% under the IGST Act and 9% each under the CGST Act and the MGST Act aggregating to 18% of CGST and MGST.

b. In the absence of any documents, the second and the third issues are not dealt with.

2. <u>GST – ADVANCE RULING – REJUVENATION OF RIVER – CONTRACT AWARDED BY JAIPUR DEVELOPMENT AUTHORITY FOR REJUVENATION OF NALLAH PROJECT ON TURNKEY BASIS AND ITS OPERATION AND MAINTENANCE – ELIGIBLE TO TAX @ 12% UNDER SL.NO.3(vi)(a) OF NOTIFICATION NO.11/2017-C.T.(R) AS AMENDED WITH NOTIFICATION NO.24/2017-C.T.(R) AND 31/2017-C.T.(R)</u>

In RE: TATA Projects Ltd. 2018 (14) GSTL 129 (A.A.R.-GST), THE APPLICANT submitted that, Jaipur Development Authority (JDA)

awarded a contract to them dated 04.03.2016 for the rejuvenation of Amanishah Nallah (Dravyavati River), Jaipur (Rajasthan) Including Area Development on Turnkey Basis, and its Operation & Maintenance (O&M) for a period of 10 Years. The major works proposed for the project are as follows.

(a) Course Correction/Strengthening of Amanishah Nallah - River rehabilitation includes ground preparations, lining, embankment works, protection & prevention, and development of other peripheral structures, landscaping, etc.

(b) Sewerage Interception, treatment and disposal -Local residents discharge untreated sewage in to the Nallah. This is proposed to be checked by intercepting the sewage from existing drains/sewer lines lying within 0.5 km of the center of the Nallah, providing limited collection main (along the banks of the Nallah only) and putting up the treatment plant as detailed in later sections for treating such intercepted sewage and discharging treated effluent into the Nallah.

(c) Value Creation and Monetization -It is also proposed to prepare a comprehensive Business Plan along with land use plan and detailed Master Plan of the precious land areas reclaimed from Nallah sections and other existing land parcels in and around the Nallah. Primary objective of this exercise will be to highlight to the government significant value addition for the city in direct monetary terms and other intrinsic benefits that will accrue from the Nallah improvement works. This plan will act as road map for the Employer to use newly developed assets as per the market needs and value creation through Nallah improvement.

The applicant's contention was that the JDA was covered under the status of Government Entity, consequent to which the applicable GST Rate was 12% vide Sl. No.3 (vi) (a) of the Notification No. 11/2017 - Central Tax (Rate), dated 28th June 2017 as amended. Accordingly, the applicant filed an application for advance ruling, for which the authority observed as under:-

1. JDA is a body constituted under Jaipur Development Authority Act 1982(JDA Act) as a statutory vehicle to implement the urban development of Jaipur as envisaged by the Department of Urban Development and Housing, Government of Rajasthan and to carry out function entrusted under Article 243G of the Constitution.

2. As per item (vi) of per serial number 3 of Notification No. 11/2017-Central Excise (Rate), dated 28.06.2017 as amended the Central tax at the rate of 6% is applicable.

3. The jurisdictional officer in his comments has also stated that nature of work is to be covered under "services" as mentioned in Sl. No. 3(iv) (a) of Notification No. 11/ 2017 - Central Tax (Rate), dated 28th June 2017 as amended with 12% GST applicable on contractor as well as on sub-contractor.

Hence, the authority ruled that the services provided by the applicant to JDA under contract awarded to them attracts gst @12% (i.e. cgst 6% + sgst 6%) videNotification No. 11/2017 - Central Tax (Rate), dated 28th June 2017 (as amended. This rate is also applicable to the sub-contractor leg under the said contract.

3. <u>GST – ADVANCE RULING – COMPENSATION FOR ALTERNATE ACCOMMODATION/ DELAYED POSSESSION TO BE PAID TO TENANT OF OLD BUILDING BY DEVELOPER- "SUPPLY" UNDER CLAUSE 5(e)OF SCHEDULE II</u>

In RE: Zaver Shankarlal Bhanushali 2018 (14) GSTL 429 (A.A.R.-GST)," M/s Future Communications Limited (FCL) are the owners of a plot of land and the commercial building thereon and have entered into an agreement with M/s Spenta Residency Private Limited (SRPL), the developers, to develop a new building in place of the old building and thereby they have entered into an agreement with tenant for new premises to be allotted in lieu of giving up the possession of the old abovementioned premises. The owners are to provide the tenants with a permanent alternate accommodation, shops in the new budding to be constructed by the developers. A tenant filed an application seeking ruling in respect of the following:

a. Is GST applicable on the compensation for alternate accommodation to be paid to the tenant of the old building by SRPL?

b. Is GST applicable on the compensation for alternate accommodation/damages for delayed handover of possession of the new premises to be paid to the tenant of the old building by SRPL?

The authority observed as under:

1. The owners and the developers have agreed that till the time the tenant is given the new premises, the tenancy rights of the tenant shall be subsisting

subject to the tenant paying the monthly rent to the owners/ developers.

2. The transaction is about the receipt by the applicant, of certain sums towards-

a. Compensation for alternate accommodation for the period of first 24 months.

b. Compensation for alternate accommodation for the further period from 25th month to 36th month and damages for delayed handover of possession after the period of 36 months.

3. The act of vacating premises for facilitating the developer implies that the applicant has agreed to do an act and such act, of vacating the premises, by the applicant, squarely falls under clause 5(e) of the Schedule II and, therefore, the amounts received by the applicant for having agreed to do such an act, would attract tax liability.

4. Furthermore, during the period of redevelopment, the applicant remains a tenant of the owners of the old premises and continues to pay them due rent @ Rs. 5,000/- per month. However the applicant is agreeing to the obligation to refrain from an act or tolerating an act or situation of redevelopment in place of old premises and of not causing hindrance or creating obstacle in the same in lieu of they vacating the rented premises for redevelopment as per the agreement of redevelopment as referred above.

5. The receipt of amounts towards alternate accommodation or delayed possession of premises would be receipt of amounts for doing an act i.e. vacating the premises for redevelopment as well as tolerating the construction cum redevelopment work till possession of new redeveloped premises as per agreement and further for tolerating an act i.e the act of not having completed the redevelopment work within 36 months. In view thereof, the same would definitely be a 'supply' under the GST Act and therefore, there arises an occasion to levy tax under the GST Act on the impugned transactions.

Hence, the authority answered as under:

a. GST is applicable on the compensation for alternate accommodation received by the applicant.

b. GST applicable on the compensation for alternate accommodation/damages for delayed handover of possession.

4. GST – ADVANCE RULING – CONSULTANCY AND SUPPORT SERVICES CAPABLE OF BEING PROVIDED IN ISOLATION, CANNOT BE TREATED AS COMPOSITE SUPPLY –SERVICES NOT IN THE NATURE OF GUIDING THE SHIP OWNING COMPANY IN THE MANAGEMENT BUT IN THE NATURE OF CONSULTANCY IN RESPECT OF OPPORTUNITIES OF MARINE TRANSPORTATION BUSINESS – TO BE CLASSIFIED UNDER SUPPORT SERVICES IN TRANSPORTATION –CONTRARY SERVICES IN THE NATURE OF SUPPORT SERVICES OF MONITORING OF VOYAGE EXECUTION FOR SMOOTH AND EFFICIENT OPERATIONS AND EXAMINATION OF LAY TIME CALCUATION AND ARRANGING FOR ACCOUNTS RECONCILIATION FOR SETTLEMENT - TO BE CLASSIFIED AS "INTERMEDIARY SERVICES"

In RE: Five Star Shipping 2018 (14) GSTL 443 (A.A.R.-GST), the applicant is a partnership firm and is providing services in the nature of collecting market intelligence and updates which is disbursed to the ship owners (i.e. consultancy service), as the principal service, providing support service to Indian/foreign ship owners to identify charterers outside India who are seeking to optimize revenue for their vessels and monitoring voyage execution, as the ancillary service. Consultancy service and the consequential support service provided by the Applicant is generically referred to as Marine Consultancy Service ("'MCS").

