



ERNAKULAM BRANCH

OF SOUTHERN INDIA REGIONAL COUNCIL (SIRC) OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

Vol: VII Issue No: 113



Shri Ravindra Kumar, IRS
Principal Chief Commissioner
Income Tax, Kerala,
inaugurating 5 days Virtual CPE
Chain Seminar on Direct Taxes

CA. Roy Varghese, Chairman, Ernakulam Branch of SIRC of ICAI hoisting the National Flag to commemorate the 74th Independence day

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Break the chain
കൈവിടാതിരിക്കാം... കൈ കഴുകൂ..

Chairman's Message



Dear Professional Colleagues,

As we continue to adapt to our new lifestyle, I hope this newsletter finds everyone safe and well.

We are now in Unlock 4 period and the Government is gradually easing restrictions and permitting economic activities with limited controls. With easing of restrictions, it seems not only the public but also the pandemic is also let loose of control. And the result, the number of positive cases reported is increasing day by day everywhere, making India to lead the table in covid affected countries in the world. It is for each one of us, to take utmost care to defeat this pandemic and restrict it from spreading. If everyone of us is taking care of ourselves, it means we are not only protecting us but also protecting and ensuring safety of others. Easing restrictions doesn't mean we are free to do whatever we want. It means we have to be more careful and vigilant and take all precautions while operating under this covid environment.

Several new initiatives have been brought in by ICAI during this covid period to support and help members and students. Apart from strengthening Digital Learning Hub and Self-Service Portal, two of the other striking initiatives was CABF support to members in Covid and revamping of ICAI Web site. To help the members suffering due to covid, CABF Management has provided a onetime support upto Rs.150,000 for hospitalization and treatment expenses. The ICAI Web site was totally modified making it more user friendly and informative, adding more valuable tools for the benefit of members, students and stakeholders. ICAI has also initiated steps to help students by opening more exam centers in 200 districts where there was no exam center. Moreover, ICAI has also started virtual orientation and ITT and Advanced ITT classes for students and launched an Article Placement and Industrial Training Portal, to provide an opportunity for both students and companies to interact with each other for selection of company vis-a-vis students.

The month of August witnessed several activities of professional development for members and students at the branch. Virtual cpe programme on – Excel utilities & Technology for Audit and Professional Services, Independence of Auditors & Reporting vis-à-vis Companies Act and other Regulators, Changes/Amendments in Income Tax Law relevant for Tax Audit 2019-2020, Panel discussion on Goods and Services Tax and a 5 Days Chain Seminar on Direct Tax covering important topics of Presumptive Taxation under Income Tax Act, Taxation of Charitable Institutions under

Income Tax Act and recent developments, Real Estate Transactions – Impact in Income Tax Act and Penalties under the Income Tax Act 1961 with special reference to cash transactions were organised and well attended by members. Study circle meetings on different topics, Career Counselling programme and other student development activities were also held during the month. More refresher courses and virtual cpe meetings are planned for the coming months also. More details of all these programme are given elsewhere in this newsletter.

As the Chairman of the branch, I was invited by the Income Tax Department, to represent the branch at the official video conference launch of 'Transparent Taxation – Honoring the Honest' by Honorable Prime Minister of India Shri Narendra Modi, through video conferencing, along with Honorable Principal Chief Commissioner of Income Tax Kerala and few other officers. At the request of ICAI Exam Officials, efforts were made to help open new exam centers at Idukki District and satellite areas of Ernakulam District for the benefit of the students, rather than concentrating in Kochi City alone.

It is our desire to present to you every month an informative and useful monthly newsletter. For this, we need the active involvement of members. As part of our efforts, we would like to publish in the newsletter worthy new articles from members and information on honorable achievements and accolades received by members. Members are requested to send in the branch email id articles on varied topics and information on achievements and accolades for publishing in the news letter. News worthy articles and other details received in time, will be considered for publishing in the forth coming news letters.

To sum up, it is brought to your attention that difficult and challenging times are there to remain. We don't know how long it will extend. Look for opportunities and inspiration where you can find them, be kind, be open to learning new things, and to listening to and respecting others. Most of all, be safe, stay positive and keep moving.

With warm regards and love

CA Roy Varghese
Chairman, ICAI Ernakulam Branch.



Shri. Narendra Modi launching the platform for “Transparent Taxation – Honouring the Honest” on 13th August, 2020. CA. Roy Varghese, Chairman of the branch was one of the special invitees to attend the webcast.

Important Announcement COVID-19 (CABF)

The Managing Committee of the Chartered Accountants Benevolent Fund (CABF) ICAI has considered the difficulties being faced by Members in the time of pandemic and has decided to grant Medical Financial Assistance to the Members and their dependents suffering from CORONA.

This help is going to be available to the Members and their dependents who are in distress and need financial assistance for treatment of Corona disease. To avail this help members/dependents may file request in prescribed Application Form-cum-Undertaking hosted on the website of the ICAI at the CABF Portal at the link <https://cabf.icai.org/>. The application is to be accompanied with the CORONA positive report and is available only for the cases of hospitalization.

The financial assistance will be up to INR 1.5 Lakhs and will be returnable to CABF in full, if it is not utilized for treatment of CORONA.

For detailed information please mail to covidassistance@icai.in.

Member Secretary
Chartered Accountants Benevolent Fund
M&C-MSS Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan
Plot No. A-29, Sector-62 NOIDA
Phone - 0120-3045997/98

Application for Medical Financial Assistance
for treatment of CORONA Disease
<https://bit.ly/3cJpa0L>

BRANCH ACTIVITIES August 2020

VIRTUAL CPE MEETINGS

The branch has organized 4 Virtual CPE Meetings in the month of August, 2020. Meeting on “Excel utilities & Technology for Audit and Professional Services” was organised on 6th August, 2020. CA. Vinodh Kothari, Chennai was the speaker. On 10th August, 2020 a meeting on “Independence of Auditors & Reporting vis-a-vis Companies Act and other Regulators” was organised in which CA. Mohan R Lavi, Bengaluru was the speaker. Meeting on the topic “ Changes / Amendments in Income Tax law relevant for Tax Audit 2019-2020” was organised on 13th August, 2020 . CA. P.M. Veeramani was the speaker.

