



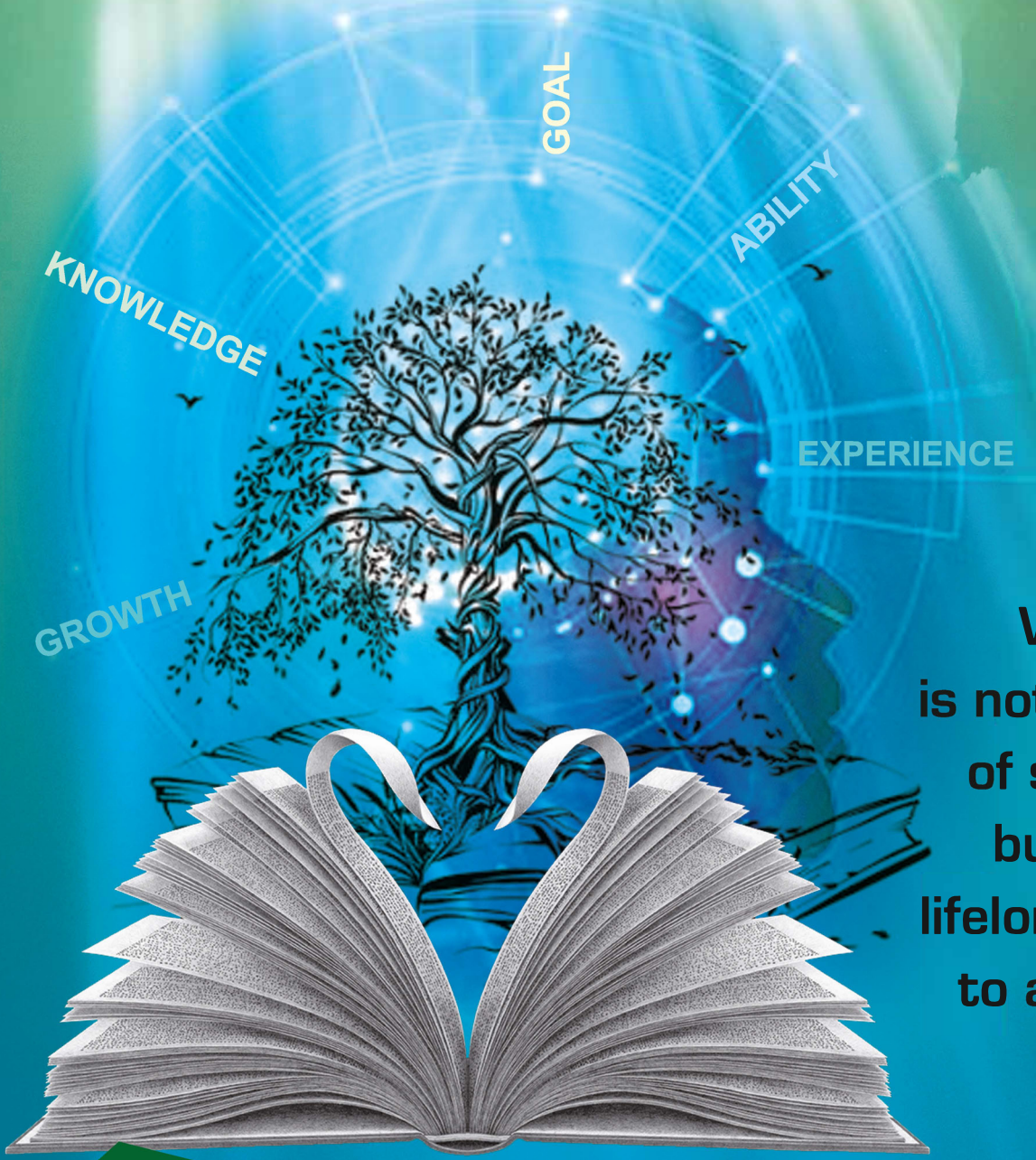
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THE CTC NEWS

A Monthly Newsletter of The Chamber of Tax Consultants

(Private circulation for members only)

ज्ञानं परमं बलम्



Wisdom
is not a product
of schooling
but of the
lifelong attempt
to acquire it.

