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THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

CELEBRATING
151
BIRTH
ANNIVERSARY
ON 2ND OCTOBER 2020



“ Be the change that you wish to see in the world. ”

-Mahatma Gandhi

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Note : All the events will be held through virtual platform (Zoom App)

Kindly enrol at the earliest to avoid disappointment. Participation Fees to be paid online on the website : www.ctconline.org

Due to lock down, The Chamber's office is not fully functional.

If members have any query, kindly contact the following staff members.

Hitesh G. Shah : Chief Manager-9821889249 | Pradeep Nambiar - Dy Manager-Events-8080254129

Bindu Mistry : Dy Manager-Technical - 9637692312 Manisha Kasbe : Dy Manager- Accounts - 8104816841

INDIRECT TAXES

Chairman: Atul Mehta | **Vice-Chairman:** Sumit Jhunjhunwala
Convenors: Hemang Shah, Kush Vora, Keval Shah | **Advisor:** Rajiv Luthia

IDT Study Circle Meeting

Day & Date:
Tuesday, 6th October, 2020
Time:
05.00 p.m. - 07.00 p.m.

Sr. No.	Topic	Speakers
1	Issues for Supply of OIDAR Services under GST	CA A. R. Krishnan - Chairman Vinay Jain, Advocate - Group Leader

Fees	
IDT Study Circle Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (GST) = ₹ 472/-

STUDY CIRCLE & STUDY GROUP

Chairman: Ashok Sharma | **Co-Chairman:** Dilip Sanghvi | **Vice-Chairman:** Sanjay Choksi
Convenors: Dinesh Shah, Dipesh Vora, Dhaval Shah | **Advisor:** Keshav Bhujle, Akbar Merchant

Study Group Meeting

Day & Date:
Sunday, 11th October, 2020
Time:
11.30 a.m. - 01.30 p.m.

Sr. No.	Topic	Speaker
1	Recent Judgments under Income Tax	Mr. Vipul Joshi, Advocate

Fees	
Study Group Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (GST) = ₹ 472/-

Study Group Meeting

Day & Date:
Sunday, 1st November, 2020
Time:
11.30 a.m. - 01.30 p.m.

Sr. No.	Topic	Speaker
1	Recent Judgments under Income Tax	Mr. Ajay Singh, Advocate

Fees	
Study Group Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (GST) = ₹ 472/-

Comprehensive Analysis of Indian Real-Estate Sector (Covering Taxation, Accounting, RERA, and Legal Aspects)

(Jointly with Delhi Chapter and Foundation of Tax and Accounting Professionals)

Dates:

02, 03, 08, 09, 10, 16, 17,
23, 24, 30, 31-10-2020
06, 07-11-2020

Hyderabad Study Group (HSG) & Delhi Chapter of The Chamber of Tax Consultants jointly with Foundation of Tax and Accounting Professionals (FTAP) will be organising the Second-long duration knowledge sharing webinar series on “Comprehensive Analysis of Indian Real-Estate Sector (Covering Taxation, Accounting,

RERA, and Legal Aspects)” after overwhelming response for the Long duration FEMA course. The course will be conducted during October-November 2020 with renowned subject matter experts from across India.

Sr. No.	Days & Dates	Time	Topics	Speakers
1.	Friday, 2nd October, 2020	04.30 p.m.–08.00 p.m.	I) Keynote Address on important legal and taxation issues for real-estate sector in India II) Recent Issues in Real Estate Business and Tax Planning Avenues, Issues in Taxation of Rental Income in Income tax	V. Sridharan, Sr. Advocate Puneet Agarwal, Advocate K. Gopal, Advocate Shashank Dundu, Advocate
2.	Saturday, 3rd October, 2020	05.00 p.m.–08.00 p.m.	Real Estate transactions - Recent issues in Capital Gains and Section 56(2) of Income Tax Act, 1961	Dharan Gandhi, Advocate
3.	Thursday, 8th October, 2020	05.00 p.m.–08.00 p.m.	GST for builders - Old Scheme, New Scheme & Transition issues	Puneet Agarwal, Advocate
4.	Friday, 9th October, 2020	05.00 p.m.–08.00 p.m.	Understanding of GST implications on Builders after 01 April 2019 & Provisions for reversal of Input Tax Credit (Rule 42 & 43 reversals)	CA Ashok Batra
5.	Saturday, 10th October, 2020	05.00 p.m.–08.00 p.m.	Panel discussion on Income Tax & GST issues (Other than Joint development)	CA Abhay Desai CA Rajiv Jain
6.	Friday, 16th October, 2020	05.00 p.m.–08.00 p.m.	Ind-AS - Accounting & Disclosures for real estate projects (with emphasis on POC method) and Comparison of Ind-AS vs. Accounting Standards	Eminent Faculty
7.	Saturday, 17th October, 2020	05.00 p.m.–08.00 p.m.	GST implications on Joint Development Agreement from Builder and Landowner perspective	CA Naresh Sheth
8.	Friday, 23rd October, 2020	05.00 p.m.–08.00 p.m.	Income Tax implications on Joint Development Agreement from Builder and Landowner perspective	CA Jagdish Punjabi
9.	Saturday, 24th October, 2020	05.00 p.m.–08.00 p.m.	Panel discussion on Income Tax & GST issues on Joint development)	Shailesh Sheth, Advocate CA K. C. Devidas
10.	Friday, 30th October, 2020	05.00 p.m.–08.00 p.m.	Critical analysis of RERA law from Builder & Consumer perspective	CA Ankit Talati
11.	Saturday, 31st October, 2020	05.00 p.m.–08.00 p.m.	Role of Professionals & Analysis of various forms under RERA	Eminent Faculty
12.	Friday, 6th November, 2020	05.00 p.m.–08.00 p.m.	Legal issues in flow of title in real estate transactions and General errors in drafting of agreements in real estate transactions	Eminent Faculty
13.	Saturday, 7th November, 2020	10.00 a.m.–01.00 p.m. 05.00 p.m.–07.30 p.m.	Group Discussions & Paper Presentation	Eminent Faculty