A panel discussion on Goods and Services Tax with special reference to “Levy, Registration, Input Tax Credit, Refund, Assessment and Place of Supply” was organised on 21st August, 2020. CA. Balagopal Ramamohan was the moderator. CA. Rajasekharan V, CA. Cyrjoe V J and CA. Soman N.L led the panel discussion.

5 days Virtual CPE Chain Seminar on Direct Taxes was organized by the branch from 24th August to 28th August, 2020. The chain seminar was inaugurated by Shri Ravindra Kumar, Principal Chief Commissioner of Income Tax, Kerala. CA. Babu Abraham Kallivayalil, Central Council Member of ICAI. CA. Jomon K George, Regional Council Member, Past Chairman, SIRC of ICAI addressed the members. The topics covered were “Presumptive taxation under Income tax Act – A Study”, “Taxation of Charitable Institutions under Income Tax Act and recent developments”, “Real Estate Transactions – Impact in Income Tax Act”, “Penalties under the Income Tax Act 1961 with special reference to cash transactions” and “Recent changes in International Taxation”. CA. Ramnath V, Coimbatore, Dr. CA. Phalgun Kumar E, Tirupati, CA. T. Banusekar, Chennai, CA. Jagdish Punjabi, Mumbai and CA. Chaithanya E, Tirupati were the speakers.

Three Study circle meetings were conducted on 5th , 12th and 19th August, 2020. The topics on “Significant Company Law



compliances to be reviewed during the Audit of Private Limited Companies” and “New spice form – Company incorporation and recent updates” and “Introduction to Nidhi Companies” were handled by CA. Prashant Mohan, CA. Shawn Jeff Christopher and CA. Abhijith Sreejith respectively.

MEMBERS ACTIVITIES

Video Conference – Launch of Transparent Taxation – Honouring the Honest

Shri. Narendra Modi launched the platform for “Transparent Taxation – Honouring the Honest” on 13th August, 2020. CA. Roy Varghese, Chairman of the branch was one of the special invitees to attend the webcast. Other selected invited dignitaries attended the webcast were CA. Atul Kumar Gupta, Hon'ble President of ICAI, Principal Chief Commissioner of Income Tax from Chennai, Ahmedabad, Odisha, CEO, NITI Aayog – New Delhi, Dignitaries from Ministry of Finance, officials from IDBI, PNB, SBI, Indian Bank, CBDT, Officials from Judicial Bodies, Chamber of Commerce and Industry, Economists and Industrialists.

Independence Day Celebrations

74th Independence day was celebrated at the branch. The National Flag was hoisted by CA. Roy Varghese, Chairman, Ernakulam Branch of ICAI. Sweets were distributed. Students and members participated at the occasion.

OTHER ACTIVITIES

Proposal to conduct the Virtual Faculty Development Workshop on Accounting Standards

A Proposal to conduct virtual ‘Faculty Development Workshop on Accounting Standards’ for faculties of colleges affiliated to M G University was sent to Accounting Standards Board of ICAI in August 2020. Accounting Standards Board readily agreed our proposal. We have accordingly submitted the proposal to Prof. (Dr.) Sabu Tomas, Vice Chancellor, Mahatma Gandhi University, Kerala. The draft programme structure was sent to the Accounting Standards Board of ICAI. We are planning to do the workshop in October, 2020.

Joint Programme with St. Alberts College, Ernakulam

Panel Discussion on “The 3 Pillars of Finance Profession: Financial Accounting, Compliance and Management Accounting” was organised jointly with Department of Commerce, St. Albert's College (Autonomous), Ernakulam on 17th August. CA. Roy Varghese, Chairman, ICAI Ernakulam Branch, CS. Madhusudhanan E.P., Chairman, ICSI Kochi Chapter and CMA. Sankar P. Panicker, Vice Chairman, SIRC of ICMAI were the panel members. The discussion was moderated by Dr. Rajagopala Nair, M.B.A., M.Com, LLB, Ph.D, Dean, Bhavan's Royal Institute of Management. 267 students attended the programme.

Inspection of Examination centre at Newman College, Thodupuzha

The proposed examination centre Newman College, Thodupuzha, Idukki district was inspected on 21st August, 2020 by CA. Jomon K George, Immediate Past Chairman and Member, SIRC of ICAI, CA. Roy Varghese, Chairman, Ernakulam Branch and CA. Allen Joseph, Chairman, SICASA. The inspection report was submitted to Examination department for their approval. We are trying other examination centres in the outskirts of Ernakulam for the benefit of the students.

Installed scientific automated sanitizing dispenser

M/s Scientific Tech Services, Tripunithura installed a Scientific Automated Sanitizing Dispenser free of cost at the branch premises on 20th August, 2020.

E-assessment initiative – points for consideration

We have met the Chief Commissioner of Income Tax on 27th August, 2020. As per his directions we have submitted the suggestive points to be considered in the e-assessment initiative of the Government to the Income Tax Department, Ernakulam on 28th August, 2020.