President: **CA Vipul K. Choksi**
Vice President: **CA Anish M. Thacker**
Hon. Jt. Secretaries: **CA Ketan L. Vajani | CA Haresh P. Kenia**
Hon. Treasurer: **CA Parag S. Ved**

FORTHCOMING EVENTS

SR. NO.	DATE	COMMITTEE	PROGRAMME DESCRIPTION	VENUE	PG. NO.
1.	18-06-2020 to 21-06-2020	International Taxation	Cancellation of 14th RRC.	Alila Diwa Goa, 48/10, Adao Waddo, Majorda, Goa-403713	2
2.	04-07-2020	—	AGM Notice	—	3
3.	—	—	Results — Election of President and Managing Council Members of The Chamber of Tax Consultants For The Year 2020-2021	—	4
4.	—	—	Renewal Notice - 2020-21	—	5
5.	—	—	Unreported Decisions - GST	—	6-9

Interested members may enrol from the Chamber's website : www.ctconline.org to make online payment. Outstation members are requested to make online payment or send DD/at par Cheque in favour of The Chamber of Tax Consultants. Debit & Credit Cards are accepted.



INTERNATIONAL TAXATION COMMITTEE

Chairman: Rajesh L. Shah | **Vice-Chairmen:** Harshal Bhuta, Kirit Dedhia

Convenors: Isha Sekri, Kartik Mehta, Raunak Doshi **RRC Mentor:** Dilip J. Thakkar, T. P. Ostwal, Padamchand Khincha

Conference Directors: Shreyas Shah, Kartik Mehta

14th Residential Conference on International Taxation

Venue: Alila Diwa Goa, 48/10, Adao Waddo, Majorda, Goa-403713

Days & Dates:
Thursday, 18th June, 2020 to
Sunday, 21st June, 2020

CANCELCATION OF 14TH RRC.

Dear Members,

We had planned our 14th Residential Conference on International Taxation at Hotel Alila Diwa, Goa from 18 June 2020 to 21 June 2020. Due to the Corona Virus (Covid-19) outbreak, and uncertainty surrounding its normalcy, we as a responsible association have decided to cancel the conference.

In case of any clarification, kindly get in touch with anyone of the following:

- Hitesh Shah (*Chief manager CTC*) - 9821889249
- Shreyas Shah - 9819885321
- Kartik Mehta - 9833218700
- Kirit Dedhia - 9833597056

We take this opportunity to thank all the participants for their support extended to us from time to time and we hope that it will be the same in the future.

Yours faithfully

Rajesh L. Shah
Chairman

Shreyas Shah / Kartik Mehta
Conference Directors

AGM NOTICE

NOTICE OF THE NINETY THIRD ANNUAL GENERAL MEETING

Notice is hereby given that the Ninety third Annual General Meeting of THE CHAMBER OF TAX CONSULTANTS will be held through Video Conferencing (“VC”) / Other Audio Visual Means (“OAVM”) on Saturday, 4th July, 2020 at 4.30 p.m. to transact the following business:

1. To read and adopt the minutes of the 92nd Annual General Meeting held on 4th July, 2019.
2. To announce the results of the elections of President and fourteen Members of the Managing Council.
3. To appoint auditors for the year that will end on 31st March, 2021 and fix their honorarium for that year.
4. To consider the Annual Report of the Managing Council for the year 2019-20.
5. To consider and adopt the annual audited accounts for the year ended 31st March, 2020.
6. Any other matter with the permission with the Chair.

FOR AND ON BEHALF OF THE MANAGING COUNCIL

Sd/-

Place: Mumbai

Ketan Vajani / Haresh Kenia

Dated: 3rd June, 2020

Hon. Jt. Secretaries

Office: 3, Rewa Chambers, 31, New Marine Lines, Mumbai-400 020.