Fees [For All Sessions]

CTC Members ₹ 1,500/- + ₹ 270/- (18% GST) = ₹ 1,770/-

Non-Members ₹ 2,500/- + ₹ 450/- (18% GST) = ₹ 2,950/-

Fees [For Single Session]

CTC or HSG Members ₹ 250/- + ₹ 45/- (18% GST) = ₹ 295/-

Non-Members ₹ 350/- + ₹ 63/- (18% GST) = ₹ 413/-

COMMERCIAL & ALLIED LAWS

Chairman: Dharan Gandhi | **Co-Chairman:** Makrand Joshi | **Vice Chairperson:** Mallika Devendra

Convenors: Gautam Mota, Tanmay Phadke | **Advisors:** K. K. Ramani, Sanjay Buch

Allied Law Study Circle Meeting

Day & Date:
Monday, 19th October, 2020
Time:
05.00 p.m. to 07.00 p.m.

We are all aware that the Consumer Protection Act 2019 received the assent of the President on the 9th August, 2019. This law has introduced several new developments and concepts. The new consumer law seeks to establish a new regulatory authority known as the Central Consumer Protection Authority having wide powers.

The new act introduces a unique provision for protecting the consumers against unfair contracts by declaring them to be illegal. This act brings in

the provisions for dealing with the misleading advertisement and has also brought in its sweep the celebrity endorsers.

The Act also covers e-commerce transactions. Stringent provisions have been laid down on the product liability. It is therefore important to understand the basics of this law which has far reaching ramifications. Accordingly, Allied Law Study Circle Meeting has been planned on the above subject.

Sr. No.	Topic	Speaker
1	Decoding the New Consumer Protection Act, 2019	CS Surendra Kanstiya , <i>Former Chairman, Consumer Guidance Society of India (CGSI)</i>

Fees	
Allied Law Study Circle Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-members	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-

DIRECT TAXES

Chairman: Dinesh Poddar | **Co-Chairman:** Ashok Mehta | **Vice-Chairman:** Abhitan Mehta

Convenors: Chintan Gandhi, Nimesh Chothani, Viraj Mehta | **Advisor:** Mahendra Sanghvi

Intensive Study Group Meeting

Day & Date:
Saturday, 24th October, 2020
Time:
06.00 p.m. to 08.00 p.m.

Sr. No.	Topic	Speaker
1	Recent Important Direct Tax Decisions	Amar Gahlot , <i>Advocate</i>

INTERNATIONAL TAXATION

Chairman: Rajesh L. Shah | **Vice-Chairman:** Kirit Dedhia, Shabbir Motorwala

Convenors: Isha Sekhri, Ronak Doshi, Kartik Mehta | **Course Co-ordinators:** Monika Wadhani, Namrata Dedhia

FEMA Study Circle Meeting

Day & Date:
Tuesday, 13th October, 2020
Time:
06.00 p.m. to 08.00 p.m.

Contravention of FEMA provisions can result in Compounding Proceedings. Compounding provides comfort to individuals and corporate community by minimizing transaction costs and regularizing the contravention. Analysis of Compounding Orders offers an ideal opportunity to gain insights into RBI's outlook

and interpretation of FEMA, and also the administrative practices adopted by RBI from time to time. The FEMA Study Circle of the Chamber of Tax Consultants is pleased to announce a Webinar on "Analysis of Important FEMA Compounding Orders", the details of which is given as under:

Sr. No.	Topic	Speaker
1	Analysis of Important FEMA Compounding Orders	Harshal Bhuta (FCA, ADIT, LLM)

Fees	
For Study Group Members	NIL
Others	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-

Input Tax Credit under GST

Dates:

 2nd, 3rd, 10th, 14th, 17th &
18th October, 2020

Input Tax Credit [“ITC”] is the heart of GST. The input credit mechanism has a legacy from Excise, VAT & Service Tax. GST law has added its own flavour with lot of spice. Thus, there are several dimensions and issues. To understand these issues the Indirect Taxes Committee of the Chamber of Tax Consultants is announcing a

Webinar Series on Input Tax Credit(ITC) for an Intensive Study on the subject. The Series would be divided into 6 sessions of 120 minutes each and in each session leading faculties would discuss various issues on each aspect of the ITC mechanism. The itinerary of Webinar series on ITC is given below.

Sr. No.	Days, Dates and Time	Topics	Speakers
1.	Friday, 2nd October, 2020 04.00 p.m. to 06.00 p.m.	Concept of Input Tax Credit, Eligibility and Conditions for taking Input Tax Credit [Sections 2(19), 2(59), 2(60), 2(62), 2(63), 16, and Rules 36, 37]	V. Raghuraman, Advocate
2.	Saturday, 3rd October, 2020 11.00 a.m. to 01.00 p.m.	Apportionment of Credit [Sections 17(1), 17(2), 17(3), 17(4), Rules 38, 42 and 43]	V. Sridharan, Advocate
3.	Saturday, 10th October, 2020 11.00 a.m. to 01.00 p.m.	Blocked Credit [Section 17(5)] & Blockage of ITC by Portal	M. H. Patil, Advocate
4.	Wednesday, 14th October, 2020 04.00 p.m. to 06.00 p.m.	Input Service Distribution (including comparison with Cross Charge) [Relevant definition under Section 2(61), Sections 20, 21 and Rules 39] Job Work related Input Tax Credit [Section 19 and Rule 45]	Harsh Shah, Advocate
5.	Saturday, 17th October, 2020 11.00 a.m. to 01.00 p.m.	Availability of credit in special circumstances [Section 18, Rule 40, Rule 41, Rule 41A and Rule 44]	CA Abhay Desai
6.	Sunday, 18th October, 2020 11.00 a.m. to 01.00 p.m.	Taking, Catching and Matching of Input Tax Credit and reversals [Sections 37, 38, 39, 41, 42, 43, 43A and Rules 59, 60, 61, 69, 70, 71 and 72]	CA Sunil Gabhawalla