FORTHCOMING PROGRAMMES IN THE MONTH OF SEPTEMBER, 2020

Date & Time	Topic	Speaker
04-09-2020 3 pm to 5 pm	Virtual CPE Meeting on “Discussion on decided case laws on Goods and Services Tax”	CA. Keshav Garg, Chandigarh
08-09-2020 3 pm to 6 pm	Virtual CPE Meeting on “Insights on Tax Audit – A Clause by Clause analysis of Form 3CD and issues in Tax Audit”	CA. Vedant Parikh, Ahmedabad and CA. Nimisha Jain, Ahmedabad
11-09-2020 3 pm to 5 pm	Virtual CPE Meeting on “GST Audit – Clause by Clause analysis of GSTR 9 & 9C”	CA. S.S. Gupta, Mumbai
18-09-2020 3 pm to 5 pm	Virtual CPE Meeting on “Digital India and Digital Compliances”	CA. Dayaniwas Sharma, CCM
5 days refresher course on Company Law commencing from 23rd September, 2020 under the guidance of the Corporate Law and Corporate Governance Committee of ICAI		

STUDENTS ACTIVITIES

Career Counselling Programme: Virtual Career Counselling programme was conducted on 1st August, 2020 at MES Udyogamandal School, Udyogamandal. CA. Deepa Varghese, Treasurer, CA. K.V. Jose, Secretary, CA. Allen Joseph and Mrs. Lizzy Babitha took the counselling session. 82 students attended the programme

Mask designing competition: Mask designing competition was conducted for the students with the theme ‘Freedom from Corona’. The competition commenced on 15th August 2020 and completed on 20th August, 2020. 30 students participated at the competition.

Indoor Games : Indoor games – MINI IMPETUS was organized from 14th August to 16th August, 2020. The games in Carroms, Chess, Ludo and Billiards were conducted. 160 students participated at the competition.

Onam Celebration competition – Malayalee Manka Maran

In connection with Onam Celebrations a competition for selecting Best Malayalee Manka and Maran from the CA students from Ernakulam conducted on 30th August, 2020.

Online classes were arranged for students due to the outbreak of Coronavirus – Covid – 19 : In view of the outbreak of Coronavirus – Covid – 19 throughout the country ICAI the branch, we have arranged online classes for the students of Intermediate (Foundation Route), Intermediate Direct Entry students and Foundation for November, 2020 through google meet app.

Reported Judicial Decisions

Direct Tax

CA. P.M. Veeramani FCA

In view of the nationwide lockdown, printed copies of the magazines were not available and hence this edition is prepared based on the data available online

Statute: Income Tax Act

Sec.12AA – Not commencing activity

Decision in favour of : Assessee

Title : Ananda Social & Educational Trust vs CIT

Citation: 187 DTR 169 SC

Bench: Supreme Court of India

There is no stipulation that the trust should have been in existence and should have undertaken activities before making application for registration. Term 'activities' in section 12AA includes 'proposed activities'; in case of newly registered trust even though there was no activity, it was possible to consider whether trust can be registered under section 12AA

The CIT can consider only while cancelling registration under section 12AA(3) if the amount is not spent on activities, or carrying on activities contrary to objects

Statute: Income Tax Act

Sec.28 – Lease rental is business income

Decision in favour of : Assessee

Title : Ceedeeyes IT Parks Private Ltd vs ACIT

Citation: 422 ITR 497

Bench: Madras HC

Where lease rental from property is income from house property or business would depend on circumstances of each case. Where such income is earned by the assessee by way of utilization of its business assets in the form of property or as an idle property which could yield rental income. In the instant case, the exclusive and main source of income was only lease rentals and

hence the same was to be treated as business income

Statute: Income Tax Act

Sec.36(1)(iii) No matching principle

Decision in favour of : Assessee

Title : CIT vs Shriram Investments

Citation: 422 ITR 528

Bench: Madras HC

Where assessee being an investment company followed cash system of accounting and accounted for actual interest received and paid during the year, matching principle cannot be applied and disallowance of interest could not be made

Statute: Income Tax Act

Sec.37 – Voluntary CSR expenditure

Decision in favour of : Assessee

Title : PCIT vs Gujarat Narmada Valley Fertilizer and Chemicals Ltd

Citation: 422 ITR 164

Bench: Gujarat HC

As long as the expenses are incurred wholly and exclusively for the purpose of earning the income from the business or profession, merely because some of these expenses are incurred voluntarily, i. e., without there being any legal or contractual obligation to incur them, those expenses do not cease to be deductible in nature. Explanation 2 to section 37(1) comes into play with effect from April 1, 2015. This disallowance is restricted to the expenses incurred by the assessee under a statutory obligation under section 135 of the Companies Act,



2013, and there is thus now a line of demarcation between expenses incurred by the assessee on discharging corporate social responsibility under such a statutory obligation and under a voluntary assumption of responsibility. As for the former, the disallowance under Explanation 2 to section 37(1) comes into play, but, for the latter, there is no such disabling provision as long as the expenses, even in discharge of corporate social responsibility on voluntary basis, can be said to be “wholly and exclusively for the purposes of business”.

Statute: Income Tax Act

Sec.37 – Violation of foreign law

Decision in favour of : Assessee

Title : Mylan Laboratories Ltd vs DCIT

Citation: 187 DTR Trib 259

Bench: ITAT Hyderabad

What is to be disallowed under explanation 1 to section 37(1) is a payment made for contravention of laws in force in India and not of any foreign country; fine imposed by European Commission for violation of EU competition laws could not be treated as disgorgement or compensatory in nature; issue is set aside to the AO with a direction to allow the payment as business loss if the income has been offered to tax in the earlier year.

Statute: Income Tax Act

Sec.45 – Reduction in partner share

Decision in favour of : Assessee

Title : Anik Industries Ltd vs DCIT

Citation: 58 CCH 323

Bench: ITAT Mumbai

The compensation received by the assessee from existing partners for reduction in profit sharing ratio would not tantamount to Capital Gains chargeable to tax u/s 45(1).