Notes:

1. In view of the continuing Covid-19 pandemic, and the difficulties arising therefrom, taking recourse to Rule 32 of the Chamber’s Rules and Regulations that form a part of the Chamber’s by laws, the Managing Council of The Chamber of Tax Consultants in its meeting held on 21st May, 2020 has resolved to hold the 93rd Annual General Meeting of the Chamber through Video Conferencing (VC) or any other Audio Visual Mode (OAVM) so as to adhere to the social distancing norms. Accordingly, the Annual General Meeting will be held through VC / OAVM. The other modalities and the online platform to be used for the meeting will be informed to the members in due course.
2. If there is no quorum by **4.30 p.m.** the meeting will be adjourned for half an hour and the members present at such adjourned meeting shall constitute the quorum.
3. Due to the Lockdown, there has been delay in finalisation of accounts for the year ended on 31st March 2020, and their audit. Therefore, the audited accounts are not circulated along with this notice. The same shall be uploaded on the Chamber’s web site as soon as the audited accounts are ready and approved by the Council
4. As per the decision taken at the **86th Annual General Meeting**, the Annual Report is to be circulated in electronic form. For the year 2019-20, the Annual Report is under compilation and shall be available on the Chamber’s website as soon as it is ready.

RESULTS — ELECTION OF PRESIDENT AND MANAGING COUNCIL MEMBERS OF THE CHAMBER OF TAX CONSULTANTS FOR THE YEAR 2020-2021

For the post of President of The Chamber of Tax Consultants, there is only one valid nomination of **Mr. Anish M. Thacker**. Mr. Anish M. Thacker is hereby declared as elected President of The Chamber of Tax Consultants for the year 2020-2021.

For the posts of **14** members of the Managing Council of The Chamber of Tax Consultants, there are only 14 valid nominations. The following 14 (In Alphabetical Order) members are hereby declared as elected Members of the Managing Council of The Chamber of Tax Consultants for the year 2020-2021.

1. Atul T. Mehta
2. Dharan V. Gandhi
3. Dinesh B. Poddar
4. Haresh P. Kenia
5. Heneel K. Patel
6. Ketan L. Vajani
7. Maitri P. Savla
8. Mehul R. Sheth
9. Neha R. Gada
10. Nishtha M. Pandya
11. Parag S. Ved
12. Rajesh L. Shah
13. Rajesh P. Shah
14. Varsha R. Galvankar

Sd/-

FOR ELECTION COMMITTEE

RENEWAL NOTICE – 2020-21

Dear Members,

SUB: PAYMENT OF ANNUAL MEMBERSHIP FEES FOR 2020-21

01st June, 2020

It's our privilege to have been of service to you over the years. We truly appreciate and value your association. It's time to renew annual membership and subscription of The Chamber's Journal, Study Group and Study Circle Meetings and other subscription of The Chamber of Tax Consultants ("The Chamber"). The renewal fees for Annual Membership, Study Group and Study Circle and other Subscription for the financial year 2020-21 falls due for payment on 1st April, 2020. We thank you for your subscription. Your involvement is important and very much appreciated. We hope you will always continue to support The Chamber in its activities and growth as done in the past.

Thanking You,

For The Chamber of Tax Consultants

CA Parag S. Ved

Hon. Treasurer

Sr. No.	Particulars	Fees	GST @18%	Total
I	MEMBERSHIP			
1.	LIFE MEMBERSHIP FEES	15,000	2,700	17,700
2.	ORDINARY MEMBERSHIP FEES - YEARLY (APRIL TO MARCH)	2,500	450	2,950
3.	ADMISSION FEES - ORDINARY MEMBERSHIP	750	135	885
4.	ASSOCIATE MEMBERSHIP - YEARLY (APRIL TO MARCH)	7,500	1,350	8,850
5.	ADMISSION FEES - ASSOCIATE MEMBERSHIP	1,000	180	1,180
6.	STUDENT MEMBERSHIP - INCLUDING E-JOURNAL (APRIL TO MARCH)	500	90	590
II	CHAMBER'S JOURNAL SUBSCRIPTION - YEARLY (HARD COPIES)			
1.	JOURNAL SUBSCRIPTION - LIFE MEMBER	1,350	0	1,350
2.	JOURNAL SUBSCRIPTION - NON MEMBER	2,500	0	2,500
3.	JOURNAL SUBSCRIPTION - STUDENT MEMBER	1,000	0	1,000
III	CHAMBER'S E-JOURNAL SUBSCRIPTION (SOFT COPIES)			
1.	E-JOURNAL SUBSCRIPTION - LIFE MEMBERS (YEARLY)	700	126	826
2.	E-JOURNAL SUBSCRIPTION - NON MEMBERS (YEARLY)	1,000	180	1,180
3.	E-JOURNAL SUBSCRIPTION - SINGLE JOURNAL	200	36	236
IV	ITJ SUBSCRIPTION			
1.	INTERNATIONAL TAX JOURNAL SUBSCRIPTION	1,400	0	1,400
V	STUDY CIRCLES & STUDY GROUPS (RENEWAL)			
1.	STUDY GROUP (DIRECT TAXES)	2,400	432	2,832
2.	STUDY CIRCLE (DIRECT TAXES)	2,000	360	2,360
3.	STUDY CIRCLE (INTERNATIONAL TAXATION)	1,800	324	2,124
4.	STUDY CIRCLE (INDIRECT TAXES)	2,250	405	2,655
5.	STUDY CIRCLE (ALLIED LAWS) (REFER NOTE 1 BELOW)	1,500	270	1,770
6.	SELF AWARENESS SERIES	1,000	180	1,180
7.	INTENSIVE STUDY GROUP ON DIRECT TAX	2,000	360	2,360
8.	FEMA STUDY CIRCLE	1,800	324	2,124
9.	PUNE STUDY GROUP	3,500	630	4,130
10.	BENGALURU STUDY GROUP	4,200	756	4,956
11.	HYDERABAD STUDY GROUP	11,000	1,980	12,980