The applicant provides MCS to both Indian and foreign ship owners.Thereisa lack of clarity regarding the GST implication on services provided to foreignship owners (located outside India), consequent to which an application for advance ruling was filed regarding MCS provided by the applicant to foreignship owners for which the authority observed as under:-

1. The issues to be decided are as under:.

i. Whether the MCS supplied by the applicant is a composite supply with consultancy service as the principal supply and not a mixed supply?

ii. Whether MCS deserves tobe classifiedas per SAC 9967 (i.e. support services intransportation, other than GTA') and not SAC 9983 (other professional, technical and business services (excluding advertisement

service), which is a residuary head, in terms of the following entry of NotificationNo.11/2017-IGST(Rate), where the GST rate notified is 18% for both?

iii. Whether the MCS qualifies as an export of service under Section 2(6) of the IGSTAct and so is not liable to tax, which particularly involves the place of supply determined as per Section 13(2)(a)of the IGST Act in terms of which the place of supply of service will be the 'location of the recipient of service' and to be determined as per Section 13(3)(a) of the IGST Act in terms of which the place of supply of service will be where the service is performed'?

2. The applicant has been appointed as a consultant and technical advisor by the foreign ship owner to perform the consulting services and such services shall be limited to the area of expertise and the consultant shall render services at such times and places as shall be mutually agreed by foreign ship owner and the applicant consultant.

3. The purpose of the consulting is to provide periodic review and advice relevant to shipping and mari time matters related to the MVA MOCEANPRIDE/ MARUBENICEMENT

4. The consultanthas a fiduciary obligation to the foreign ship owner based on contractual term of the agreement wherein he is obligated to provide independent advice uninfluenced by commercial concerns which does not require him to be an advocate for the foreign ship owner, for which the consultant agrees at, under no circumstances will that role become promised or inaccurately represented. The implementation of such value-based and market-driven advisory service is expected to lead to increased cargo volumes with long-term sustainable revenue.

5. The main purpose of an 'intermediary' as per section 2(13) of the Integrated Goods and Services Tax Act, 2017 is to is to arrange or facilitate supply of services between two or more persons.

6. On verification and examination of the nature of services being provided by the applicant, it is very apparent that the claim made by the applicant that they are providing services only to the ship owners and have no interaction with the ship charterers while providing these services would not be maintainable because the nature of support services, being Monitoring of Voyage Execution for smooth and efficient operations and Examination of

lay time calculations and arranging for accounts reconciliation for objectives of eventual settlement, are such services which cannot be performed until and unless the applicant interacts and works in coordination with the ship charterers on behalf of the shipowners.

7. Thus from the very nature of support services that are being provided by the applicant, as visible from the terms of agreements, it is clear that the support services being provided by them would be 'intermediary services' and the applicant would be covered in the definition of an intermediary in terms of Section 2(13) of the IGST Act. 2017.

Hence the authority ruled as under:-

a. MCS provided to foreignship owners does not constitute a "composite supply".

b. MCS will not qualify as business consultancy servicein termsof the scheme of classificationof services.

c. Support service qualifies as "intermediary service" in terms of Section 2(13) of the IGST Act.

5. GST – ADVANCE RULING – SUPPLY WITHOUT CONSIDERATION – RELATED PERSONS – ACTIVITY OF NATIONAL DAIRY DEVELOPMENT BOARD (NDDB) TO REVIVE STATE MILK UNION FOR DAIRY DEVELOPMENT WITHOUT CONSIDERATION – NOT TO BE TERMED AS RELATED PERSON

In RE: National Dairy Development Board2018 (14) GSTL 483 (A.A.R.-GST), the applicant, NDDB, is a statutory body constituted by an Act of Parliament, namely the National Dairy Development Board Act, 1987 (NDDB Act) to promote dairy and other agriculture based industries& incidental services. The State Governments of Jharkhand & Assam have sought assistance of the applicant to support Jharkhand State Cooperative Milk Producers' Federation Limited (JMU) and West Assam Milk Producers' Co-operative Union Limited (WAMUL) for which arrangement has been entered into by the said state governments and applicant with an objective of reviving the JMU & WAMUL (Unions for short) and developing dairying in the respective states for which the state governments have entrusted NDDB to run the management, appoint key managerial persons and provide end to end services which ultimately would help the Unions in developing.

An application was submitted before the authority seeking ruling on the following points:

(i) By virtue of tripartite agreement between NDDB, State Government & Unions, whether the arrangement between NDDB and Unions would be considered as supply between 'related persons' in accordance with Schedule 1 of the Central Goods & Service Tax Act, 2017?

(ii) Assuming the answer to above point is affirmative, whether the applicant would be required to determine value of activities undertaken by them in accordance with Section 15(5) of CGST Act, 2017 read with Rule 28 of the CGST Rules, 2017?

The authority observed as under :

1. Pursuant to the agreements with the state government of Jharkhand and Assam, the applicant provides services to Unions & the actual services are received by the concerned State Governments and the Unions are simply beneficiaries of the services performed by the applicant. Thus, there is no question of exercise of control by the applicant over the Unions which, in fact, provide support to the applicant to fulfill the purposes as per the agreements made with the state governments and the applicant and in return they receive the benefits of it.

2. Decisions were taken to hand over the management of the Unions to NDDB under terms and conditions specified therein for which NDDB would not charge any management fee from the Government of Jharkhand.

3. Unionsare only beneficiaries of agreement entered into by the state governments with the applicant and are required only to provide adequate support to the applicant. In such a situation, there is no relationship between NDDB and the UNIONS, consequent to which the situation specified at Sl. No. 5 of Section 15(5) of CGST Act is not found in existence in the transaction between NDDB and the Unions &, accordingly, such transactions are not to be considered as related party transactions in GST.

Hence, the authority ruled that the transactions undertaken by NDDB and Unions in accordance with the agreements made by NDDB with State Government of Assam and Jharkhand are not to be considered as supply between 'related persons' in accordance with Schedule I of Central Goods and Service Tax Act, 2017 (CGST Act) read with Section 15 of CGST

Act and corresponding provisions under the Gujarat Goods and Services Tax Act, 2017.

6. MANAGEMENT, MAINTENANCE OR REPAIR SERVICE – COLLECTION THERETO PRIOR TO OCCUPATION AND FORMATION OF THE SOCIETY -NOT COVERED

In C.S.T.Mumbai-VI V. Shri Krishna Chaitanya Enterprises 2018 (14) GSTL 533 (Bom.), the assessee is in the business of construction of buildings and is a builder and developer. The adjudicating authority confirmed the demand on the assessee pertaining to the collection of maintenance charges from their customers for upkeep of the apartment or premises, which was negated by the Tribunal. On further appeal by the department, the high court observed as under:-

1. A perusal of the definition of the term "management, maintenance or repair"would indicate that management, maintenance or repair means any service provided by any person under a contract or an agreement, or a manufacturer or any person authorised by him, in relation to, the management of properties, whether immovable or not, maintenance or repair of properties, whether immovable or not, or maintenance or repair including reconditioning on restoration, or servicing of any goods, excluding a motor vehicle. Then, there is an explanation which clears doubts and it declares that for the purposes of this clause, goods includes computer software and properties include information technology software. The words "Taxable service" is defined in Section 65, Clause (105) to mean any service provided or to be provided to any person by any person in relation to management, maintenance or repair.

2. Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA for short) is an act to regulate in the State of Maharashtra, the promotion of the construction of the sale and management, and the transfer of Flats on ownership basis.

3. It is well settled that in India there is dual ownership. The land beneath the building does not belong to the person who constructs or owns the building. In most of the cases, the builders and developers obtain rights from the land owners so as to enable them to pull down the existing structure and

exploit the potential of the land to its optimum. The covenants with the owner are that such land would be exploited to its optimum and with its exploitation and usage the builder and developer can construct building/s comprising of units and flats which can be sold in the open market.

4. The consideration for this agreement is strictly a sum payable in money so also certain number of units or Flats to be handed over to the owner. The cost of constructionand other charges are defrayed or reimbursed by the promoter or builder by selling units or Flats other than those reserved for the owner of the land, in open market at the price which it commands on the given date. The Flats in the buildings under construction can also be sold and the agreement for sale with individual Flat takers can provide for appropriate stipulation with regard to payment of money and consideration. This is agreed to be paid and collected slabwise.

5. The flat taker, therefore, knows at what stage he has to pay the amount and if he has to pay the amount in toto by the stage, namely, construction of a particular floor, located on which the Flat agreed to be sold to him is constructed, then, full payment would be made by that time. The title in the building has to be conveyed together with the rights to the land beneath it. The land beneath and appurtenant to the building enables the building owner, namely, a cooperative housing society or a company to enjoy the fruits of the development. There are often complaints and cases of unscrupulous builders and developers fleecing and cheating Flat purchasers. Therefore, a complete mechanism is put in placetill conveying of the property.