Fees	
CTC Members	₹ 1,200/- + ₹ 216/- (18% GST) = ₹ 1,416/-
Non-Members	₹ 1,750/- + ₹ 315/- (18% GST) = ₹ 2,065/-
Any single session	₹ 400/- + ₹ 72/- (18% GST) = ₹ 472/-

STUDENT

Chairperson: Varsha Galvankar | **Vice-Chairperson:** Niyati Mankad | **Vice-Chairman:** Vitang Shah

Convenors: Raj Khona, Charmi Shah | **Advisor:** Ajay Singh

Legal Practice Orientation Course From Classroom to Courtroom

Dates:

20, 21, 22, 27, 28-11-2020 &
5, 6-12-2020

Who should attend?	Students, Young Professionals and anyone who wants to understand the legal field from a practitioner's perspective
The Objective	This course is designed to provide a glimpse into the practical aspects of the legal profession in India. Our distinguished speakers will acquaint the participants' concepts which are required to bridge the gap between academic knowledge and the actual practice of law.
Fees	Student Members: ₹ 400/- + ₹ 72/- (18% GST) = ₹ 472/- Non-Students: ₹ 800/- + ₹ 144/- (18% GST) = ₹ 944/-

Sr. No.	Particulars	DATES	TIME	Speakers
1.	Overview & Opportunities In Legal Field (2 Hrs)	Friday, 20th November, 2020	05:30 p.m.-08:00 p.m.	Panel of :- Mr. Beni Chatterjee, Senior Advocate Mr. Abhikalp Pratap Singh, AoR, SC Ms. Almitra Gupta, Associate at Linklaters, Singapore and Member of NY Bar Assoc.
2.	Interpretation of Statutes, Deed and Documents	Saturday, 21st November, 2020	05:30 p.m.-07:30 p.m.	Eminent speaker
3.	Law of Writs in India	Sunday, 22nd November, 2020	10:00 a.m.-12:00 noon	Eminent speaker
4.	Civil and Commercial Practice and Procedure	Friday, 27th November, 2020	05:30 p.m.-08:30 p.m.	Eminent speaker
5.	Criminal Practice and Procedure	Saturday, 28th November, 2020	05:30 p.m.-08:00 p.m.	Eminent speaker
6.	General Corporate Law Practice in India	Sunday, 29th November, 2020	10:00 a.m.-12:00 noon	Ms. Anu Iyer
7.	Alternate Dispute Resolutions	Saturday, 5th December, 2020	10:00 a.m.-01:00 p.m.	Mr. Ankoosh Mehta
8.	Drafting & Conveyancing	Sunday, 6th December, 2020	10:00 a.m.-12:00 noon	Mr. Murtuza Federal

BENGALURU STUDY GROUP

Convenors: Narendra Jain, Vishnu Bagri | **Co-ordinators:** Tata Krishna, Hanish S.

Bengaluru Study Group Meeting (Jointly with Delhi Chapter)

Day & Date:

Thursday, 15th October, 2020

Time:

06.00 p.m. to 08.00 p.m.

The Bengaluru Study Group (BSG) and the Delhi Chapter of the Chamber of Tax Consultants is organising a webinar on the topic of TCS provisions introduced effective October 1, 2020 – key issues. It is scheduled on October 15, 2020.

Sr. No.	Topic	Speaker
1.	TCS provisions introduced effective October 1, 2020 – key issues	CA Ketan Vajani
Fees		
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-	
Non-Members	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-	

Pune Study Group Meeting

Day & Date:
Saturday, 17th October, 2020
Time:
10.00 a.m. - 12.00 p.m.

Sr. No.	Topic	Group Leader
1.	Top 10 TP issues relevant in FY 19-20's TP certification	CA Chetan Rajput
Fees		
Pune Study Group Members	NIL	
Others	₹ 350/- + ₹ 63/- (18% GST) = ₹ 413/-	

Pune Study Group Meeting

Day & Date:
Saturday, 7th November, 2020
Time:
10.00 a.m. - 12.00 p.m.

Sr. No.	Topic	Group Leader
1.	Top 10 International Tax issues relevant for practicing professionals	CA Ajay Rotti
Fees		
Pune Study Group Members	NIL	
Others	₹ 350/- + ₹ 63/- (18% GST) = ₹ 413/-	

MEMBERSHIP & PUBLIC RELATIONS

Chairperson: Nishtha Pandya | **Co-Chairman:** Premal Gandhi | **Vice-Chairperson:** Ashita Shah
Convenors: Bandish Hemani, Tanvi Vora | **Advisor:** Hitesh R. Shah

Self-Awareness Series Meeting

Day & Date:
Friday, 16th October, 2020
Time:
05.30 p.m. - 07.00 p.m.

Paramhansa Yogananda -author of the spiritual classic Autobiography of a Yogi and founder of the Yogoda Satsanga Society of India, very aptly said:

"Worry is a psychophysical state of consciousness in which you are caught in feelings of helplessness and apprehension about some trouble you don't know how to get rid of."

He also tells us that it is like driving a car with brakes one that severely damages the whole mechanism. But as we all know, it is not easy to get rid of it! The basic issue is identity crisis! Man is a soul and has a body. When he properly places his sense of identity, he

experiences his native state of **Sat-Chit-Anand** – ever existing, ever conscious, ever-new Joy.

In these worrisome times, the Membership and Public Relations Committee of the Chamber of Tax Consultants is please to announce a webinar as part of the SAS initiative on **'Riding worries and living in ever new joy'**. The speaker of this event will be **Swami Suddhananda Giri**, a senior monk of Yogoda Satsanga Society of India,

The details of webinar are as follows:

Sr. No.	Topic	Speaker
1.	Ridding Worries and Living in Ever New Joy	Swami Suddhananda Giri
Fees		
SAS Members	NIL	
Non SAS Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-	
Non Members	₹ 300/- + ₹ 54 (18% GST) = ₹ 354/-	

Study Circle Meeting

Day & Date:
Friday, 6th November, 2020
Time:
05.00 p.m. to 07.00 p.m.