(Note: 10% Discount applicable for the registration of 3 or more Study Circles & Study Groups)

Notes:

1. **The Managing Council has decided to extend rollover benefit for one year to the Members of the Allied Laws Study Circle. (Accordingly those Members who have enrolled for this Study Circle in F.Y. 2019-20, need not renew their subscription for F.Y. 2020-21)**
2. **10% Discount applicable for the registration of 3 or more Study Circles & Study Groups.**
3. Members are requested to visit website www.ctconline.org for online payment.
4. Payments should be made by Account Payee Cheque/Demand Draft in favour of "THE CHAMBER OF TAX CONSULTANTS". Outstation members are requested to send payments only by "Demand Draft or At Par Cheque".
5. A consolidated Cheque/Draft may be sent for all payments.
6. Please also update your Mobile number & e-mail address to ensure receipt of regular updates on activities of The Chamber.
7. Please write your full name on the reverse of Cheque/DD.
8. Kindly pay your membership fees by 30th June, 2020 for uninterrupted service of the Chamber's Journal.
9. Members are requested to download the Renewal Form from Chamber's website www.ctconline.org
10. Renewal Notices are also sent separately and members are requested to fill up the same and send it to The Chamber's office along with the cheque.
11. Renewal Notice contains entire information of Members as per CTC database. In case of any change in information of Member as shown in form, kindly provide updated information along with the form.

UNREPORTED DECISIONS (GST)

By Vinay Jain & Sachin Mishra, *Advocates*

1. **Whether the phrase ‘technical difficulties on the common portal’ under Sub-rule (1A) to Rule 117 of the CGST Rules, 2017 will include within its ambit any delay caused in filing TRAN-I due to any other technical difficulties at the end of the assessee? Whether the accumulated CENVAT credit is a vested right of the assessee and a constitutional right under Article 300A of the Constitution of India? Whether the time limit specified in Rule 117 of CGST Rules for filling Tran-1 form is procedural in nature and not a mandatory provision?**

Facts and Pleadings: Four Writs were filed before the Hon’ble Delhi High Court seeking relief in the nature of a writ of Mandamus directing department (i.e. Respondents) to permit Petitioners to file Form TRAN-1 beyond the period provided under the CGST Rules, 2017. The said delay was caused due to numerous difficulties faced at the end of the Petitioners such as filing of refund application instead of filing the Form TRAN-1 in time; switch over from dependence on tax compliance at group level in the earlier regime to unit level in the GST regime; mistakenly declaring of less value of accumulated CENVAT credit than the actual value etc.

According to the department as all the aforesaid delay were caused due to the personal negligence and ignorance of Petitioners themselves, the same will not fall within the ambit of ‘technical difficulties on the common portal’ under Sub-rule (1A) to Rule 117 of the CGST Rules, 2017. The department also submitted that benefit of taking credit is not a vested right of an assessee and cannot be claimed in perpetuity as the same is subject to certain conditions, safeguards and limitations provided under the GST law. Department also relied on the provisions of section 164 of the CGST Act to contend that in view of said section they can make rules to carry out the provisions of GST Act.