6. Prior thereto, it is the promoter who must form the legal entity, namely, a cooperative housing society or a company. It is towards that end that he has to hold on to the property and the money for complete discharge of his eventual duty and function. Until that stage is reached, he has to maintain, safeguard and protect the property. He has to look after the day-to-day wear and tear. Therefore, when he maintains the structure or repairs it, he is not rendering a taxable service in the sense envisaged by the Finance Act, 1994. If one loses complete focus or sight of the backdrop in which the so called service is rendered, then, the conclusion as erroneous and suggested by the Revenue will be reached.

7. The deposit or the monies themselves are held and appropriated towards payment of taxes, etc., popularly known as outgoings. The building and the Flats therein has to stand intact till all the Flats or units are sold and the statutory obligations are fully discharged. This is not a service of the nature understood by Section 65 (64) of the Finance Act, 1994. It is not a contractor simplicitor of maintenance of immovable property. It is not as if there is an existing building comprising flats, fully occupied, the maintenance and upkeep of which is handed over under a contract. It is a statutory obligation superimposed on a contract to sell a flat/unit in a building to be constructed on a piece or parcel of land which cannot be confused with a taxable service as defined under the Finance Act, 1994. The day-to-day upkeep, maintenance and repair is till the statutory duty is fully performed as noted above. Revenue does not wish to take into consideration the background in which buildings are maintained and till they are conveyed with complete title to even the land beneath.

8. The provisions of sections 5 and 6 and eventually the further provisions right upto section 13 of the MOFA would make it clear that builder and developer maintains and repairs the property till it is conveyed or the title in the same is conveyed to the Flat purchasers or the legal entity which would ultimately be formed by him. Thus, a cooperative housing society or a company would have to be formed of all those flat purchasers who have purchased the flats prior to or under construction, namely, subsequently purchased flats. The completion of the building or it being rendered fit for occupation is one of the duties and obligation of the builder and promoter under this law. For the flats to be conveyed, the builder has to maintain the property. His liability is in terms of the statute itself. It is towards that end that money is collected and paid over to the statutory authorities in the form of charges and taxes as it is the builder's obligation to collect these amounts from individual flat takers and make it over to these authorities.

9. After formation of the legal entity, the obligation ceases and it is taken over by the cooperative housing society or the company. Until that takes place, the promoter continues to be liable. If this aspect is ignored, then, the narrow or restricted construction placed on the provision by the revenue can be accepted. The tax then can be justified on the ground that it is a taxable service provided by the builder.

Hence, the departmental appeal was rejected.

7. GST – ADVANCE RULING – BEER MANUFACTURED BY CONTRACT BOTTLING UNIT (CBU) –SURPLUS PROFIT TRANSFERRED BY CBU TO BRAND OWNER IN CONSIDERATION TO USE THE BRAND – SERVICE COVERED UNDER SL.NO.5(C) OF SCHEDULE-II

In RE: United Breweries Ltd. 2018 (14) GSTL 546 (A.A.R.-GST), the applicant is engaged in the manufacture and supply of beer under various brand names. In addition to manufacturing beer on their own, the applicant has manufacturing arrangement with contract brewing/bottling units(CBU) who manufacture brands of beer belonging to the applicant and supply such beer to market. CBUs manufacture beer bearing brands owned by the applicant by procuring raw materials, packaging materials, incurring overheads and other manufacturing costs etc. on its own and sell the beer directly to Government corporations/wholesale depending on the state market.

The CBUs, upon the sale of the goods, pay the statutory levies and taxes.

The CBUs further account for the manufacturing cost and distribution overheads in their books of account as they had procured all the resources for the manufacture of the beer & transfer the balance amount to the applicant after retains a certain amount of profit. An application was filed for advance ruling before the authority on the following questions:

(a) Whether beer bearing brand/s owned by the applicant manufactured by CBUs out of the raw materials, packaging materials and other input materials procured by it and accounted by it and thereafter selling such beer to various parties under its invoicing would be considered as supply of services and whether GST is payable by the CBUs on the profit earned out of such manufacturing activity?

(b) Whether GST is payable by the applicant on the "surplus profit" transferred by the CBU to the brand owner out of such manufacturing activity?The authority observed as under:-

1. The end product of the applicant i.e. beer, whether manufactured by the applicant or the CBUs, is not exigible to CGST, SGST or IGST. The point to be determined is whether the CBUs are supplying any service to the

applicant by undertaking to manufacture beer according to their specifications thereby rendering them liable to pay GST on the profit earned by them by virtue of supply of service to the applicant.

2. The CBUs undertake the manufacture of goods for or on behalf of the applicant, apparently in the nature of a job work. 'Job work' is defined under section 2 (68) of the CGST Act, 2017.

3. Services related to manufacture appear in section 8 under heading 9988 of Notification 11/2017 Central Tax (Rate) dated 28.06.2017. This Notification, at serial number 26, also requires that heading 9988 is applicable when the physical inputs are owned by person other than the manufacturer and also provides for classification of other manufacturing services apart from those under heading 9988. There are four groups of services under heading 9989, ranging from group 99891 to 99894. The manufacturing activity undertaken by the CBUs does not appear in any of the services listed in the aforesaid groups from 99891 to 99894.

4. Therefore, it is evident that the manufacturing activity carried out by the CBUs does not fall under the heading 9989 as in order to satisfy a manufacturing activity under heading 9988, it is necessary that the goods worked upon should be supplied by a registered person to the manufacturer. Therefore to determine whether the activity undertaken by the CBUs falls under heading 9988 or not, one needs to see whether the raw material is supplied by the applicant or not.

5. In this regard, the agreement between the applicant and the CBUs indicate that the CBUs shall engage in the purchase and handling of the raw materials for which the quality of the raw material shall be supervised by the applicant. The clauses in the agreement indicate that the ownership of the raw material required to manufacture beer rests with the manufacturer and not with the applicant which indicates that the applicant had not supplied any goods used in the manufacturing activity undertaken by the CBUs. Consequently, the manufacturing activity undertaken by the CBUs does not qualify classification under Heading 9988. Consequently, it should be reckoned as if the CBUs are not engaged in supply of any service to the applicant and, therefore, there does not arise any liability to pay GST on the amount retained by the CBUs as their profit.

6. The applicant is the owner of brands of beer. Under the afore-discussed agreements the applicant permits the CBUs to manufacture beer according to their specifications, label them with the brands of the applicant and then sell them as per the State excise laws.

7. Sub-section (d) of Section 7 of the CGST Act, 2017 provides that activities mentioned in Schedule II are to be treated as supply of goods or supply of services. S.No. 5(c) of Schedule provides that 'temporary transfer or permitting the use or enjoyment of any intellectual property right' constitutes supply of service.

8. The sale proceeds are utilized to first pay the CBUs the cost of the raw materials, bottling cost, energy charges and fixed retention charges. The balance amount accrues to the applicant as brand fee and business surplus/business profit.

9. The applicant provides the technical know-how and supervision of various activities to enable the CBUs to achieve the desired results. The money that the applicant receives can be either of the two, supply of goods or supply of service. Since there is evidently no supply of goods from the applicant to the CBUs, it should be on account of supply of service when the same is defined as anything other than goods. It is beyond doubt that the applicant is engaged in supply of service to the CBUs for which money is received and called as brand fee and business surplus. The nomenclature of the amount received as brand fee or business surplus or business profit does not alter the fact that it is a consideration that flows to the applicant.

10. The origin of Schedule II and the categorisation of the activities mentioned therein as supply of goods or supply of services lies in section 7 of the CGST Act,2017. The applicant is engaged in the supply of service which is not covered under Schedule II. The fact that the supply of service is not covered under Schedule II does not imply that there is no supply of service and that GST is not chargeable thereupon.

Hence, the authority answered as under:

a. The CBUs are not engaged in supply of service to the applicant and therefore there does not arise any liability to pay GST on the amount retained by the CBUs as their profit.

b. GST is payable by the brand owner (applicant) on 'surplus profit" transferred by the CBU to them out of

the manufacturing activity and the supply of service to the CBUs is classified under service code (tariff) 999799 and liable to pay GST at 18% (CGST-9%, SGST-9%) on the amount received from the CBUs.