Sr. No.	Topic	Speaker
1.	Law relating to HUF – with specific reference to recent Supreme Court judgment	Bharat Raichandani, Advocate

IMPORTANT DECISIONS UNDER GSTBy Vinay Jain & Sachin Mishra, *Advocates*

1. Whether supply of SKID equipment to facilitate distribution of gas to consumers will be liable to service tax under ‘Supply of tangible goods for use’ under Section 65(105) (zzzzj) of the Finance Act, 1994?

Facts and Pleadings: M/s. Adani Gas Ltd. (hereinafter referred to as the ‘Appellant’) was in the business of distributing Compressed Natural Gas and Piped Natural Gas (“PNG”) to industrial, commercial, and domestic consumers. To facilitate the distribution of gas, the Appellant installed an equipment described as SKID at their customer’s sites. The SKID equipment consisted of isolation valves, filters, regulators and electronic meters. The equipment regulated the supply of PNG and recorded the quantity consumed by the customer, which was then used for billing purposes. The Appellant entered into a Gas Sales Agreement (“GSA”) with the consumers to whom PNG was supplied.

The Revenue alleged that SKID equipment was installed, maintained and repaired by the Appellant at the cost of the customer and neither ownership nor possession of the equipment was transferred to the customer. Therefore, as per Revenue, conditions of ‘supply of tangible goods for use’ under Section

65(105) (zzzzj) of the Finance Act, 1994 were satisfied. Revenue also argued that since the Appellant had not paid VAT for the charges collected on supply of pipelines and the equipment, this transaction must be treated as a service.

The Appellant argued that in the present case, there was no transfer of the right to use the equipment nor was there any element of service in the supply of the equipment therefore, the said supply of SKID equipment will not be covered under ‘supply of tangible goods for use’ under Section 65(105) (zzzzj) of the Finance Act, 1994. The Appellant also argued that the equipment was installed by the Appellant as a seller of gas and was not used by the customer and the contractual rights to the customer, including the right to verify and dispute the bill, must be kept distinct from the use of the SKID equipment. The Appellant also argued that amounts collected under the head of ‘gas connection charges’ were in the nature of interest-free security deposits, which were required to be refunded in part, or in full, depending on the duration of the contract which determined depreciation and they were not collected as a consideration for providing a service.

Judgement: The Hon'ble Supreme Court held that as there was no transfer of ownership or possession of SKID equipment by the assessee to its customers, thus, the ingredient of not transferring the ownership, possession or effective control of the goods under Section 65(105)(zzzzj) of the Finance Act, 1994 was satisfied. The Hon'ble Supreme Court observed that the expression 'use' does not have a fixed meaning and the content of the expression must be based on the context in which the expression is adopted. The expression 'use' in the present context signified the application of the goods for the purpose for which they were supplied under the terms of the contract. The Hon'ble Supreme Court further observed that the SKID equipment ensured benefit to both seller and customer and the seller was concerned with the precise quantification of the gas supplied while the customer had an interest in ensuring the safety of its facilities and that the billing was based on the correct quantity. The Hon'ble Supreme Court further observed that Section 65(105)(zzzzj) did not require exclusivity of use. The Hon'ble Supreme Court held that the extent of the refund of gas connection charges collected from the consumers depended on their usage and the percentage of refund varied from customer to customer, while the remaining amount was retained by the assessee, as regards the domestic customers, no deposit receipts were provided and accordingly, the Appellant's argument that the charges constituted a refundable security deposit was hence rejected.

Commissioner of Service Tax, Ahmedabad v. Adani Gas Ltd., Supreme Court Judgment dated 28.8.2020 in Civil Appeal No. 2633 of 2020.

2. Whether the amended Rule 89(5) of the CGST Rules, 2017 is ultra vires Section 54(3) of the CGST Act, 2017 and the Constitution of India? Whether clause (ii) of proviso to Section 54(3) of the CGST Act is ultra vires the Constitution of India?

Facts and Pleadings: The Petitioners in the batch of Writ Petitions before the Madras High Court were engaged in businesses wherein the rate of tax on inputs/input services exceeded the rate of tax on output supplies. This resulted in a 'inverted duty structure' leading to accumulation of Input Tax Credit ('ITC') in their hands. Clause (ii) of proviso to Section 54(3) of the CGST Act provides that refund is allowed where the unutilised credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. The manner in which such refund is allowable is laid down in Rule 89(5) of the CGST Rules. Since its introduction, the Rule has undergone several changes. Aggrieved by the amendment made vide Notification 21/2018-CT dated 18.4.2018 to the extent the refund was not allowed on ITC in respect of input services, the validity of amended Rule 89(5) as being ultra vires Section 54(3) of the CGST Act was challenged while also challenging the constitutional validity of Clause (ii) of proviso to Section 54(3).

The Petitioner argued that Proviso to Section 54(3) ought to be construed by bearing in mind the words of Section 54(3) which states that refund of 'any unutilised ITC' would be available. The Petitioner submitted that the proviso acts as an entry barrier and once the entry barrier is crossed, the entitlement to refund would be governed by Section 54(3) and not by the proviso. The Petitioner submitted

further submitted that Clause (i) of proviso to Section 54(3) of the CGST Act which deals with refund of unutilised ITC in case of zero-rated supplies allows refund of both inputs and input services which indicates that the legislative intent is not to limit such refund only to input goods. Reliance was placed on VKC Footsteps India Pvt. Ltd. v. Union of India [2020 VIL 340 Guj] wherein it was held that the amended Rule 89(5) is ultra vires Section 54(3). With regards to unconstitutionality of Proviso to Section 54 (3), the Petitioner argued that if clause (ii) of proviso to Section 54(3) of the CGST Act is interpreted as being applicable only to assesseees who use input goods and not to those who use input services, it would amount to discrimination between persons who are similarly situated by making an invidious classification. Goods and services are treated in identical fashion with regard to all the aforesaid four elements of taxation i.e., taxable event, the taxable person, the rate of tax and the measure of tax. The differentiation between goods and services, in GST legislation, is only from the viewpoint of administrative convenience. In order to uphold the constitutional validity of the Section, the principle of reading down should be resorted to. Thus, the word ‘inputs’ must be read in its wide, common parlance meaning, to include input services as well. The Petitioner argued that as per Article 38 of the Constitution of India, the legislation should be interpreted in such a manner that inequalities are mitigated and this principle is applicable even in the context of tax legislations.