The Petitioners relied upon the earlier judgments including *A.B. Pal Electricals v Union of India* (W.P.(C) 6537/2019 (decided on 17.12.2019) in favour of the assessee on this issue. The Petitioners also submitted that the GST system is in a nascent “trial and error” phase and they should not be made to suffer on account of inefficiency in the systems of the Respondents. The Petitioners also argued that the accumulated CENVAT credit is vested right and

constitutionally protected right under Article 300A of the Constitution, which cannot be taken away by framing Rules without there being any substantive provision in this regard under the CGST Act, 2017. The Petitioners also submitted that the time limit specified in Rule 117 of CGST Rules is procedural in nature, and not a mandatory provision, and thus period provided therein cannot be enforced so as deprive the Petitioners from availing their vested right.

Judgment: The Hon’ble High Court after analysing several judgments and legislative history and intent of the transition provisions held that the phrase technical difficulties on the common portal’ under Sub-rule (1A) to Rule 117 of the CGST Rules, 2017 should be given a wider interpretation. As per the Hon’ble High Court it will include within its ambit any difficulty faced by the assessee whether at its own end or at the end of the government in filing the Form TRAN-1 within the prescribed time limit. Further, the Hon’ble High Court also held that the CENVAT credit which stood accrued and vested is the property of the assessee and is a constitutional right under Article 300A of the Constitution and the same cannot be taken away merely by way of delegated legislation by framing rules, in absence of any substantive provision in the GST Act, 2017. Further, the Hon’ble High Court also held that in absence of any consequence being provided under Section 140, to the delayed filing of TRAN-1 Form, Rule 117 has to be read and understood as directory and not mandatory. Further, the Hon’ble High Court went on to read down the provision of Rule 117 in so far as it prescribed the time limit for filing of form TRAN-1. However the Hon’ble High Court also noted that it cannot extend in perpetuity and in absence of any specific provision in the GST Act, time limit provided in terms of the residuary provisions of the Limitation Act, i.e. the period of three years should be the guiding principle and accordingly held that Tran-1 declaration can be filed for a period of three years from the appointed date i.e. by 30.6.2020. The Hon’ble court also directed the respondent to publicise the content of this judgement so that similarly placed assessee can also take advantage of this judgement and file declaration by 30.6.2020.

Brand Equity Treaties Limited vs. U.O.I., High Court of Delhi decided in W.P.(C) 11040/2018 and C.M. No. 42982/2018 on 05.05.2020.

2. **Whether Circular No. 26/26/2017-GST dated 29.12.2017 which provides for rectification of mistakes in GSTR-3B pertaining to earlier tax period only in any subsequent tax period in which the error is noted is ultra vires the provisions of CGST Act, 2017 and contrary to Articles 14, 19 and 265 of the Constitution of India?**

Facts and Pleadings: M/s. Bharti Airtel Limited (hereinafter referred to as 'Petitioner') is inter-alia engaged in the business of providing telecommunication services in India. Due to non-operationalization of Forms GSTR-2A, GSTR-2 and GSTR-3 and the system related checks, the Petitioner recorded ITC based on its estimate in GSTR-3B for the period July 2017 to September 2017. As the actual value of ITC was not available, the Petitioner had to discharge its GST liability in cash. Thus, when the exact value of ITC was discovered through GSTR-2A, the Petitioner realised that there was excess payment of taxes, by way of cash, to the tune of approximately Rs. 923 crores. Accordingly, Petitioner desired to correct its returns for the said period, but was being prevented from doing so, as there was no enabling statutory procedure implemented by the Government. Accordingly, the Petitioner preferred this writ petition challenging Rule 61(5) of the GST Rules, Form GSTR- 3B and Circular No. 26/26/2017-GST dated 29.12.2017 as ultra vires the provisions of CGST Act, 2017 and contrary to Articles 14, 19 and 265 of the Constitution of India.