8. GST – ADVANCE RULING APPELLATE AUTHORITY - CONVERSION OF COAL SUPPLIED INTO ELECTRICAL ENERGY AND PAYMENT OF JOB WORK CHARGES TO RECEIVE ELECTRICITY – NOT A JOB WORK

In RE: JSW Energy Ltd. 2018 (14) GSTL 571 (A.A.R.-GST), the authority for advance ruling held that the conversion of coal supplied into electrical energy and payment of job work charges to receive electricity from JSW Steel Limited (JSL) is not a job work and tantamounts to a manufacture of electricity from the coal. On appeal against this decision, the appellate authority observed as under:-

1. A harmonious reading of the definition of job work and the procedure for the same, one can construe that the inputs to the job worker for conducting any treatment / process and shall bring the same after completion of job work or otherwise. The definition of job work involves (i) two persons, (ii) goods and (iii) process / treatment on the goods. Hence, the goods sent to the job worker should be the inputs of the principal.

2. A perusal of the agreements would indicate that the coal imported by JSL is coking coal, which is different from the steam coalthat is used by power plants for the generation of electricity. In other words, the inputs utilized by JSL for the manufacture of their final product (ie steel) are not the same which they intend to send to the appellant for undertaking process on the same. The appellants intend to procure steam coal (which are inputs for the power plant of the job worker) and intend to avail credit of duty on the same, which are otherwise unavailable to the appellants as their final product (electricity) does not fall under the ambit of GST.

3. Even assuming that steam coal is also an input for JSL, the question arises as tothe requirements of section 143 of the CGST Act are met with regard to bringing the inputs back after process / treatment on the inputs.

4. A perusal of the documents and permissions would indicate that the principal would not be in a position to bring the inputs after processing by

the proposed job worker independent of a third person or entity and that there is no one-to-one co-relation that can be established with the receipt of the processed goods due to the involvement of the third party.

5. E-flier on 'job work' published by the CBEC mentions that the whole ideas in job work is to make the principal responsible for meeting the compliances on behalf of the job worker of the goods processed by him (job worker) considering the fact that typically the job workers are small persons who are unable to comply with the discrete provisions of the law.

6. Supreme Court in M/s Prestige Engineering (India) v. Collector of C. Ex., Meerut 1994 (73) ELT 497 (S.C.) observed that a process cannot be considered as job work if the principal sends minor inputs to the job worker and all other inputs / goods utilized in the final product are being procured/purchased by the job worker as it will defeat the very purpose and idea of job work. Applying this analogy, no job work can be deemed to be in existence in the instant case as only the minor additions have been made by the job worker on the inputs provided by the principal as envisaged in the law.

7. Furthermore, the appellants have not provided documentary evidences as to the following:-

a. How can steam coal, which is a prime raw material of the job worker, be considered as inputs for the principal as they are utilizing coal other than steam coal?

b. How would the principal be able to bring back the inputs (after processing the same by the job worker) u/s 143 (1)(a) without being regulated by the third party?

c. What are the other inputs / materials procured by the job worker which needs to be added to the inputs supplied by the principal for converting the same into electricity as, in terms of the decision in Prestige Engineering (supra), job worker cannot make substantial addition to the inputs of the principal to qualify for the process of job work?

Hence, the appellate authority dismissed the appeal despite holding that the job work can also cover activities that tantamount to manufacture.

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

PROSECUTION UNDER THE IT ACT : ISSUES WITH SECTION 276B

CA B. RAMANA KUMAR
M.COM, LLB, FCA, ADVOCATE

&

S. HARISH KUMAR
B.A.LLB, ADVOCATE

INTRODUCTION:

The failure to remit TDS to the Government will invite prosecution Proceedings u/s 276B the important part as it once stood, produced: "If a person, **without reasonable cause or excuse**, fails to deduct or after deducting fails to pay the tax as required by or under the provisions of sub-section (9) of section 80E or Chapter XVII-B…."

Previously, Section 276B was also worded in a way that it could be interpreted as being only applicable in cases of failure to pay tax after deduction and not on non-deduction of TDS. However, this wasamended. Currently, provisions for failure to Deduct Tax at source now falls under the preview of Section 271C and is subjected to penalty.

PROSECUTION ON NON-FILING OF TAX DEDUCTED AT SOURCE:

Currently Section 276B stands as follows:

"*If a person fails to pay to the credit of the Central Government, –*

(a) The tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or

(b) The tax payable by him, as required by or under –

(i) sub-section (2) of section 115-O; or

(ii) The second proviso to section 194B,

He shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine."

The usual procedure adopted by the department is as under:

- If the officer feels that prosecution is warranted, the officer shall then prepare a proposal to initiate prosecution on the Assessee.
- This proposal is approved by the Jurisdictional Commissioner, who on his or her discretion, will then issue a show-cause notice to the Assessee and the relevant officers, so that a hearing may be conducted.
- The Assessee is granted the opportunity to make his or her case on why Prosecution should not be launched against him or her.

- In this regard, if the Assessee fails to convince the Commissioner or if the Commissioner is not satisfied with the response as submitted by the Assessee, then he or she shall grant sanction to the Assessing Officer to file the complaint before the court and thus launch Prosecution Proceedings against the Assessee.

SCOPE OF THE DEFAULT:

The provisions of Section 276B make no mention of the scope of the default and as such, generally speaking, all defaultswith regards to TDS, regardless of actual amount or time, shall be treated equally.However, there previously was a circular to on this stating as follows:

"***Instruction: Issued by CBDT, dated 28-5-1980.***

The prosecution under section 276B should not normally be proposed when the amount involved and/or the period of default is not substantial and the amount in default has also been deposited in the meantime to the credit of the Government. No such consideration will, of course, apply to levy of interest under section 201(1A)."

REASONABLE CAUSE U/S 278AA:

As per Section 278AA, inserted by the Taxation Laws (Amendment 8c Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986, punishment u/s 276B will not be applicable in cases where the Assessee had reasonable cause for the failure. What this means is that if the Assessee was unable to pay or deduct TDS due to circumstances that would take the matter of the deduction and/or payment of TDS beyond the hands of the Assessee or otherwise outside the control of the Assessee then the Assessee would be granted relief from Prosecution. Reasonable cause may include:

1. Financial Difficulties.

There have been cases before the hon'ble Punjab & Haryana High Court in **ITO v. Chiranjilal Cotton Industries & Ors (2002) 254 ITR 181 (PUNJAB & HARYANA)** wherein it was held that the Department was unable to refer to any evidence on record to show that the assessee had the resources, but it had failed to pay. The Court compared the manner in which the payments had been made as indicative of the assessee's financial position. The Court further cited the bank account the total of Rs. 4,114/- and stated that nothing had been produced on record to show that the delay was willful.

Similar sentiments were expressed in **S.G. Kale v. Union of India (2002) 256 ITR 148 (Raj)** wherein it was held that there had been a bona fide default with good and sufficient reasons in payment of tax deducted at source to government within the prescribed time and as such, it

shall mitigate the gravity of the offence to an extent that even penalty for such breach cannot be imposed. For this reason the court held that the default was not willful and thus prosecution would not stand.

2. Age and/or health of the Assessee.

Prosecution is normally not initiated against an assessee who is over the age of 70 at the time of commission of the offence. Courts generally take a lenient view in cases where the delay was due to the problems associated with advance age as well as problems like ill health, impaired mental facilities etc.

3. Offence committed without the Knowledge of the Accused.

In the case of Companies, all of the personal who were responsible and or in charge during the period of the offense shall be deemed to be guilty and be liable for the offence. However, if it can be proven that the Accused had performed his or her due diligence or that the offence had been committed without his knowledge and that he or she had taken all reasonable steps, then such a person shall not be liable for Prosecution.

4. Outside the control of the Accused.

In the case of **Union of India v. Pyarelal Tarachand & Anr.(2003) 264 ITR 525 (MP) : (2003) 180 CTR 551 (MP) : (2004) 135 TAXMAN 97 (MP)**, prosecution proceedings were dropped for the reasoning that the default was unintentional and that there was no intentional suppression of the facts, noting the lack of any mala fide intent and mens rea.

5. Time of offense and amount.

In **Bee Gee Motors & Tractors v Income-tax Officer (1996) 218 ITR 155 (PUNJAB & HARYANA)**, it was held that the Court would have normally sent the case to the authorities concerned for consideration but for the fact that very insignificant amount of Rs. 9,428/- in one case and even lesser amount in another case was involved.

Further, taking into consideration that the prosecution came to be launched after a number of years since the default was committed or even from the date when the tax was deposited as also that the matter was pending since 1993, it was concluded that it would serve no useful purpose in remitting the case to the authorities concerned and ruled in favour of the taxpayer.

