



ज्ञानं परमं बलम्

THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

NOVEMBER 2021



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सुखदुःखे समे कृत्वा लाभालाभौ जयाजयौ ।
ततो युद्धाय युज्यस्व नैवं पापमवाप्स्यसि ॥ 38॥

Fight for the sake of duty, treating alike happiness and distress,
loss and gain, victory and defeat. Fulfilling your responsibility in
this way, you will never incur sin.



CONTENTS

SR. NO.	DATE	COMMITTEE	PROGRAMME DESCRIPTION	PG. NO.
1	11-11-2021	Study Circle & Study Group	Study Circle Meeting on Issues in Income Computation & Disclosure Standards (ICDS) V To X	4
2	12-11-2021	Bengaluru Study Group	Bengaluru SG Meeting on Not for Profit Organisations – Recent Regulatory & Tax Developments	
3	13-11-2021	Hyderabad Study Group	Hyderabad SG Meeting on Issues in Indirect Taxation of Pharma Industry	7
4	19-11-2021	Bengaluru Study Group	Bengaluru SG Meeting on Newly Introduced TDS Provisions of Section 194-O, 194-Q, 206AB & 206CCA – Some Issues	4
5	19-11-2021 20-11-2021 26-11-2021 27-11-2021	International Taxation	Online Class Room Course for Transfer Pricing 2021	5
6	24-11-2021	International Taxation	International Taxation SC Meeting on Discussion on MLI with case studies	6
7	26-11-2021, 27-11-2021	Indirect Taxes	Workshop on Customs Duties & Foreign Trade Policy (Jointly With Bombay Chartered Accountants' Society)	3
8	29-11-2021	Direct Taxes	Intensive Study Group Meeting on Recent Case Laws under Income-tax Act	7
9	30-11-2021	Membership & Public Relations	SAS Meeting on Discovering Internal Strength & Attaining Growth through Travel & Exploration	4
10	03-12-2021 04-12-2021	Direct Taxes	Webinar Series on Capital Gains - in Controversial Scenarios	6
11	03, 04-12-2021 10, 11-12-2021	Accounting & Auditing	Ind AS Programme - Practical Aspects	8

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

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

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

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



Indirect Taxes

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

Days & Dates

Friday, 26th November, 2021 &
Saturday, 27th November, 2021

Time

04.00 p.m. to 08.30 p.m. on

Friday

09.30 a.m to 02.00 p.m. on

Saturday

Workshop on Customs Duties & Foreign Trade Policy (Jointly With Bombay Chartered Accountants' Society)

After the introduction of GST, many indirect taxes vanished and got subsumed into one single tax. However, Customs Duties – one of the oldest indirect taxes, still finds its unique place in the arena of indirect taxes and international trade.

The Chamber of Tax Consultants, jointly with Bombay Chartered Accountants' Society organized a power-packed workshop on the important concepts of Customs Law and Foreign Trade Policy. Eminent subject matter experts will share the conceptual and practical aspects as well its interplay with GST. This unique program is going to be conducted over a

virtual platform to provide you with the convenience of attending from your location.

It is now incumbent on GST professional to have reasonable working knowledge of Customs and FTP to provide Qualitative and comprehensive services to clients. It is a golden opportunity for GST Practitioners to learn the basic concepts of Customs and FTP from leading experts in the field and to venture into this challenging and rewarding area of practice. A must-attend for all tax professionals, CFOs, Tax heads and persons involved in international trade.

Sr. No.	Topics	Speakers
1.	Session – I – Levy and chargeability under the Customs Act and procedures for Import and Export along with interplay with GST	V. Sridharan , <i>Sr. Advocate</i>
2	Session – II – Classification and Scheme of Customs Tariff Act and Principles of Customs Valuation and SVB	V. Raghuraman , <i>Advocate</i>
3	Session III – Specific Provisions such as bonding, warehousing and other miscellaneous topics including EOU and SEZ	Rohit Jain , <i>Advocate</i>
4	Session IV – Important concepts under Foreign Trade Policies, various incentive schemes and issues – Bilateral and Multi-lateral Agreements	Sudhakar Kasture , <i>Advocate</i>

Fees

CTC Members	₹ 750/- + ₹ 135/- (18% GST) = ₹ 885/-
Non-Members	₹ 1,000/- + ₹ 180/- (18% GST) = ₹ 1,180/-


Bengaluru Study Group

Co-ordinator: Sandeep C.; Convenor: Bharat L.