GST department submitted that Circular No. 26/26/2017-GST dated 29.12.2017 does provide for the rectification of mistakes pertaining to earlier tax period in any subsequent tax period in which the error is noted. As per department, it is not a case wherein the said circular does not provide for rectification at all and thus is in alignment with the CGST Act, 2017. The department also submitted that the Petitioner can very well claim refund of the ITC lying in the electronic credit ledger. The department further submitted that if rectification will be allowed to be reflected in the previous tax period Form GSTR-3B of the supplier, it would lead to many complexities such as requirement of modification of the particulars furnished in Form GSTR-3B by the recipient as well.

The Petitioner argued that the output tax liability has substantially reduced on account of low tariff in the telecom sector. As a result, the input tax credit which has accumulated on account of erroneous reporting, cannot be fully utilized in the prevailing tariff structure. Thus, relief provided under the

Circular No. 26/26/2017-GST dated 29.12.2017 will not remedy the loss caused to the Petitioner. The Petitioner argued that the inability of the government to run their IT system as per the structure provided under the CGST Act, 2017 cannot prejudice the rights of a registered person. According to the Petitioner, the summary scheme introduced by Rule 61(5) of CGST Rules, 2017 being in complete variance with the machinery originally contemplated under the GST Scheme, stifled the rights of the Petitioner by not permitting the validation of the data prior to the same being uploaded. Thus, the Petitioner pleaded that it should be allowed to rectify GSTR-3B for the period July 2017 to September 2017.

Judgement: The Hon'ble High Court after analysing several judgments and legislative history behind the filing of the returns has held that that due to the failure of the government to operationalise GSTR-2 & 3 in time, the Petitioner could not file the correct ITC available to it in the relevant period. The Hon'ble High Court held that the Government has failed to fully enforce the scheme of the CGST Act, 2017 and cannot take benefit of its own wrong of suspension of the Statutory Forms and deprive the rectification of the returns to reflect ITC pertaining to a tax period to which the return relates to. As per the Hon'ble High Court, Petitioner has a substantive right to rectify the ITC for the period to which it relates. Thus, the Hon'ble High Court held that the rectification/adjustment mechanism for the months subsequent to when the errors are noticed is contrary to the scheme of the CGST Act, 2017. The Hon'ble High Court also held that the refund of excess cash balance in terms of Section 49(6) read with Section 54 of the CGST Act does not effectively redress Petitioner's grievance. Accordingly, the Hon'ble High Court the rectification of the return for that very month to which it relates is imperative and, accordingly, read down para 4 of the Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricted the rectification of Form GSTR-3B in respect of the period in which the error has occurred.

Bharti Airtel Limited vs. U.O.I., High Court of Delhi decided in W.P.(C) 6345/2018, CM APPL. 45505/2019 on 05.05.2020.

3. **Whether for the purposes of service tax the value of photography service can be determined separately from the value of certain consumables and chemicals which are used on the paper for printing the image? Whether such printed photograph can be said to be a 'deemed sale of**

goods' in terms of Article 366(29A)(b) of the Constitution of the India? Whether the expression "sale" as appearing in Notification No.12/2003-ST dated 20.6.2003 will cover deemed sale as well?

Facts and Pleadings: M/s Agrawal Colour Advance Photo System (hereinafter referred to as the 'Appellant') is engaged in the business of processing, printing and exposure of colour photographic film. The Appellant was paying service tax on 30% of the value of the invoices raised on account of service rendered to the customers and was paying VAT on the balance value.

The Department argued that the value of service provided in relation to photography would be the "gross amount charged" including the cost of material, goods used/consumed. The department alleged that the consumables and chemicals used for providing photography service disappear when the photograph emerges and therefore, there is no element of sale involved on those consumables. Department also alleged that the said contract is predominantly a service contract and the supply of material and consumables is merely incidental. Department submitted that the value of other goods and material, if sold separately would be excluded under exemption Notification No.12/2003 and the term 'sold' appearing thereunder has to be interpreted using the definition of 'sale' in the Central Excise Act, 1944 and not as per the meaning of 'deemed sale' under Article 366(29A)(b) of the Constitution.