In **Vijay Singh Vs Union of India & Anr (2005) 199 CTR (MP) 653**, it was held that the delay in depositing the amount was not substantial, around five months, and the amount involved was only Rs. 28,776.

For this reason, the Court allowed the Petition of the Assessee stating that in such a situation, the authorities concerned

should have considered the matter in the light of the instructions contained in the circulardated 28/05/1980 with regards to exempting the assessee from prosecution.

It should be noted that while there is no set time limit within which Prosecution must be initiated, the concept of reasonable time still applies. In the case of **Parmeet Singh Sawney v. Dinesh Verma And Another.(1988) 169 ITR 5 (DEL) : (1987) 66 CTR 130 (DEL) : (1988) 36 TAXMAN 122 (DEL),** one of the facts raised was that prosecution was initiated almost 14 years after the alleged commission of the offense.

6. Amounts to Harassment:

As per section 278AA, no person shall be liable to prosecution under section 276B if they can establish that there were reasonable causes for the default in TDS. In the case of **Sequoia Construction Co. P. LTD. And Others v. P. P. Suri, ITO, Centra (1986) 158 ITR 496 (DEL) : (1985) 47 CTR 277 (DEL) : (1985) 21 TAXMAN 13 (DEL),** it was observed by the court that there was no clear finding by the Department that there was sufficient and good cause with the assessee's capacity to make the TDS deposits.

The Court further held that milder proof of reasonable cause should have been taken to have been established and, in the circumstances of the case, it would have been a "*sheer exercise in futility and harassment of the accused*" to allow criminal prosecution proceedings.

7. Other reasons.

Prosecution can be dismissed for reasons other than the ones stated above, provided the reasons are accepted by the Court.

It should be noted that the above are not clear and unambiguous reasons. It is up to the discretion of the courts to accept or reject the explanation provided by the Assessee on a case by case basis.

CONCLUSION:

Thus it can be seen that the Assessee is not without relief when subjected to Prosecution Proceedings u/s 276B. Where the Assessee is able to prove that he had sufficient cause and that there was no knowing attempt to evade payment of tax, then the Assessee shall be granted relief under the Provisions of Section 278AA.

However in cases where the Assessee has is unable to convince the court of or show sufficient cause that the matter was outside of his control, then the Assessee shall have no choice but to face the Prosecution Proceedings and make an application for Compounding.

(The authors are Chennai based Advocates. They can be reached at ramanakumar @ovopaxlegal.com & harish@ovopaxlegal.com)

PROPOSED SIMPLIFIED RETURNS AND RETURN FORMATS

CA. DEBASIS NAYAK & Ms. NAMRATHA ACHARYA

GST Council in its 27th meeting held on 4th May, 2018 had approved the basic principles of GST return design. Now in its 28th meeting held on 21st July, 2018, GST Council approved the key features and new format of the GST returns. This article lists down the salient features of the new format and business processes.

1. Uploading of invoices on a real-time basis

Taxpayers would be able to upload the invoices continuously at any given point of time in a month. Such invoices once uploaded, shall be continuously visible to the recipient in a screen called the "***viewing facility***". Also, invoices uploaded by the supplier by the 10th of the succeeding month shall be auto-populated in the liability table of the main return of the taxpayer.

2. Credit to be availed ONLY based on the invoices as uploaded by the suppliers

The maximum limit of eligible input tax credit would be based on the invoices uploaded by the supplier upto 10th of the subsequent month. It is to be noted that any invoices uploaded by the supplier after 10th of the succeeding month,can be availed as input tax credit only in the **succeeding month.** For example, Invoice No 1 and 2 for the month of April 2018 is uploaded on 5th May 2018 and 17th May 2018. The recipient can avail credit to the extent of Invoice No 1 during the month of April 2018. However, input tax credit relating to Invoice No 2 can be availed by the recipient only in the month of May 2018, though the invoice would still be visible to the recipient in the viewing facility of April 2018.

After the due date of filing return, the recipient shall also be able to view the return filing status of the supplier in the viewing facility screen.

3. Transitional Period

For smooth implementation of the revised system, a transitional period of **6 months** has been proposed wherein the recipient would be able to avail input tax credit on ***self-declaration*** basis on invoices

uploaded by the supplier by 10th of the next month or thereafter, using the facility of availing input tax credit on missing invoices (invoices which are not uploaded by the supplier but on which recipient has availed input tax credit)

Any input tax credit availed using the above missing invoices facility after the transitional period, shall be recovered from the recipient.

4. Missing Invoice reporting

Reporting of missing invoices by the recipient can be delayed upto **two tax periods** to allow the recipient to follow up and get the missing invoices uploaded by the suppliers. Taxpayers filing quarterly returns shall report missing invoices in the next quarter.

Accept, reject, keep pending and locking of invoices

After the supplier has uploaded invoices on a real-time basis, the recipient shall be in a position to accept, reject or keep pending, a particular invoice. The recipient can lock an invoice (i.e., acceptance of entering into the transaction as mentioned in the invoice). In case of large number of invoices, since locking cannot take place on an invoice-to-invoice basis, a facility of deemed locking shall be provided wherein all invoices shall be presumed to be locked excepting the invoices which are rejected or kept pending by the recipient. Further, any invoices which are not rejected or kept pending by the recipient shall be deemed to be locked after the return for the relevant tax period has been filed by the recipient.

It is also to be noted that locked invoices would **not be allowed to be amended** by the supplier. Inorder to amend the same, a credit/debit note would have to be issued by the supplier.

A wrongly locked invoice can be unlocked by the recipient subject to reversal of ITC availed by him and an online confirmation thereof.

5. Invoices uploaded but returns not filed

In cases where invoices are uploaded by supplier but the returns are not filed, it shall be treated as self-admitted liability by the supplier and the recovery proceedings shall be initiated against him

6. Offline matching Tool (Return vs financials)

A facility for matching the invoices downloaded by the recipient from the viewing facility, with the invoices in their

respective accounting softwares, shall be provided, with ability to filter invoices on the basis of date of invoice, date on which invoice was uploaded by the supplier into the common portal, and the GSTIN of the supplier. Incase of incorrect GSTIN, where the invoice would appear in the viewing facility of a taxpayer who is not the recipient of such supplies, the offline matching tool will have a facility to create a recipient and seller master list, from which the correct GSTIN can be traced and matched.

7. Return Format

Now the multiple returns are proposed to be replaced by one single return per month for tax payers having turnover of more than INR 5 crores. The return shall consist of two tables, one reporting the outward supplies and another reporting the input tax credit availed. The due date for filing this single return shall be 20th of the succeeding month.

Small taxpayers with turnover less than INR 5crores, will have an option to file quarterly returns, with monthly payment. The return filing dates for such taxpayers shall be staggered based on turnover of taxpayer which shall be calculated based on reported turnover in the previous financial year, annualised for the full year.

8. Nil returns

Taxpayers with no output tax liability, no purchases, and no input tax credit in any quarter of a financial year shall file one NIL return for the quarter.

9. Amendment of returns

Taxpayers would be allowed to file **two amended returns** for each tax period earliest before the date of filing september returns or the annual returns

10. Upload of shipping bill details

The registered persons can file shipping bill details for exports. either at the time of filing return or after filing the return. Filing the details on a later date will not be considered as amended returns.

11. Recovery Proceedings

In the new system, at the time of filing returns, the GST liability is expected to be discharges in **full** (as presently applicable).

As regards availability of credit of GST to a buyer, if the supplier does not deposit the GST, then there will NOT be any automatic reversal of ITC. First the GST Authorities will initiate recovery against the supplier and in some exceptional circumstances such as closure of business

by the supplier, recovery of ITC from the recipient shall be made through a due process of service of notice and issue of order. Hence this may lead to cases where the genuine buyer without any fault of his, could be penalized through denial of credit.

However, as per the Central Goods and Services Tax (Amendment) Bill, 2018, a new section has been inserted stating that the supplier and the recipient of a supply shall be ***jointly and severally liable*** to pay tax or the Input tax credit availed, as the case maybe, in relation to outward supplies for which the details have been furnished but returns not filed. This seems to be in contradiction with the recovery proceedings as mentioned in the above paragraph and would require further clarity.

12. Profile based Returns

Taxpayers would be required to update a detailed questionnaire based on which requisite details/tables would be made available in the main return of the taxpayer. Hence the taxpayers would be able to view only the tables which are relevant to their transactions during a particular tax period.