Statute: Income Tax Act

Sec.56(2)(viii) – Interest on enhanced compensation

Decision in favour of : Revenue

Title : Mahender Pal Narang vs CBDT

Citation: 423 ITR 1

Bench: Punjab & Haryana HC

Interest received on compensation or enhanced compensation under section 28 of the 1894 Act for acquisition of land was to be treated as income from other sources and not under capital gains as the language of section 56(2)(viii) and 57(iv) are plain, simple and unambiguous. The fact that there was no amendment to section 10(37) would not change the position. Clause 46.3 of Board circular (324 ITR st 293) interest received on compensation or enhanced compensation referred to in section 145A(b) should be assessed as ‘income from other sources’

Statute: Income Tax Act

Sec.73 explanation – Composite business

Decision in favour of : Assessee

Title : Lohia Securities Ltd vs DCIT

Citation: 187 DTR Trib 73 TM

Bench: ITAT Kolkatta

Assessee company having treated entire activity of purchase and sale of shares, which comprised of both delivery based and non-delivery based trading as one composite business and accordingly claimed set off of the loss incurred in delivery based trading against profit derived from derivative trading, aggregation of share trading loss and profit from derivative transaction should be done before application of explanation to section 73 and if the result is profit, then explanation is not attracted

Statute: Income Tax Act

80IB(10) – No need to be owner of land

Decision in favour of : Assessee

Title : Bashyam Constructions Private Ltd vs DCIT

Citation: 422 ITR 346

Bench: Madras HC

Section clearly drawn a distinction between ‘developing’ and ‘building’. Provision does not required that the ownership of land must vest with developer for it to qualify for deduction. Joint venture agreement clearly showed assessee as developer

Statute: Income Tax Act

80JJA – Employees in computer software

Decision in favour of : Assessee

Title : Manhattan Associates India Development Centre Private Ltd vs DCIT

Citation: 187 DTR Trib 105

Bench: ITAT Bangalore

Assessee engaged in rendering software development services in industrial undertaking engaged in manufacture or production eligible for deduction

Statute: Income Tax Act

Sec.139(9) – Form 3CEB is not audit report

Decision in favour of : Assessee

Title : DCIT vs Husco Hydraulics Private Ltd

Citation: 187 DTR Trib 99

Bench: ITAT Pune

In the absence of any intimation to the assessee regarding the defect in the return, AO cannot declare the return as invalid, more so when the report in Form 3CEB is not audit report envisaged in explanation (e) of section 139(9)

Statute: Income Tax Act

Sec.143(2) – Time limit for notice

Decision in favour of : Assessee

Title : Atul Projects India Private Limited vs UOI

Citation: 422 ITR 478

Bench: Bombay HC

Time limit for issue of notice shall run from the date of



filing of original return of income and not from the date of curing of defects. Where assessee was served with notice u/s 139(9) of certain defects in the return and same was cured by filing of a revised return, the time limit for issue of notice would run from date of original return

Statute: Income Tax Act

Sec.144C – Effective year – reference to DRP

Decision in favour of : Assessee

Title : Vdeanta Ltd vs ACIT

Citation: 422 ITR 262

Bench: Madras HC

Section 144 C do not prescribe procedure but a substantive exercise in assessment. A substantive right by virtue of introduction of section 144C, in view of settled position that law applicable on the first day of the assessment year should be for that year, the section can be applied prospectively from AY 2011-12. CBDT circular stating that the same would be applicable from October 2009 not valied

Statute: Income Tax Act

Sec.158BB – credit in NRE account

Decision in favour of : Assessee

Title : Purshottam Khatri vs CIT

Citation: 185 DTR SC 177

Bench: Supreme Court of India

Foreign currency deposit in NRE account for which assessee produced only exchange vouchers and certificate issued by banks in India and could not produce evidence that income arose outside India, could not be treated as undisclosed income. Foreign currency brought in both in cash and travellers cheques as declared in travel documents cannot also be treated as undisclosed income

Statute: Income Tax Act

Sec.159 - Appeal of deceased assessee

Decision in favour of : Remand

Title : Late Rajan Roy vs ACIT

Citation: 79 ITR Trib SN 3

Bench: ITAT Delhi

Where the appellant dies during the pendency of appeal before CIT(A) or ITAT , fresh Form 35/36 to be filed by the legal representatives and then only the appeal becomes a valid. Else, appeal to be dismissed

Statute: Income Tax Act

Sec.206C – Processing of Tendu leaves

Decision in favour of : Revenue

Title : Gondia Beedi Leaves Contractors Association vs UOI

Citation: 433 ITR 404

Bench: Bombay HC

Purchasing and processing of tendu leaves is not a manufacturing activity . Tendu leaves is a forest pro-

duce and purchase of the same falls under TCS . Buyers are not entitled to exemption

Statute: Income Tax Act

Sec.221 – Penalty for non-payment of 140A

Decision in favour of : Assessee

Title : Kapsons Electrostampings vs DCIT

Citation: 58 CCH 347

Bench: ITAT Amritsar

The assessee, for non-payment of self-assessment tax is to be treated as an “assessee in default” for the limited purpose of enabling the AO to make recovery of the amount of tax and interest due and not for levy of penalty, under section 221

Statute: Income Tax Act

Sec.226 – Stay of Recovery

Decision in favour of : Assessee

Title : General Insurance Corporation of India vs ACIT

Citation: 422 ITR 248

Bench: Bombay HC

CBDT Circular No. 530, dated March 6, 1989 (see [1989] 176 ITR (St.) 240) states that stay of demand be granted where there are conflicting decisions of the High Court. This principle can be extended to conflicting decisions of the different Benches of the Tribunal. Hence, the assessee is entitled to stay of collection until disposal of appeal

Statute: Income Tax Act

Sec.254 – No limitation for disposal on merits

Decision in favour of : Assessee

Title : Golden Times Services Private Ltd vs DCIT

Citation: 422 ITR 102

Bench: Delhi HC

The course adopted by the ITAT at the first instance by dismissing the appeal for non-prosecution , and then compounding the same by refusing to entertain the application for recall of the order cannot be sustained as no limitation is provided in rule 24 of the tribunal rules