The Appellant submitted that the term "sold" used in Notification No.12/2003-ST dated 20.6.2003 must be interpreted to cover "deemed sale" under Article 366(29A) of the Constitution and therefore, if a service contract is a works contract then no service tax can be charged on the goods component. The Appellant submitted that since the photography involves both the processing activity as well as supply of goods, therefore, it is a works contract. There is an element of both sale and service in photography, thus, service tax would not be leviable on sale portion.

Judgement: The Hon'ble High Court after analysing several judgments and legislative history behind the enactment of Clause 29-A in Article 366 of the Constitution of India held that the 'works contract' which is indivisible in nature can be bifurcated into two parts, one for "sale of goods" and other for "services", thereby making goods component of the contract liable to sales tax and service portion to service tax. The Hon'ble High Court relied upon State of Karnataka etc. vs. M/s Pro. Lab & others, 2015-VIL-

06-SC-LB wherein the proposition that processing of photography was a contract for service simpliciter with no element of goods at all was rejected, to held that in view of Clause 29-A in Article 366, the dominant intention behind such a contract, namely, whether it was for sale of goods or for services, is immaterial and not a good law anymore. The Hon'ble High Court also relied upon Safety Retreading Company Private Limited vs. Commissioner of Central Excise, Salem, (2017) 3 SCC 640 - 2017-VIL-06-SC-ST to held that gross turnover in respect of which the Appellant has paid sales tax/VAT under State Act as works contractor is excluded from purview of service tax. Accordingly, the Hon'ble High Court held that for the purposes of service tax the value of photography service can be determined separately from the value of certain consumables and chemicals which are used on the paper for printing the image. The Hon'ble High Court also held that such printed photograph can be said to be a 'deemed sale of goods' in terms of Article 366(29A)(b) of the Constitution and will qualify for deduction in value in terms of Notification No.12/2003-ST dated 20.6.2003. Thus, the Larger bench of the tribunal in the case of Aggarwal Colour Advance Photo System Vs. CCE Bhopal stands overruled.

M/s Agrawal Colour Advance Photo System vs. CCE, The High Court of Madhya Pradesh, decided in CEA No. 1/2013 dated 13.03.2020

4. **Whether the Service Recipient is right in reducing the value of consideration for the services rendered by the Service Provider on the count that the agreement provided for payment of service tax by the service provider even though the said services were exempted?**

Facts and Pleadings: Metro Waste Handling Pvt Ltd ("The Petitioner") entered into agreement with South Delhi Municipal Corporation ("SDMC") for providing the services of lifting/collecting of municipal solid waste/garbage/malba/drain silt etc. and dumping the same to nearby designated site. The agreed rate was of Rs.1934/- per day per vehicle for eight hours of working. The agreement stated that rate was all inclusive including service tax, labour cess, accident claims etc. The Petitioner raised invoices for the services provided without any reference to service tax payable and SDMC paid full payment. However, in 2015, SDMC, pursuant to the auditor's objection started deducting the amounts from the agreed rate on an alleged ground of non-application of service tax.

The SDMC argued that the consideration for the said services was fixed by considering the element of service tax payable on the said transaction and the same has also been specified in the agreement which stipulates that the rate was all inclusive including service tax, labour cess, accident claims etc. Thus, as no service tax was payable on the said transaction, there was no justification for the Petitioner to demand the said rate.

The Petitioner argued that the that the consideration that was payable by SDMC was Rs.1934/- is per day per vehicle for eight hours and there was nothing to show that any component of this amount included service tax. Hence, to claim that the Petitioner has not paid service tax and hence not entitled to component of service tax, is a false contention. The Petitioner further submitted that when the parties entered into the contract on 27.08.2012, it was known that there was no service tax payable for the services in question as Mega Exemption Notification No.12/2012, specifically under Clause 25 exempted waste collection or disposal services provided to the Government or local parties. Hence, the consideration that was agreed upon as payable to the petitioner, did not include any component of service tax as is being mischievously pleaded.

Judgement: The Hon'ble High Court perused the service agreement in dispute and concluded that there was no stipulation in the agreement that in case service tax, insurance, registration charges, parking charges, etc. are varied, the charges payable will be increased/decreased, which manifest that there is no stipulation in the agreement that the charges are in any manner linked with the service tax. Further, as both the parties were aware that in view of Mega Exemption Notification No.12/2012, service tax was not payable on the present transaction at any stage, SDMC cannot subsequently unilaterally change the terms of the contract and reduce the negotiated rate payable to the Petitioner. The Hon'ble High Court also held that while interpreting the terms of the contract, the court can get assistance from the conduct of the parties and by the conduct of the parties in present case, the Hon'ble High Court deduced that the parties understood that the service tax was not a component of the agreed rate. Accordingly, the court directed SDMC to make payment of the amount deducted from bill.