13. Transmission of data to ICEGATE

Once the information of the shipping bills is updated, the entire data shall be transmitted to the ICEGATE (IT system of Customs administration). Any amendments in the shipping bill details shall be carried out in the separate facility mentioned above, and not through the process of filing any amended returns.

14. Supply side control

For a newly registered taxpayer or a taxpayer who has defaulted in payment of tax beyond a time period and/or above a threshold, uploading of invoices shall be allowed only upto a threshold amount or only after the default in payment is made good respectively. This would lead to the recipient being protected against the actions of the supplier and also in the interest of public money.

The proposed changes in the return formats and methodology is in the line with aim of the Government to facilitate ease of doing business. Hopefully the portal will able to deliver the desired result this time.

The authors are Chennai based Chartered Accountants. They can be reached atdebases.nayak@pwc.com and namratha.acharya@pwc.com.)

REVISED TAX AUDIT REPORT - LEGAL ISSUES

CA T.V. MUTHU ABIRAMI
Advocate

The CBDT vide notification no. 33/2018 dated 20th July 2018 has brought six changes to the existing clauses and nine new additional clauses in Form 3CD which will be effective from 20th August 2018.

In this backdrop, the author has identified certain legal issues concerning the revised Form 3CD, which is being brought out in this article.

When can one say that the audit is completed?

Section 44AB requires an assessee to "***get his accounts*** of such previous year ***audited*** by an accountant before the specified date ***and furnish*** by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed." ***(emphasis supplied)***

On a plain reading of the section, we can understand that the section requires the assessee to get his accounts audited and furnish the report before the specified date. It is the responsibility of the assessee to get the accounts audited and furnish the audit report. Therefore, if the tax auditor has completed the audit on or before 20th of August in the old format and has submitted his report to the assessee on or before 20th of August, then, in the author's opinion, the audit report should be valid. It is important to consider the date of completion of audit, to see whether the new format is required or the old format itself would be sufficient.

However, in an electronic era, the procedure for efiling is that the tax auditor will have to upload the audit report, which will have to be accepted by the assessee. In this context, two scenarios can be envisaged – (1) signing and uploading the audit report in old format on or before 20th August, but not accepted by assessee on or before 20th August (2) audit has been completed on or before 20th August but uploading the audit report in old

format to be done after 20th Aug by the tax auditor.

In the first case, suppose the assessee wants to accept the audit report in the old format after 20th August, the system might not accept the same. Similarly, in the second case, the tax auditor would not be able to upload the audit report in the old format after 20th August, even though he has completed the audit before 20th August. Now in these cases, can the assessee be penalised u/s.271B for not furnishing the audit report? In both these scenarios, there is no violation of the provision of section 44AB, thereby penalty under section 271B should not be levied. In essence, a form cannot override the provision of law. It is a well settled principle that a delegated legislation cannot go beyond the parent statute.

The cut off date of 20th August

The next issue is with respect to the date of the new form coming into effect – 20th August. Is there any significance with respect to this date? This date appears to have been arbitrarily chosen by the CBDT. In the opinion of the author, if this issue is tested for constitutionality, then the issue might go against Article 14. No doubt Article 14 permits classification, but such a classification must be real and substantive. It should not be arbitrary, evasive or artificial. The classification must have nexus with the object sought to be achieved.

Is the new Form 3CD justified in seeking the details that are not connected with the business income?

If one goes through the new form 3CD, certain clauses like

- clause 29A (Reporting of advance received on capital asset forfeited under section 56(2)(ix)),
- clause 29B (Reporting of income under section 56(2)(x) pertaining to taxable gifts exceeding Rs.50,000/-),
- clause 30C (Reporting of details pertaining to GAAR provisions – *this clause is deferred till 31.03.2019*),
- clause 31 (Reporting details pertaining to section 269ST),
- clause 34 (Reporting details with respect to transactions not disclosed in TDS Return/ TCS Return),
- clause 36A (Reporting of deemed dividend under section 2(22)(e)),

- clause 42 (Reporting of details with respect to Form 61, Form No. 61A and Form No. 61B),

- clause 43 (Reporting details with respect to CbCr referred in section 286)

are not concerned with the business income. Can these details be sought to be reported by the tax auditor? In the opinion of the author, these clauses are clearly out of the scope of tax audit.

The Hon'ble High Court of Bombay in *Ghai Construction v State Of Maharashtra[2009] 184 TAXMAN 52 (BOM.)* has held that tax audit under section 44AB is only with respect to the business / profession carried on by a person and it will not be applicable for income from other sources. The judgment has also traced the history of tax audit. The relevant paragraphs of the judgement is quoted herein below for the benefit of readers.

"21. In order to ascertain the scope of section 44AB, it is useful to note that, on 2-3-1970, the Government of India constituted a high power committee of experts under the chairmanship of Sri Justice K. N. Wanchoo, retired Chief Justice of India, ***to examine and suggest legal and administrative measures to unearth black money, to check the avoidance of tax arrears and to indicate the manner in which the tax assessment and tax administration may be improved*** *and for giving effect to the recommendations. The Wanchoo Committee, in its final report submitted to the Government of India in December, 1971, inter alia, recommended mandatory audit at least in the big cases.* ***The recommendation was also with a view to saving considerable time for the Assessing Officer which could then be utilized by them for more important investigational aspect of a case. Audit would help in the proper presentation of accounts before the Assessing Officer. Ultimately, section 44AB was introduced in the Income-tax Act only with effect from 1-4-1985 providing for compulsory audit in the non-corporate sector.***

22. *While stating in detail the need for mandatory audit, the Committee, inter alia, observed in paragraph 2.148 as under:—*

"We, therefore, recommend that a provision be introduced in the law making presentation of audited accounts mandatory in all cases of business or profession where the sales/turnover/receipt exceed Rs. 5 lakhs or the profit before tax exceeds Rs. 50,000. . . ."

Thus, the recommendation for the presentation of audited account was in all "cases of business or profession" and not in respect of the entire income of a person carrying on a business or a profession. It is these recommendations which were accepted in the form of section 44AB of the Income-tax Act.

23. *In the case of an individual carrying on business as a sole proprietor it is necessary to comply with the provisions of section 44AB only in respect of his business income. It would not be necessary to comply with the provisions of section 44AB in respect of his other income. The same would apply in the case of a professional whose income is over Rs. 10,00,000 per annum. It is his professional income and not his income from other sources. Which would be covered by the provisions of section 44AB."* ***(emphasis supplied)***

Further in the case of *T.D Venkata Rao v UOI, [1999] 237 ITR 315 (SC)* the Hon'ble Supreme Court, while deciding the constitutional validity of the section 44AB, held that the section is applicable in case of business or profession.

Also, the Guidance Note on Tax Audit issued by the ICAI clearly states that the tax audit is applicable only in case of business or profession. The Guidance Note is binding on the members of ICAI. The clarification regarding the authority of the documents issued by the Institute states as follows:"*Guidance Notes are recommendatory in nature. A member* ***should*** *ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so."* ***(emphasis supplied)***

Therefore, when tax audit is applicable only in the case where the assessee carries on business or profession, can the scope of tax audit be expanded to report on matters other than business or profession?

However, a counter argument can also be taken this way. No doubt, tax audit is applicable only for a person who carries on business or profession, but the matters enumerated to be reported could cover even other heads of income. Applicability of tax audit might be restricted to persons who carry on business or profession, but once the person could be brought under the provisions of tax any audit, any detail, even with respect to other heads of income could be sought for in the tax audit report.

In the opinion of the author, such a counter argument runs against the

provision of section 44AB. Also, once such an interpretation is allowed, then there could be no end to the list of details that could be sought for in the tax audit report. Also, the form 3CD, being a result of delegated legislation, cannot go beyond the enabling legislation. Yet another aspect is that, audit refers to the expression of opinion on the books of accounts. But these details which are sought for in the report are merely factual in nature. Reliance is placed in the judgment rendered by the Hon'ble Jodhpur Bench of Income Tax Appellate Tribunal, in *Bajrang Textiles v Dy. CIT [2004] 3 SOT 115 (Jodh.)* wherein it was held that the word "audit" does not refer to preparationand compilation of books of account. It only refers to expression of opinion on such booksof account to verify the true and fair financial results of the assessee.