Statute: Income Tax Act

Sec.276 C – Not an attempt to evade tax

Decision in favour of : Assessee

Title : Vyalikaval House Building Co-operative Society Ltd vs DCIT

Citation: 187 DTR 212

Bench: Karnataka HC

Conduct of assessee in making payment of self assessment tax belatedly and after taking coercive step by department cannot be constructed as attempt to evade tax to entail prosecution

RECENT ADVANCE RULINGS UNDER GOODS AND SERVICES TAX JUDICIAL DECISIONS ON INDIRECT TAXES

Indirect Tax

CA.P.J.Johney FCA

RECENT ADVANCE RULINGS UNDER GST

Statute: Goods and Service Tax

Decision in favour of: Assessee

Title: **M/s Karma Buildcon**

Jigna V Shah

Citation: GUJ/GAAR/R/33/2020 dated 02/07/2020

Bench/Court: AAR Gujarat

M/s. Karma Buildcon, FP-67, Karma Lifestyle, Nr. Rajeshwar Gold Flats, Harni, Vadodara having a GSTIN : 24AAQFK 7744K1ZQ, filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

Question

1. What will be the value of supply for the transaction of sale of residential/commercial property with undivided rights of land?

Answer : The value to be arrived in terms of deeming provision of Para 2 of Notification no. 11/2017-CT (Rate) dated 28.06.2017, as amended by Not. No. 1/2018-C.T. (Rate), dated 25-1-2018.

Question 2. In the case of construction of residential/commercial complex, the builder charges an amount which is inclusive of land or undivided share of land. As per Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28.06.2017 the land value is deemed to be on third (33.33%) of the total amount (i.e. value including land value) and GST is payable on balance amount. But in applicant's case the value of Land is clearly ascertainable. In that case actual cost of Land can be deducted for the purpose of arriving at the taxable value of supply?

Answer: Negative.

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title: **M/s Apar Industries Limited**

P.Vanitha Sekhar, A.A.Chahure

Citation: GST/ARA/37/2019-20/B-42, Mumbai, dated 18/03/2020

Bench/Court: AAR Maharashtra

M/s. Apar Industries Ltd., having factories at Rabale (Maharashtra), Silvassa (Union Territory of DNH), Gujarat and Odisha, are the registered manufacturer and supplier of various goods detailed like Transformer Oils, White Oil, Industrial Lubricating Oils and Specialities Oils, Falling under the Customs /GST Tariff No.2710, Aluminium Conductors falling under Chapter Heading No.7614 of the Customs/ GST Tariff Act and Various Grades of Cables, including Power/Electric Cables, House wire, Marine / Pressure Tight Cables/ Non Pressure Tight Cables; etc. falling under Chapter Heading No.8544 of the Customs/ Tariff Act.

QUESTIONS

1. When goods i.e. Marine / Pressure Tight Cables/ Non Pressure Tight Cables, falling under Chapter 8544 are manufactured & designed especially for use for Defence Ministry in their Warship as Parts of Warship, what will be the Determination of Tax Liability on such supply?

2. Whether GST @5% is applicable in terms Sr. No: 252 of Schedule-1 of the Notification No. 1/2017 Integrated Tax (Rate) dated 28.06.2017?

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 37/2019-20/B- 42 Mumbai, dt. 18/03/2020 For reasons as discussed in the body of the order, the subject application for advance ruling made by the applicant is not maintainable and rejected under the provisions of the CGST Act, 2017

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title: **M/s Prragathi Steel Casting Pvt. Ltd.**

Dr. Ravi Prasad M.P, Mashhood ur Rehman Farooqui
Citation: Advance Ruling No.KAR ADRG 40/2020 dated: 30/07/2020

Bench/Court: AAR Karnataka

M/s Prragathi Steel Castings Pvt. Ltd-The applicant is involved in manufacture and supply of various steel castings, automobile parts, valves etc. The instant application is with regard to the classification of certain parts such as Couplers, Knuckle, Locks, Toggle, Yoke etc., & the applicable GST rate thereon. The applicant, at present, is supplying the aforesaid parts to M/s Sanrok Enterprises, Faridabad, as per the specifications & drawings, who in turn supply the same to the Indian Railways, on classifying the said goods under HSN 8607 & on discharging the GST @5%. The applicant stated that a consultant opined that the impugned goods are liable to be classified under HSN 7325 and the applicable rate of GST is 18%. Hence the applicant filed the instant application, seeking advance ruling on the following question: Railway parts such as Couplers, Knuckle, Locks, Toggle, Yoke etc., manufactured and supplied by us to our buyer Sanrok Enterprises (who in turn supply to Indian Railways after assembly) be classified under HSN 8607 or to be classified under HSN 7325 as other cast articles of Iron or Steel?

RULING

Railway parts such as Couplers, Knuckle, Locks, Toggle,



Yoke etc., manufactured and supplied by the applicant to M/s Sanrok Enterprises (who in turn supply to Indian Railways after assembly) are classifiable under HSN 8607. The applicable rate of GST on the impugned goods is 5% in terms of entry number 241 of Schedule I to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, till 29.09.2019 and effective from 30.09.2019, the rate of GST is 12%, in terms of entry number 205 G of Schedule II to the Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification No.14/ 2019 - Central Tax(Rate) dated 30.09.2019, with no refund of unutilized input tax credit, in terms of Sl.No.14 of Notification No.5/2017-Central Tax (Rate) dated 28.06.2017.

B.JUDICIAL DECISIONS ON INDIRECT TAXES

Statute: Central Sales Tax

Decision in favour of: Department

Title: Nirmal Kumar Parsan Vs Commissioner of Commercial Taxes and others

A.M. Khanwilkar and Dinesh Maheshwari JJ.