Metro Waste Handling Pvt Ltd vs. South Delhi Municipal Corporation, High Court of Delhi decided in W.P.(C) 12084/2016 & CM APPL.47741/2016 on 12.05.2020.

5. **Whether the income received towards salary as director of a private limited company shall be included in the aggregate value as supply of good or service under the CGST Act, 2017?**

Facts: Mr. Anil Kumar Agrawal ('Applicant') is an unregistered person and is in receipt of various types of income such as 1) salary of director, 2) interest income from different sources 3) rental income from commercial and residential property, etc. The Applicant inter alia sought advance ruling on whether the income received from the aforesaid sources shall be included in the aggregate value as supply of good or service under the CGST Act, 2017.

AAR Observations: The AAR observed that income received towards salary as director can be broadly classified into two categories, one as executive director and another one as nominated (non-executive) director. The AAR is of the view that income received towards salary as executive director of the company for the service provided by the Applicant as an employee to the employer cannot be considered as supply of goods or service under the provisions of CGST Act, 2017. Further, the AAR observed that in case of income received as nominated (non-executive) director of the company, the Applicant provides service to the company which is taxable under reverse charge mechanism in view of Section 9(3) of the CGST Act, 2017 read with Entry No. 6 of Notification No. 13/2017-CT (Rate) dated 28.06.2017. The AAR also observed that interest income being exempted supply and hence included in the aggregate value. On rental income, the AAR observed that as aggregate value includes both taxable as well as exempt supplies, rental income from commercial/residential property being taxable supply and services by way of renting of residential dwelling for use as residence being exempted supply are includible in the aggregate value.

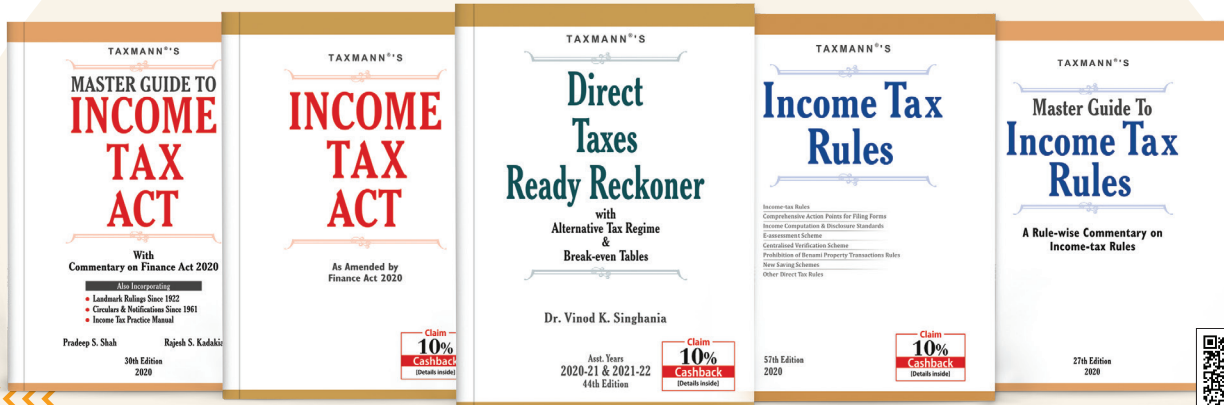
Mr. Anil Kumar Agrawal, The Authority for Advance Ruling in Karnataka, GST decided in Advance Ruling No. KAR ADRG 30/2020 dated 04.05.2020.



Finance Act 2020 Publications

(UPDATED TILL 17th MAY 2020)

As Amended by
Finance Act, 2020 Taxation and Other Laws
(Relaxation of Certain Provisions) Ordinance, 2020



Scan & Buy

Non-receipt of the CTC News must be notified within one month from the date of publication, which is 1st of Every Month.

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If undelivered, please return to :



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