Independency of tax auditors

Another issue with regard to the online form is that, the online form provides only a "yes/no" in the columns. Therefore, any qualification/comments/ views, which the tax auditor might want to give, may be supplied in the physical copy duly signed and verified in the prescribed form and handed over to the assessee. In the online form, it can be stated that the physical copy contains the qualification/ comments/views and the online form must be read in conjunction with the physical copy that is being handed over to the assessee. By doing so, the independency of the tax auditor is preserved and the tax auditor need not feel restricted about the format for reporting.

Again, in respect of those clauses which is beyond the scope of section 44AB or where the tax auditor does not get the records from the assessee, it is helpful to give a disclaimer that the clause is beyond the scope of tax audit / with the available records it is not possible to verify the details provided by the assessee.

Why is this documentation important? Because, penalty proceedings under section 271 J can be initiated on a chartered accountant for furnishing incorrect information in any report furnished under the Act. It is to be noted that the power to initiate penalty proceedings under section 271J rests with the Assessing Officer or the Commissioner of Income Tax(Appeals).

Turned Advocate. She He can be reached at ***abirami_t7@yahoo.co.in)***

EXCEL TIPS

VLOOKUP Function

CA. DUNGAR CHAND U. JAIN

Excel VLOOKUP function is best suited function when we are looking for a Particular value in a column, and when the Particular value is found, we go to the right in that row and fetch a value from a cell which is a specified number of columns to the adjacent right.

Let's take a simple example to understand when to use the Excel VLOOKUP function.

Remember when the exam results were declared and pasted on the notice board and everyone used to go crazy finding the roll number and marks (though things have changed today and we are able to see it online).

We used to go to the notice board and start looking for our roll number (running our finger from top to bottom in the list) and the moment we would spot our roll number, we would move our hands to right to see the marks.

And that is what VLOOKUP function actually works.

The VLOOKUP function performs a vertical lookup by searching for a value in the first column of a *table* and returns the value in the same row in the *index_number* position.

VLOOKUP helps comparing values located in a column to the left of the data we want to find.The V in VLOOKUP stands for "Vertical"

SYNTAX

The syntax for the VLOOKUP function is:

```
VLOOKUP(lookup_value, table_array, col_index_num, [range_lookup] )
```

Parameters or Arguments

lookup_value

The value to search for in the first column of the *table*.

table_array

Two or more columns of data that is sorted in ascending order.

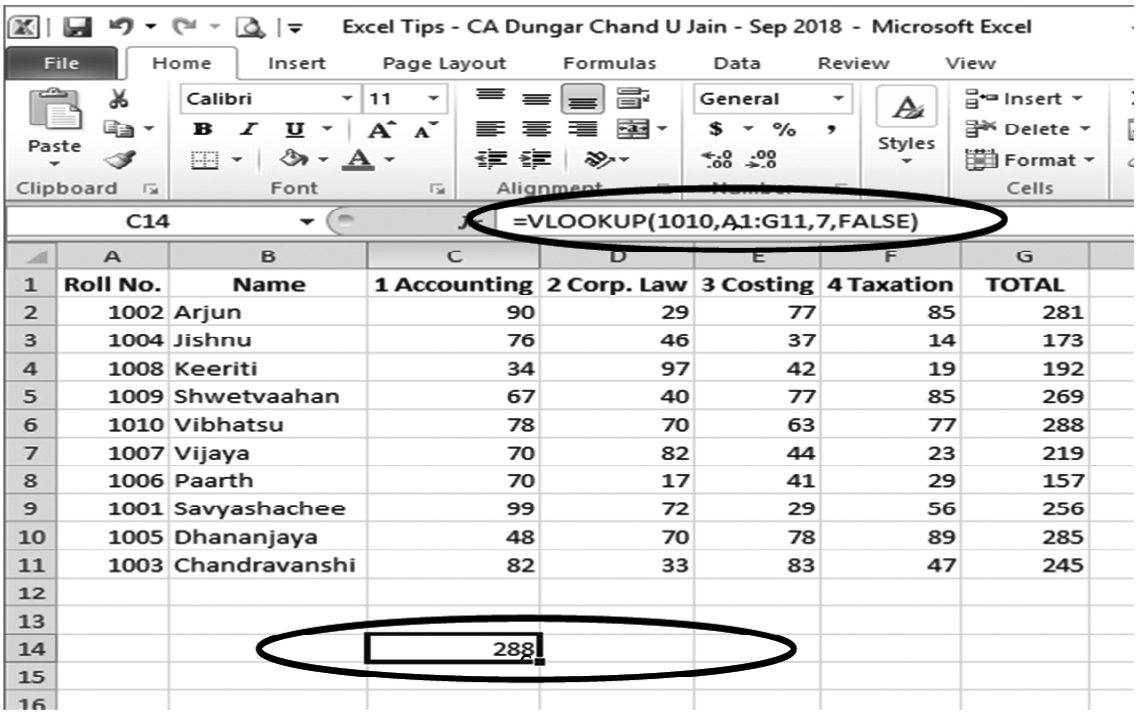
col_index_num

The column number in *table* from which the matching value must be returned. The first column is 1..

[range_lookup]

Optional. Enter FALSE to find an exact match. Enter TRUE to find an approximate match. If this parameter is omitted, TRUE is the default.

Example :



	A	B	C	D	E	F	G
1	Roll No.	Name	1 Accounting	2 Corp. Law	3 Costing	4 Taxation	TOTAL
2	1002	Arjun	90	29	77	85	281
3	1004	Jishnu	76	46	37	14	173
4	1008	Keeriti	34	97	42	19	192
5	1009	Shwetvaahan	67	40	77	85	269
6	1010	Vibhatsu	78	70	63	77	288
7	1007	Vijaya	70	82	44	23	219
8	1006	Paarth	70	17	41	29	157
9	1001	Savyashachee	99	72	29	56	256
10	1005	Dhananjaya	48	70	78	89	285
11	1003	Chandravanshi	82	33	83	47	245
12							
13							
14			288				
15							
16							

Using Vlookup function for the above data, it will return 288

=VLOOKUP(1010,A1:G11,7,FALSE)

First Parameter

The first parameter in the VLOOKUP function is the *value* to search for. So in this example, the VLOOKUP is searching for the value of 1010

Second Parameter

The second parameter in the VLOOKUP function is the *table* which is set to the range of A1:G11. The VLOOKUP uses the first column in this range (i.e. A1:G11) to search for the value of 1010.

Third Parameter

The third parameter is the *index_number* which is set to 7. This means that the 7th Column in the *table* is where we will find the value to return. Since the *table* is set to A1:G11, the corresponding return value will be in G1:G11 (ie: 7th column as specified by the index_number of 7).

Fourth Parameter

Finally and most importantly is the fourth or last parameter in the VLOOKUP. In our example, it is set to FALSE. This means that you need to find an EXACT match for the value of 1010. We do not want to find a "close" match, but an EXACT match!! So if 1010 is not found in the range of A1:G11, then the VLOOKUP function will return #N/A.

However since the VLOOKUP is able to find the value of 1010 in the range A1:G11, it returns the corresponding value from G1:G11 which is **288**

Importance of Fourth Parameter

specifying TRUE or FALSE for the last parameter is very important in the VLOOKUP function.

Say, we are looking for the Roll number of **1020**, but as we see, it is not in the range of A1:A11 in the spreadsheet above. Let's write our VLOOKUP formula with FALSE as the final parameter and another VLOOKUP formula with TRUE as the final parameter and see what happens.

=VLOOKUP(1020,A1:G11,7,FALSE)

returns **#N/A**

=VLOOKUP(1020,A1:G11,7,TRUE)

returns **245**

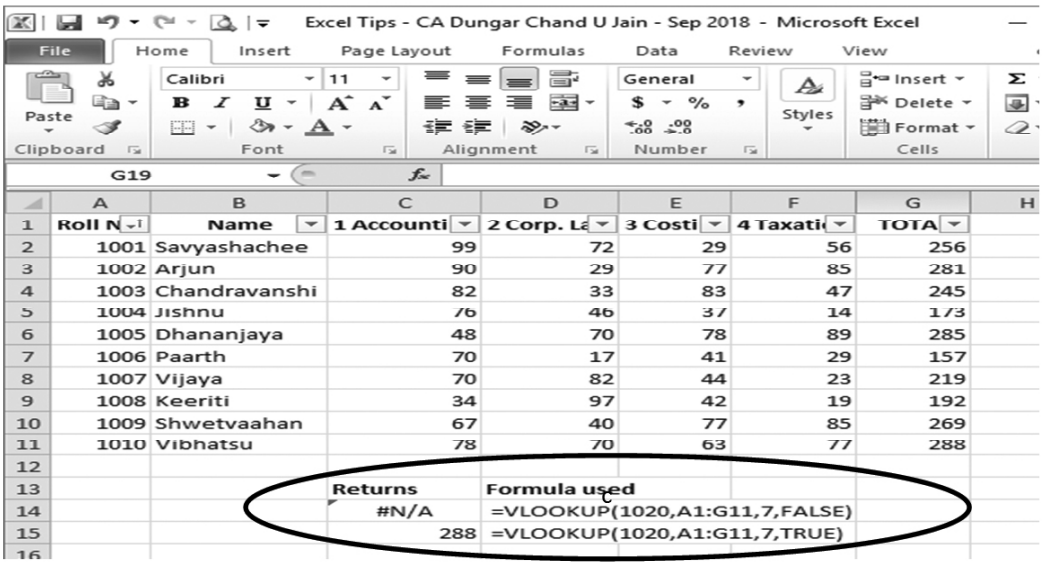
The first VLOOKUP formula has FALSE specified as the final parameter. This means that the VLOOKUP is looking for an exact match for 1020. Since the value 1020 does not exist in the range A1:A11, the VLOOKUP function returns #N/A.