Citation: [2020] 74 GSTR 1 (SC) Bench/Court: Supreme Court of India

Central Sales Tax-Import or Export-Sale of imported goods kept in bonded warehouse within state to foreign-going ship as ship stores without paying customs duty-not sale in course of import or export-Central Sales Tax Act (74 of 1956), ss. 2(ab),5-Constitution of India, art. 286-Customs Act (52 of 1962), ss.2(11),(13), 7, 69, 88-West Bengal Sales Tax Act (4 of 1954)-West Bengal Sales Tax Act (49 of 1994).

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title: Kaish Impex Private Limited Vs Union of India and Others

Nitin Jamdar and M.S. Karnik JJ.

Citation: [2020] 74 GSTR 28 (Bom) Bench/Court: Bombay High Court

Goods and Services Tax-recovery of tax-provisional attachment-attachment of bank account-only permissible during pendency of proceedings against assessee under specified sections- attachment only of bank account of assessee against whom proceedings under sections mentioned initiated-summons issued to assessee pursuant to inquiry initiated against export firm under section 67 of act-proceedings cannot be extended to assessee- bank account of assessee could not be provisionally attached merely based on summons issued under section 70 to him-Central Goods and Services Tax Act (12 of 2017), ss. 70, 83.

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title: Abbott Healthcare Private Limited Vs Commissioner of State Tax Kerala, Commercial Tax Office, 1 Circle, Thrissur, Kerala and Others

A.K. Jayasankaran Nambiar J.

Citation: [2020] 74 GSTR 37 (Ker) Bench/Court: Kerala High Court

Goods and Services Tax—charge of tax—supply of goods—composite supply — definition —general principles— assessee placing diagnostic instruments at premises of hospitals and laboratories for their use for specified period without consideration —reagents, calibrators and disposables supplied through its distributors on payment of applicable Goods and Services Tax—application for advance ruling whether provision of specified medical instruments by assessee to hospitals for use without consideration,

constituted a “supply” — authority ruling it was composite supply— beyond jurisdiction — matter remanded—Central Goods and Services Tax Act (12 of 2017), s. 2(30)—Notification no. 11 of 2017 Central Tax (rate) dated June 28, 2017.

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title: Commercial Steel Engineering Corporation Vs State of Bihar and Others

Jyoti Saran and Arvind Srivastava JJ

Citation: [2020] 74 GSTR 51(Patna) Bench/Court: Patna High Court

Goods and Services Tax- transitional provisions—input tax credit— wrongful availment or utilisation —proceedings for recovery with interest and penalty—conditions precedent for proceedings — positive act of utilisation to reduce tax liability — mere reflection of transitional credit in electronic credit ledger not an act of availment— credit in credit ledger confirmation that there was no tax outstanding against assessee which was recoverable —sum standing to credit of assessee in electronic ledger—cannot be treated as an outstanding tax liability — Bihar Goods and Services Tax Act (12 of 2017), s. 73(1).

Statute: Value Added Tax

Decision in favour of: Department

Title: MCP Enterprises Vs State of Kerala & another

A.K. Jayasankaran Nambiar J

Citation: [2020] 74 GSTR 103 (Ker) Bench/Court: Kerala High Court

Value Added Tax—legislative powers—discrimination—re-assessment—limitation—class of dealers whose turnover exceeded threshold limit specified in section 42(1) for differential treatment in matter of re-opening of assessments to assess escaped turnover—has intelligible differentia having rational nexus with object sought to be achieved—provision valid—retrospective operation — dealers obliged under rules to preserve books only for specified period—power to reopen assessment not to be exercised in relation to years for which period for which dealer obliged to retain books of account had expired —Kerala Value Added Tax Act, 2003 (30 of 2004), ss. 25, 42(3).

Statute: Value Added Tax

Decision in favour of: Assessee/Department

Title: Hindalco Industries Limited Vs State of Kerala and another

A.K. Jayasankaran Nambiar J

Citation: [2020] 74 GSTR 116 (Ker) Bench/Court: Kerala High Court.

Value Added Tax— assessment — limitation — change of law-assessments in respect of which limitation for re-opening under section 25 was to expire by march 31, 2017 can be re-opened up to march 31, 2018 by virtue of amendment to third proviso to section 25(1) by Kerala Finance Act, 2017—repeal of value added tax and introduction of goods and services tax—effect—state legislature has no power to amend the 2003 act after repeal thereof on June 22, 2017— assessments in respect of which limitation for re-opening was to expire by march 31, 2018 cannot be re-opened up to march 31, 2019 or thereafter on basis of amendments introduced through Kerala Finance Act, 2018—Kerala Value Added Tax Act, 2003 (30 of 2004), s. 25(1)—Kerala Finance Act (11 of 2017)— Kerala Finance Act (5 of 2018)— constitution(one hundred and first amendment) act, 2016.

Statute: Goods and Services Tax

Decision in favour of: Assessee

**Title: Mohit Minerals Private Limited Vs Union of India and Others**

J.B. Pardiwala and A.C. Rao JJ

Citation: [2020] 74 GSTR 134 (Guj) Bench/Court: Gujarat High Court.

Goods and Services Tax—integrated goods and services tax—notification levying integrated goods and services tax at five per cent. on service by person located in a non-taxable territory to person located in non-taxable territory by way of transportation of goods by vessel from place outside India up to customs stations of clearance in India—notification that importer located in taxable territory shall be recipient of service—neither an inter-state supply nor an intra-state supply — levy and collection of tax on ocean freight ultra vires act—Integrated Goods and Services Tax Act (13 of 2017), ss. 2(11), 5, 7, 8, 12,13—Central Goods and Services Tax Act (12 of 2017), ss. 2(67), (83),16(1)—Customs Act (52 of 1962), s. 2(26)—Constitution of India, art. 265—notification no. 8 of 2017-integrated tax (rate) dated June 28, 2017—notification no. 10 of 2017-integrated tax (rate) dated June 28, 2017.