The Department argued that historically, goods and services have been subjected to different treatment and merely because the GST provisions deal with both goods and services, it cannot be concluded that all the

benefits that are available to a person who avails input goods should be extended to those who avail input services. The Department argued that the expression ‘where the credit has accumulated on account of rate of tax on inputs’ qualifies and curtails the expression ‘refund of any unutilised input tax credit’ in Section 54(3). The Department argued that the Rule 89(5) merely supplements Section 54(3) (ii) and that it fulfils the purpose of eliminating arbitrariness in determining the entitlement to refund on the basis of Section 54(3)(ii). The Department further argued that the word ‘inputs’ in Section 54(3)(ii) of the CGST Act is intended to carry the meaning ascribed to the said word in Section 2(59) of the CGST Act. The Department further submitted that the Gujarat High Court in the case of VKC Footsteps India failed to consider the proviso to Section 54(3). The Department further argued that the classification of registered persons into those who are entitled to a refund of unutilised input tax credit and those who are not by differentiating between those who procure input goods and input services is legitimate as both the CGST Act as well as the Constitution clearly differentiate between goods and services.

Judgement: The Hon’ble High Court observed that though Section 54(3) allows refund of ‘any unutilised ITC’, clause (ii) of proviso to Section 54(3) uses the words ‘accumulated on account of’ rate of tax on inputs being higher than rate of tax on output supplies. The Hon’ble High Court held that if the proviso is interpreted merely to be a condition to claim refund of entire unutilised ITC, the words ‘accumulated on account of’ would become redundant. The Hon’ble High Court observed that the proviso, in addition to prescribing a condition also performs the function of limiting the quantity

of refund. Accordingly, Hon'ble High Court held that Rule 89(5), as amended is thus within the rule making power under Section 164 and is in line with Section 54(3). The Hon'ble High Court observed that the unamended Rule 89(5) wherein refund was available on both inputs and input services exceeded the scope of Section 54(3). The Hon'ble High Court further observed that aforesaid decision of the Gujarat High Court did not consider the scope, function and impact of proviso to Section 54(3). The Hon'ble High Court observed that under GST law, goods and services are treated similarly in certain respects but differently in other respects and even with regard to rate of tax, almost all services attract a uniform rate of 18%, whereas goods are taxed at rates that vary considerably. The Hon'ble High Court further observed that refund claim, other than a claim for excessive taxes paid inadvertently on account of the erroneous interpretation of applicable law or the declaration of a provision as unconstitutional is in the nature of a benefit or concession and right of refund is purely statutory and cannot be availed of except strictly in accordance with the prescribed conditions. The Hon'ble High Court held that the Parliament has wide latitude for classification and thus, the non-conferment of the right of refund to the unutilised input tax credit from the procurement of input services cannot be said to be violating Article 14 of the Constitution of India.

Transtonneltroy Afcons Joint Venture and Ors. v. UOI, Madras High Court Judgment dated 21.9.2020 in WP. No. 8596 of 2019 and other Petitions.

3. Whether re-insurance services are used for provision of insurance services and,

therefore, would qualify as 'input service' for the Appellant? Whether the amendment to the definition of 'input service' in Rule 2(1) w.e.f. 1.4.2012 would affect the eligibility of the Appellant to Cenvat credit on reinsurance services during the relevant period? Whether the Appellant is eligible to avail Cenvat credit of re-insurance service provided by pool member companies under the Insurance Pool?

Facts and Pleadings: M/s. Shri Ram General Insurance Company Ltd. (hereinafter referred to as 'the Appellants') is engaged in providing general insurance policies like motor insurance, fire insurance, marine insurance and others. The Appellant is also availing re-insurance service from Indian as well as foreign re-insurance companies in respect of these insurance policies and it has been availing Cenvat credit of service tax paid on such re-insurance services.

The department alleged that the re-insurance service is not essential for providing insurance service as the Appellant can provide insurance service without obtaining re-insurance service. The department further alleged that re-insurance services were obtained by the Appellant after issuance of insurance policies to the customers, i.e. after provision of 'output services' and thus, the same cannot be said to have been used for rendering 'output services'. The department argued that re-insurance services pertaining to motor vehicles have been included in the definition of 'input service' only by way of an amendment of Rule 2(1) of the Cenvat Credit Rules, 2004 w.e.f. 1.4.2012 and thus, will not qualify as 'input service' prior to the said date. Further, with the said amendment, reinsurance services pertaining to

other than motor vehicles is also not eligible for credit. The department further alleged that the invoices issued by the pool member companies are not proper documents, as they have been issued without providing any service and without any payment of premium.

The Appellant submitted that re-insurance services are used for provision of insurance services and thus, qualify as 'input service' for the Appellant on the count that obtaining re-insurance service is not only a prudent business requirement but also a statutory requirement under the provisions of the General Insurance (Re-insurance) Regulations 2000. In this regard, the Appellant relied upon CCE vs. PNB Metlife India Insurance Co. Ltd., 2015 (39) S.T.R. 561 (Kar.). The Appellants also argued that the amendment in Rule 2 (l) of the Cenvat Credit Rules, 2004 does not affect the eligibility of the Appellant to avail Cenvat credit on re-insurance services. The Appellant submitted that the exclusion clause under 'input service', cannot be read to cover re-insurance services since they are not insurance services in respect of a motor vehicle. The Appellants also argued that the Appellant is eligible to avail Cenvat credit on re-insurance services provided by member companies under the Indian Motor Third Party Insurance Pool that has been created under Section 34 of the Insurance Act.