The second VLOOKUP formula has TRUE specified as the final parameter. This means that if an exact match if not found, the VLOOKUP function will look for the next largest value that is less than 1020. Now what does this mean to us?

	A	B	C	D	E	F	G	H
1	Roll No.	Name	1 Accounting	2 Corp. Law	3 Costing	4 Taxation	TOTAL	
2	1002	Arjun	90	29	77	85	281	
3	1004	Jishnu	76	46	37	14	173	
4	1008	Keeriti	34	97	42	19	192	
5	1009	Shwetvaahan	67	40	77	85	269	
6	1010	Vibhatsu	78	70	63	77	288	
7	1007	Vijaya	70	82	44	23	219	
8	1006	Paarth	70	17	41	29	157	
9	1001	Savyashachee	99	72	29	56	256	
10	1005	Dhananjaya	48	70	78	89	285	
11	1003	Chandravanshi	82	33	83	47	245	
12								
13			Returns	Formula used				
14			#N/A	=VLOOKUP(1020,A1:G11,7,FALSE)				
15			245	=VLOOKUP(1020,A1:G11,7,TRUE)				
16								

So, the data in A1:A11 since was not sorted in ASCENDING ORDER, the VLOOKUP instead of returning the corresponding value for 1010 i.e. 288 (being the highest value before 1020) has returned 245, being the last calculation done by excel just before stopping search. So if the data is not sorted in ascending order, we are going to get some really strange results.

Above Example reworked after the data is sorted in ascending order :



	A	B	C	D	E	F	G	H
1	Roll N	Name	1 Accounti	2 Corp. La	3 Costi	4 Taxati	TOTA	
2	1001	Savyashachee	99	72	29	56	256	
3	1002	Arjun	90	29	77	85	281	
4	1003	Chandravanshi	82	33	83	47	245	
5	1004	Jishnu	76	46	37	14	173	
6	1005	Dhananjaya	48	70	78	89	285	
7	1006	Paarth	70	17	41	29	157	
8	1007	Vijaya	70	82	44	23	219	
9	1008	Keeriti	34	97	42	19	192	
10	1009	Shwetvaahan	67	40	77	85	269	
11	1010	Vibhatsu	78	70	63	77	288	
12								
13			Returns	Formula used				
14			#N/A	=VLOOKUP(1020,A1:G11,7,FALSE)				
15			288	=VLOOKUP(1020,A1:G11,7,TRUE)				
16								

Usage of "False" as the 4th Parameter in Vlookup function results in Error as there is no match to 1020, whereas usage of "True" as the 4th Parameter results in 288 being the highest resultant for the search in A1:A11 i.e. 1010.

Absolute Referencing

A common mistake made by users when they copy the formula to another cell. We commonly use relative referencing for the table range and the table range is adjusted by Excel and change relative to where we paste the new formula.

=VLOOKUP(1020,A1:G11,7,FALSE)

When copied to next cell below becomes

=VLOOKUP(1020,A2:H11,7,FALSE)

Whereas we do not want the A1:G11 to change when Vlookup is used. To overcome this, we have to use absolute referencing which will look as follows :

=VLOOKUP(1020,$A$1:$G$11,7, FALSE)

This when copied will not change the table range and will copy as-it-is.

Common Vlookup Errors :

<table>
<tr><td>#N/A</td><td>Occurs if the Vlookup function fails to find a match to the supplied lookup_value.
The cause of this generally depends on the supplied [range_lookup] argument:
<table>
<tr><td>if [range_lookup] = TRUE</td><td>the #N/A error is likely to be because the smallest value in the left-hand column of the table_array is greater than the supplied lookup_value.</td></tr>
<tr><td>(or is omitted)</td><td>The #N/A error could also arise if the left column of the table_array is not in ascending order.</td></tr>
<tr><td>if [range_lookup] = FALSE</td><td>the #N/A error is likely to be because an exact match to the lookup_value is not found in the left-hand column of the table_array.</td></tr>
</table></td></tr>
<tr><td>#REF!</td><td>Occurs if either:
<table>
<tr><td>• The supplied col_index_num argument is greater than the number of columns in the supplied table_array.</td></tr>
<tr><td>or</td></tr>
<tr><td>• The formula has attempted to reference cells that do not exist. This can be caused by relative referencing errors when the Vlookup is copied to other cells.</td></tr>
</table></td></tr>
<tr><td>#VALUE!</td><td>Occurs if either:
<table>
<tr><td>• The supplied col_index_num argument is < 1 or is not recognised as a numeric value.</td></tr>
<tr><td>or</td></tr>
<tr><td>• The supplied [range_lookup] argument is not recognised as one of the logical values TRUE or FALSE.</td></tr>
</table></td></tr>
</table>

Incorrect Value returned	If your Vlookup function is simply returning the wrong value, check the following:

1. Are the values you are searching in the left column of the table_array? For the Vlookup function to work, the values that you are searching must be in the left column of the table_array.
2. If the [range_lookup] argument is set to TRUE (or omitted), the function will return the closest match below the lookup_value. For this to work correctly, the left column of the table_array must be in ascending order.
3. Check that the col_index_num argument refers to the required column.
Remember that this is the column number counting from the first column of the table_array. It is not necessarly the same as the spreadsheet column number.
4. If the [range_lookup] argument is set to FALSE, the Vlookup function requires an exact match. Check that there is only one match to the lookup_value within the left column of your table_array. Note that if there is more than one match, the Vlookup function will use the first match that it encounters.

Remarks

- The VLOOKUP function returns any datatype such as a string, numeric, date, etc.
- If you specify FALSE for the *approximate_match* parameter and no exact match is found, then the VLOOKUP function will return #N/A.
- If you specify TRUE for the *approximate_match* parameter and no exact match is found, then the next smaller value is returned.
- If *index_number* is less than 1, the VLOOKUP function will return #VALUE!.
- If *index_number* is greater than the number of columns in *table*, the VLOOKUP function will return #REF!

The author is a Madurai based Chartered Accountant. He can be reached at dungarchand@hotmail.com)

Circular No. 5/2018

F. No. 370149/155/2018-TPL
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)

New Delhi, Dated 16th August, 2018

Clarification on the immunity provided u/s 270AA of the Income-tax Act, 1961

Section 270AA of the Income-tax Act, 1961 (the Act) *inter alia* provides that w.e.f. 1st April, 2017, the Assessing Officer, on an application made by an assessee, may grant immunity from imposition of penalty under section 270A (not being penalty for misreporting) and initiation of proceedings under section 276C or section 276CC, subject to the conditions specified therein.

2. Apprehensions have been raised that where an assessee makes an application seeking immunity under section 270AA of the Act, and in the earlier year(s) penalty under section 271(1)(c) of the Act has been initiated on the same issue, the Income-tax Authority may contend that the assessee has acquiesced on the issue in such earlier year (s), by seeking immunity under section 270AA of the Act and therefore, take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act.

3. In this matter, it is hereby clarified that where an assessee makes an application seeking immunity under section 270AA of the Act, it shall not preclude such assessee from contesting the same issue in any earlier assessment year. Further, the Income-tax Authority, shall not take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act in earlier assessment years merely on the ground that the assessee has acquiesced on the issue in any later assessment year by preferring an immunity on such issue under section 270AA of the Act.

(Sanyam Suresh Joshi)
DCIT (OSD) (TPL)-III

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