Statute: Trade Tax

Decision in favour of: Assessee

Title: Triveni Engg. Industries Limited Vs Commissioner, Trade Tax, U.P., Lucknow

Alok Mathur J

Citation: [2020] 74 GSTR 223 (All) Bench/Court: Allahabad High Court

Trade Tax— rectification of mistake—doctrine of merger assessing authority accepting dealer's contention and not levying tax under section 3f in respect of machinery lease rent—order becoming final—dealer appealing on other issues—application for rectification of order of appellate authority to bring lease rent to tax—lease rent not subject of appeal—no mistake in appellate order—doctrine of merger not applicable—rectification not permissible—u. p. Trade Tax Act (15 of 1948), ss. 3f, 22.

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title: South Indian Bank Limited Vs Union of India and others

A.K. Jayasankaran Nambiar J

Citation: [2020] 74 GSTR 236 (Ker) Bench/Court: Kerala High Court

Goods and Services Tax—input tax credit— transition provisions—bank having branches in all states—input tax credit validity taken and returns accepted during pre-goods and services tax period—assessee registered as input service distributor under goods and services tax law—but unable to file form tran-1 for absence of details of purchase invoices on strength of which input tax credit availed of before introduction of goods and services tax—accumulation of credit and entitlement of assessee to distribute credit to its branches not in dispute—if assessee permitted to file individual form tran-1 in respect of each recipient branch, accumulated credit could be distributed to branches without details of invoices— direction to principal nodal officer to either permit assessee to file rectified form tran-1 electronically in favour of each branch or accept manual tran-1 form with appropriate corrections.

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title: Assistant Commissioner of CGST & Central Excise, Marimalai Nagar division, Rajakilpakkam, Chennai and**another Vs Daejung Moparts Pvt. Ltd.**

K.Ravichandrababu J

Citation: [2020] 74 GSTR 257 (Mad) Bench/Court: Madras High Court

Goods and Services Tax—delay in payment of tax—levy of interest automatic—but quantification of such liability cannot be unilateral but after considering assessee's objections—Central Goods and Services Tax Act (12 of 2017), s. 50.

Writs under constitution—Goods and Services Tax—appeal—delay in payment of tax—interest— assessee not disputing liability to pay interest but quantum of interest— writ petition disposed of remanding matter on condition that assessee should pay admitted liability of interest—no prejudice to revenue—appeal against order of single judge not warranted—Central Goods and Services Tax Act (12 of 2017), s. 50—Constitution of India, art. 226.

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title: Refex Industries Limited Vs Assistant Commissioner of CGST & Central Excise, Maraimalai Nagar Division, Chennai and Others

Dr. Anitha Sumanth J

Citation: [2020] GSTR 274(Mad) Bench/Court: Madras High Court

Goods and Services Tax—delayed payment of tax—interest—"delayed", meaning of—does not apply to input tax credit already with department—interest can be levied on belated cash payment but not on input tax credit available with department to credit of assessee—credit will be valid till invalidated by recourse to mechanisms under statute— proviso to section 50(1) inserted with effect from august 1, 2019 clarificatory and operative retrospectively —Central Goods and Services Tax Act (12 of 2017), s. 50(1).

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title : Arora & Co Vs Union of India and Others

Vipin Sanghi and Sanjeev Narula JJ

Citation: [2020] 74 GSTR 290 (Delhi) Bench/Court: Delhi High Court

Goods and Services Tax— transition period—closing stock of pipes—input tax credit—petitioner unable to log in to common portal and avail of transition of credit before December 2, 2017— e-mail received on March 30, 2019 requesting petitioner to file before march 31, 2019 but approval retracted same date by respondents—further representation rejected vide letter dated April 13, 2019 stating that no new evidence provided, as request already rejected by grievance redressal committee on basis of evidence already on records— writ petition— direction to respondents to either open online portal to file form TRAN-1 electronically, or to accept manually on or before November 2019—Central Goods and Services Tax Act (12 of 2017), s. 140(3).

Statute: Goods and Service Tax

Decision in favour of: Assessee

Title : Delhi Textiles vs Commissioner, Commercial Tax, U.P, Lucknow

Alok Mathur J

Citation: [2020] 74 GSTR 302 (All) Bench/Court: Allahabad High Court

Trade Tax—penalty—check-post—evasion of tax—import-order for machine placed by petitioner to D in Delhi and machine purchased by D from U. P—machine trans-



ported by vehicle for delivery to petitioner for which D issued bill and import declaration—interception of vehicle and detention of goods for failure of driver to produce papers of D and form relating to import of machine from State of Delhi to State of Uttar Pradesh—entire documents produced by petitioner in first instance before assessing authority—no clear finding by authorities of intention to evade tax -penalty not warranted-U.P. Trade Tax Act (15 of 1948), s.15A(1)(o)-Central Sales Tax Act(74 of 1956)

Statute: Value Added Tax

Decision in favour of: Assessee

Title: Tarapore and Company Vs State of Jharkhand and Others

H.C. Mishra and Deepak Roshan JJ

Citation:[2020]74 GSTR 340 (Jharkhand)

Bench/Court: Jharkhand High Court

Value Added Tax—registered dealers—input tax credit—purchases of goods on which tax paid by purchaser to selling dealer—disallowance of claim of input tax credit to purchaser and levy of interest on ground tax amount not reflected in MIS regarding return filed by selling dealer— purchaser producing all necessary documents including tax invoice supplied to it by seller—due to laches on part of selling dealer return not been filed by selling dealer and tax amount not deposited in Government Treasury—punitive action not warranted against bonafide purchaser—Jharkhand Value Added Tax Act,2005(5 of 2006),ss. 18(8)(xvii), 33.