Judgment: The Hon'ble CESTAT held that re-insurance services are used by the insurer for providing output insurance service on the count that the re-insurers have paid service tax on the same and charged the same to the Appellant. The Hon'ble CESTAT observed that without the use of such re-insurance

services, it may not be commercially prudent for any insurance company to assume such high risks under the original insurance policies. The Hon'ble CESTAT held that the insurance policy has a direct correlation with the respective reinsurance obtained by the Appellant and therefore, the fact that re-insurance services were obtained by the Appellant after issuance of insurance policies to the customers is irrelevant. The Hon'ble CESTAT further held that the re-insurance service is a statutory requirement and without obtaining re-insurance services, the Appellant cannot be permitted to engage in insurance business. The Hon'ble CESTAT further held that amendment w.e.f. 1.4.2012 under 'input service' in rule 2(l) would not affect the eligibility to Cenvat credit on **reinsurance services as exclusion clause cannot be read to cover re-insurance services, which are not insurance services in respect of a motor vehicle.** In other words, the reinsurance services are insurance of insurance and not insurance of motor vehicles. Further, the Hon'ble CESTAT observed that under the pool arrangement, each company pays the re-insurance premium after deducting the amount due from the other member companies and the service tax liability stands discharged on the whole re-insurance premium paid to the other members and therefore, the invoices issued are for provision of service. Therefore, Hon'ble CESTAT held that the Appellant would be eligible to avail the Cenvat credit of service tax paid thereon.

M/s. Shriram General Insurance Company Ltd. v. CCE, Jaipur, CESTAT New Delhi decided on dated 4.3.2020 in Final Order No. 50709-50711/2020.

4. **Whether the activity of collection of octroi on entry of goods for consumption and use in the municipal area on behalf of Municipal Corporation of Greater Mumbai will be taxable under 'port service' under section 65(105)(zn) of the Finance Act, 1994?**

Facts and Pleadings: M/s. Mumbai Port Trust (hereinafter referred to as 'Appellant') was vested with the responsibility under Mumbai Municipal Corporation (Levy of Octroi) Rules, 1965 to collect octroi on entry of goods for consumption and use in the municipal area for which 3% of such collections was retained as recompense.

According to the department, the said activity will be taxable under 'port services' under section 65(105)(zn) of the Finance Act, 1994. The department alleged that the Appellant is not a government/local authority but a trust which is a commercial organisation and therefore cannot provide sovereign function. The department also alleged that the octroi was not a collection of the government but is levied by the local bodies to fund its operations. The department relied upon *Kandla Port Trust v. CCE, 2019 (24) GSTL 422 (Tri-Ahmd)* to allege that any fees charged in relation to goods are chargeable to service tax for being within the ambit of 'port services'.

The Appellant contended that the collection of taxes by local bodies is no less of a sovereign function than that of either the government. Furthermore, the Appellant contended that it merely acts as a pass through for the Municipal Corporation of Greater Mumbai and that they merely retain the administrative expenses towards collection, that otherwise would have been borne by the municipal authority.

Therefore, the same cannot be considered as a consideration, arising from offer and acceptance, for rendering of 'port service' but mere transfer arrangements between two governments.

Judgement: The Hon'ble CESTAT observed that the collection of octroi for the entry and consumption of specified goods in Greater Mumbai has been legislated under the Mumbai Municipal Corporation Act, 1888 and the Mumbai Municipal Corporation (Levy of Octroi) Rules, 1965. The Hon'ble CESTAT further observed that the Appellant is a statutory authority established under law and subsequently incorporated within the ambit of Major Port Trusts Act, 1963 and the Appellant was one of the three agencies of the Central Government empowered to enforce collection of the octroi. The Hon'ble CESTAT observed that the Appellants are surely undertaking sovereign functions very much similar to the empowerment of the officers of central excise to collect service tax. The Hon'ble CESTAT held that retention of a portion of such collection, is also similar to the allocation of estimates to the field formations of the CBEC for meeting administrative expenses and therefore, same cannot be considered as consideration for rendition of any service. Accordingly, the Hon'ble CESTAT held that the collection of octroi by the Appellant is in pursuance of discharge of sovereign privilege and therefore not taxable.

M/s. Traffic Manager, Mumbai Port Trust vs. CST Mumbai, CESTAT, Mumbai, decided on 23.07.2020 in Final Order No: A/85644/2020

5. **(I) Whether service provided by Hyatt International to Asian Hotels Ltd**

(hereinafter as ‘The Appellant’) for operation and management of its hotel fall under “management consultant”? (II) Whether Service Tax is leviable on the expenses reimbursed to Hyatt International under ‘business auxiliary service’? (III) Whether amount paid to Hyatt International for maintenance and repair of software will be taxable under ‘maintenance or repair services’ prior to 1.6.2007? (IV) Whether promotional activity undertaken for Hyatt Chain of hotels will be covered under ‘business auxiliary service’? (V) Whether currency conversion charges leviable to Service Tax under ‘business auxiliary services’? (VI) Whether miscellaneous amount received from guests in relation to Business Centre will be covered under ‘convention services’?

Facts and Pleadings: (I) The Appellant had entered into agreement with Hyatt International for operation and management of Appellant’s hotel, for which the Appellant paid a fee to Hyatt International. (II) The Appellant had also agreed to reimburse Hyatt International of the expenses incurred by it in running the Hotel. (III) The Appellant had also paid Hyatt International for maintenance and repair of software. (IV) M/s. Hyatt Chain Services Ltd. undertakes certain promotion activities for the Hyatt Chain of hotels (including the Appellant) as a whole and thereafter passes on the cost of the same to various Hyatt hotels on actual basis without any mark up. (V) The Appellants were also collecting currency conversion charges from hotel guests for conversion of currency. (VI) The Appellant received certain miscellaneous amount from guests towards courier, photocopy, lost key, secretarial, etc. in relation to Business Centre.

(I) According to department, the aforesaid service provided by Hyatt International to the Appellant would fall under “management consultant’ service. (II) The department has claimed Service Tax on the expenses reimbursed to Hyatt International under ‘business auxiliary service’. (III) The Department claimed Service Tax on expenses paid towards maintenance of software under ‘repair or maintenance services’ as a service recipient for the period 18.8.2006 to 31.3.2007. (IV) The department alleged that the M/s Hyatt Chain Services Ltd. undertakes certain promotion activities for the Hyatt Chain of hotels which is taxable under ‘business auxiliary service’. (V) Department claimed Service Tax on conversion charges of currency received from hotel guests under ‘business auxiliary services’ as a service provider. (VI) The department claimed Service Tax on the miscellaneous income from Business Centre on the ground that it is part and parcel of ‘convention’ service as a service provider.

(I) The Appellant submitted that since Hyatt International actually operates the Hotel, the service is not covered under ‘management consultant’ service-relied on Basti Sugar Mills Company Ltd. vs. CCE, 2007 (7) STR 431 (Tri-Del) affirmed by Supreme Court in 2012 (25) STR J 154 (SC) and Indian Hotels Company Ltd. vs. CST, 2016 (41) STR 913 (Tri.-Mumbai). (II) The Appellant submitted that the expenses reimbursed are not towards provision of any ‘business auxiliary service’, but are part and parcel of the overall agreement for operation and management of the hotel. The Appellant submitted that such reimbursements are made to Hyatt International on actual basis and do not form part of value of any taxable service-reliance placed on Intercontinental

Consultants & Technocrats Private Limited vs. UOI, 2013 (29) STR 9 (Del.) affirmed by Supreme Court in 2018 (10) GSTL 401 (SC). (III) The Appellant contended that maintenance of software is not covered under 'maintenance or repair services' prior to 1.6.2007, as 'computer software' was introduced only from 1.6.2007 via an Explanation in definition 'goods'. (IV) The Appellant submitted that M/s. Hyatt Chain Services Ltd. merely undertakes certain promotion activities for the Hyatt Chain of hotels as a whole and thereafter passes on the cost of the same to various Hyatt hotels on actual basis without any mark up. It is merely sharing of joint promotional expenses at a global level. In any case, the relation between the Appellant, other Hyatt hotels and M/s. Hyatt Chain Services Ltd. is not that of a service provider and client. Thus, the activities undertaken by M/s. Hyatt Chain Services Ltd. are not covered under 'business auxiliary service'. (V) The Appellants claimed that the currency conversion charges cannot be subjected to Service Tax as these charges are received from hotel guests for conversion of currency and service is rendered by the Appellant independently and not on behalf of anybody or in the capacity of an agent. Further, the Appellant also did not even know the purpose for such conversion by customer hence the same cannot be treated as auxiliary to business of the customer. Customer may or may not be using the same for business purpose (VI) The Appellant claimed that miscellaneous amount received from guests do not have any connection with convention centre service and the Appellant had duly discharged Service Tax on amount charged for letting convention centre.

Judgement: (I) The Hon'ble CESTAT held that Hyatt International is not providing any service of a 'management consultant' to the Appellant as it cannot be said to be providing any advice, consultancy or technical assistance rather it is itself running the hotel. (II) The Hon'ble CESTAT observed that Section 67 that only such amount is subject to service tax which represents consideration for provision of service and any other amount which is not a consideration for provision of service cannot be subjected to service tax. Further, the Hon'ble CESTAT relied on Intercontinental Consultants Case to held that expenses which are reimbursed, cannot be subjected to levy of Service Tax under 'business auxiliary service'. (III) The Hon'ble CESTAT relied on Kasturi & Sons Ltd. 2011-TIOL-240-HC-MAD-ST, 'Computer Software' was only included via an Explanation to definition of goods w.e.f. 1.6.2007 and thus, any service relating to software would not be subject to levy of Service Tax prior to 1.6.2007 under 'management, maintenance or repair' services. (IV) The Hon'ble CESTAT relied on Historic Resort Hotels Pvt. Ltd., 2017-TIOL-3660-CESTAT-DEL and M/s. Gujarat State Fertilizers and Chemicals Ltd. & Anr. Vs. CCE, 2016-TIOL-198-SC-ST, to held that sharing of expenditure for common facilities cannot be treated as service by one to another and therefore set aside the demand of service tax on promotional activities undertaken by M/s. Hyatt Chain Services Ltd. for the Hyatt Chain of hotels under 'business auxiliary service'. (V) The Hon'ble CESTAT relied upon M/s. Marudhara Motors, Final Order No. ST/58225/2017 dated 1.12.2017 to held that currency conversion charges were claimed from the customers and since there was no involvement of any third party on

whose behalf service could be said to have been provided to the customers, Service Tax could not have been demanded under 'business auxiliary services'. (VI) The Hon'ble CESTAT observed that the aforesaid miscellaneous charges collected by the Appellant from the

hotel guests do not in any manner whatsoever relate to holding of a convention and therefore set aside the demand on the same.

M/s. Asian Hotels Ltd. vs. CST, CESTAT New Delhi, decided on 16.09.2019 in Final Order No. 51223/2019.

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UNDER SEMINAR PRESENTATIONS - UNREPORTED DECISIONS

UNREPORTED TRIBUNAL DECISION

By Ajay R. Singh, *Advocates*

1. **S. 68 r.w.s. 115BBE : Cash Credit - demonetization of currency - unaccounted sales only profit therefrom could only be taxed as income of assessee:**

It is evident from entries found in cash book and from statement recorded from assessee in course of survey that assessee purchased gold in period of demonetization which was obviously for sale to persons on receiving cash from them as the same is normal practice of gold trade. The gold purchased in period of demonetization was towards agreed sale to persons on receiving amount there from those persons. Thus the source of payment for purchase of gold is out of amount received from its sales and so it is to be treated as properly explained. It is only profit on sale of said purchased gold which is income of assessee which was undisclosed income of assessee and the same could only be subjected to tax. It is settled law that in case of unaccounted sales only profit therefrom could only be taxed as income of assessee.

Nawal Kishore Soni vs. ACIT (ITAT Jaipur)
dt: September 15, 2020; ITA No. 1307, 1308,

& 1309/JP/2019; Assessment Years: 2015-16 to 2017-18

2. **S. 56(2)(viib)/Rule 11UA: Fair market value of shares - assessee are free to adopt any one of the methods :**

The appellant has challenged the addition of ₹ 3,96,54,531 u/s. 56(2)(viib) of the Act by the AO on account of issuance of shares on basis of Discounted Free Cash Flow Method instead of Net asset method.