Statute: Value Added Tax

Decision in favour of: Department

Title: Priority Gold Pvt. Ltd. Vs Assistant Commissioner of State Tax, Special Circle, Thrissur and Another

S.V. Bhatti j

Citation: [2020] 74 GSTR 399 (Ker) Bench/Court:

Kerala High Court

Value Added Tax—writs under Constitution— alternative remedy of appeal—input tax credit— refund—escaped turnover—self assessment declaration filed by petitioner, input tax credit of Rs. 51,71,761 claimed on local purchase and application filed for refund of tax said to have been paid in excess—notice informing that, input tax credit calculated on total quantity of Inter-State stock transfer of bullion effected to be disallowed and proposing to retrieve total input tax credit of Rs. 2,69,27,728 along with interest—order of revision passed accordingly and application for refund rejected—writ petition contending orders suffer from perversity—facts to be considered— petition not maintainable- Kerala Value Added Tax Act, 2003 (30 of 200-4), ss. 11(3), third proviso, 25—Constitution of India, art. 226.

Statute: Goods and Services Tax

Decision in favour of: Assessee

Title: Hardcastle Restaurants Pvt. Ltd. and Another Vs Union of India and Others

M.S. Sanklecha and Nitin Jamdar JJ

Citation: [2020] 74 GSTR 417 (Bom) Bench/Court:

Bombay High Court

Goods and Services Tax—Anti-profiteering—proceedings before National Anti-Profiteering Authority —Quasi-judicial —Principles of natural justice applicable—presence of member during hearings essential— member joining after hearings completed and signing order along with other members—failure to natural justice— Central Goods and Services Tax Act (12 of 2017), s. 171—Central Goods and Services Tax Rules, 2017, Chapter XV—

National Anti- Profiteering Authority under the Goods and Services Tax Methodology and Procedure, 2018.

Statute: Sales Tax

Decision in favour of: Department

Title: M. Saroopchand Vs Commissioner, Commercial tax Department, Puducherry and others

M. Sundar J

Citation: [2020] 74 GSTR 456 (Mad) Bench/Court:

Madras High Court

Sales Tax— value added tax— recovery of tax— attachment of property—” dealer” —definition—immovable property with two storied superstructure purchased by writ petitioner from D under registered sale deed dated July 3, 2017—attachment of property provisionally by order dated October 30, 2015 to secure arrears of tax and penalty under “Pondicherry General Sales Tax Act” and “Pondicherry Value Added Tax Act” due from dealer in petroleum products, a proprietary concern having D’s mother as sole proprietary—valid—writ petitioner’s vendor qualifies as “dealer” within meaning of section 2(n) and writ petitioner’ s vendor’s property, covered under section 37(1) of PVAT Act— Puducherry Value Added Tax Act (9 of 2007), ss. 2(n),(zc), 37(1)-Pondicherry General Sales Tax Act (6 of 1967).

Statute: Value Added Tax

Decision in favour of: Department/Remanded

Title: Abhay Solvents Private Limited Vs Assistant Commissioner of Commercial taxes, LGSTO-510, Koppal, Karnataka and another

S. Sujatha J

Citation: [2020] 74 GSTR 438 (Karn) Bench/Court: Kar-

nataka High Court

Value Added Tax—Goods and Services Tax—repeal—re-bate—input tax paid in excess—refund—interest—manufacture of refined rice bran oil obtaining de-oiled rice bran as by- product an exempted commodity—petitioner applying for partial rebate and restricting its claim of input-tax credit to extent of inputs utilized towards de-oiled rice bran—pursuant to decision in M.K. Agro Tech (P) Ltd. v. State of Karnataka [2015] 77 VST 153 (Karn) holding partial rebate applicable only in case of exempted end product writ petition filed seeking refund of input tax credit paid in excess in respect of tax period, March 2014 to July 2015 and refund granted in respect of tax period 2015 to January 2017 subject to result of pending SLP (civil) nos. 576-596 of 2014 after obtaining indemnity bond from petitioner to extent of refund—decision in M.K. Agro Tech (P) Ltd. v. State of Karnataka [2015] 77 VST 153 (Karn) holding assessee not entitled to claim full input tax credit and that partial rebate applicable— demand of refunded tax amount— valid—on facts not hit by principles of natural justice— repeal of value added tax act on July 1, 2017 not affecting proceedings initiated by authorities in view of section 174(1)(f) and (3) of Goods and Services Tax Act— Commissioner’s circular dated October 9, 2017 to be read down to effect that levy of penalty/interest not automatic— not a case of omission on part of dealer or no output tax paid or short paid or higher input tax claimed— opportunity of hearing warranted in quantifying interest - amount— matter remanded—Karnataka Goods and Services Tax Act (27 of 2017), s. 174(1)(f),(3)—Karnataka Value Added Tax Act, 2003 (32. of 2004), ss. 10(0), 17, 42, 69(1).

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CA. P.M.Veeramani
Ernakulam

A panel discussion on Goods and Services Tax with special reference to “Levy, Registration, Input Tax Credit, Refund, Assessment and Place of Supply”



CA. Roy Varghese



CA. Balagopal Ramamohan



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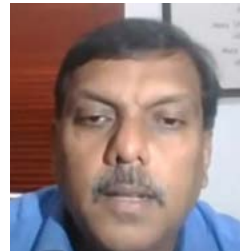


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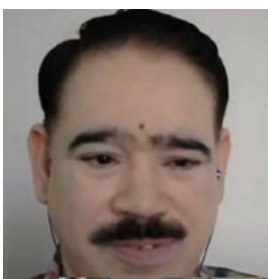
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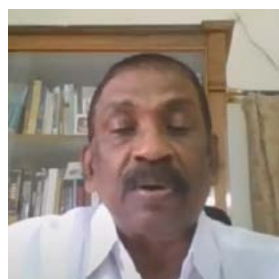
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