Section 56 allows the assessee to adopt one of the methods of their choice. But, the AO held that the assessee should have adopted only one method for determining the value of the shares. In our opinion, it was beyond the jurisdiction of the AO to insist upon a particular system, especially the Act allows to choose one of the two methods. Until and unless the legislature amends the provision of the Act and prescribes only one method for valuation of the shares, the assessee are free to adopt any one of the methods

Karmic Labs Pvt. Ltd. v/s. ITO, Ward-15(2)
(1); ITA No. 3955/Mum/2018 Assessment
Year: 2014-15; Mumbai ITAT; dt: 28/07/2020

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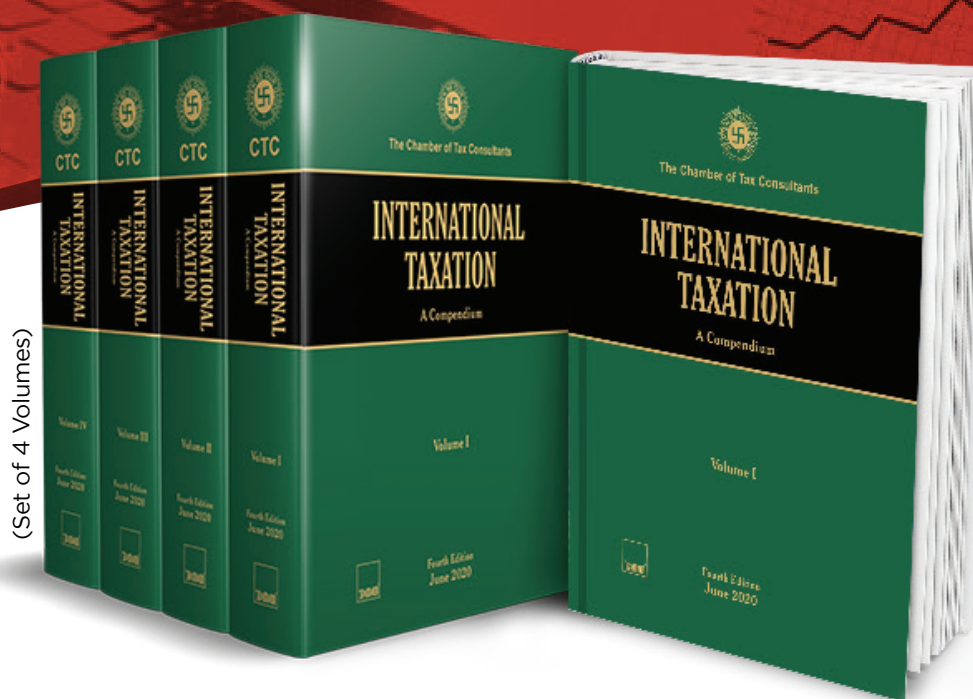
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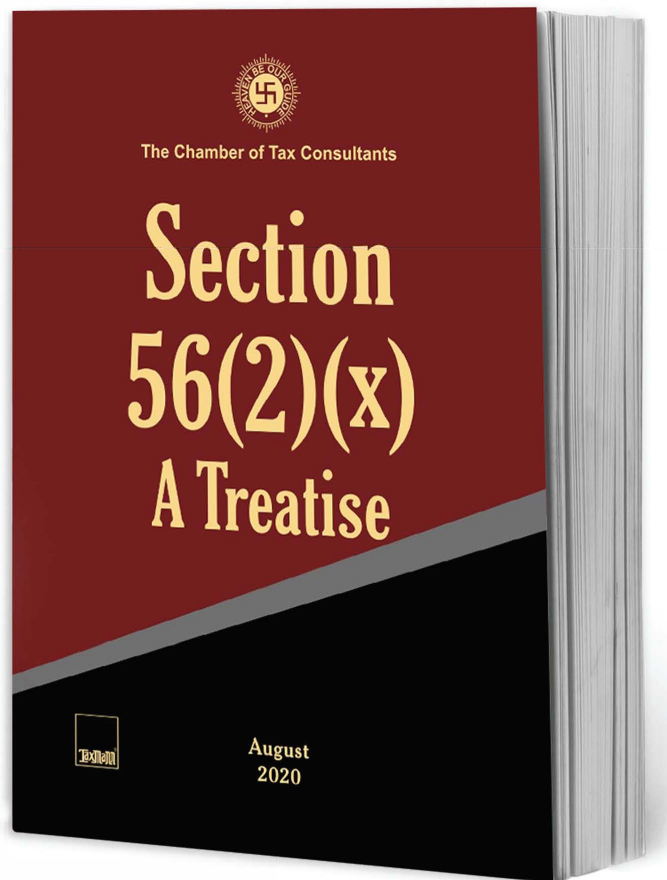
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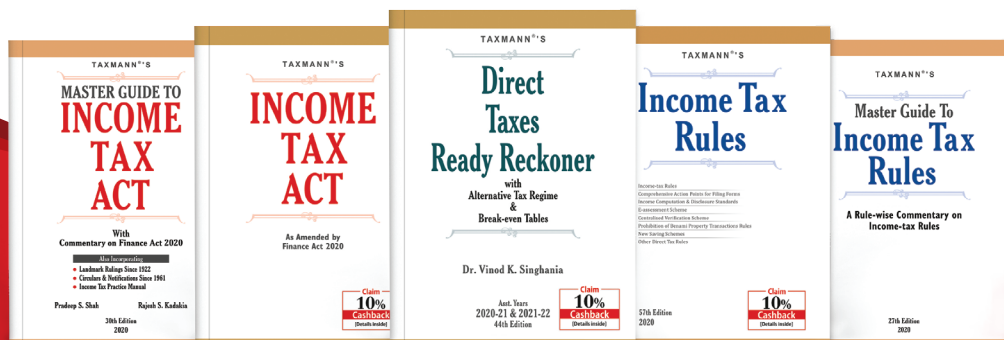
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