Day & Date
 Friday, 19th November, 2021
 Time
 05.15 p.m. to 06.30 p.m.

Bengaluru SG Meeting on Newly Introduced TDS Provisions of Section 194-O, 194-Q, 206AB & 206CCA – Some Issues

SPEAKER

CA Narendra Jain, Bangalore

The Bengaluru Study Group (BSG) of the Chamber of Tax Consultants is organising a webinar on the topic of "Newly introduced TDS provisions of section 194-O, 194-Q,

206AB and 206CCA – Some issues". It is scheduled on 19th November, 2021.

Fees	
Bengaluru Study Group Member	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-


Membership & Public Relations

Chairperson: Nishtha Pandya; Co-Chairman: Premal Gandhi; Vice-Chairperson: Ashita Shah; Convenors: Tanvi Vora, Bandish Hemani; Advisor: Sujal Shah

Day & Date
 Tuesday, 30th November, 2021
 Time
 05.30 p.m. to 07.00 p.m.

SAS Meeting on Discovering Internal Strength & Attaining Growth through Travel & Exploration

SPEAKER

Mr Himanshu Prem Joshi, (Renowned author, Freelance Educator, Short Film Maker on FAITH in NATURE' produced by North South Productions (BBC Channel 4) and has developed Bhavan's Nature Adventure Centre in Mumbai)

All are cordially invited

We are travellers on this planet be it a professional or non-professional. Where did we come from; where will we go is a matter unknown to all of us. Through travel, our feet learn how to form their own paths and our heart begins to beat to a different rhythm. The more time we spend away from professional and personal routines, the more we learn to embrace the unknown and abandon ourselves into the great vastness of the universe. Travelling and exploring nature teaches us that life does not have to progress in a linear manner.

To throw light on the deep aspects of travelling and attaining self-growth, Membership and Public Relations Committee has organised

a workshop on Discovering Internal Strength & Attaining Growth through Travel & Exploration.

What will you learn in this workshop?

Delving into various levels of physical, material, mental, spiritual and soulful growth, we propose to discuss aspects of outdoor travel and the simultaneous journey within deep inside the SELF.

The speaker will share his experience of various Himalayan trips with the beautiful photographs' slide show.


Study Circle & Study Group

Chairman: Ashok Sharma; Vice-Chairman: Sanjay Chokshi; Convenors: Dinesh R. Shah, Dipesh Vora, Dhaval Shah; Advisor: Keshav Bhujle

Day & Date
 Thursday, 11th November, 2021
 Time
 05.00 p.m. to 07.45 p.m.

Study Circle Meeting On Issues In Income Computation & Disclosure Standards (ICDS) V To X

Speaker

Dharan Gandhi, Advocate

The Study Circle and Study Group Committee of The Chamber of Tax Consultants have organized a Webinar on "Issues in Income

Computation & Disclosure Standards (ICDS) V to X" on 11th November, 2021.

Fees	
For Study Circle Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (18% GST) = ₹ 472/-

Chairman: Rajesh P. Shah; **Co-Chairperson:** Isha Sekhri; **Vice-Chairmen:** Kartik Badiani, Shabbir Motorwala, Kirit Dedhia; **Convenors:** Ronak Doshi, Kartik Mehta, Niraj Chheda, Monika Wadhani; **Advisors:** Dilip Thakkar, Rashmin Sanghvi, T. P. Ostwal;
Course Convenor: Monika Wadhani & Siddharth Parekh



International Taxation

Online Class Room Course For Transfer Pricing 2021

Days & Dates
Friday, 19th;
Saturday, 20th November, 2021;
Friday, 26th &
Saturday, 27th November, 2021

Sr. No.	Days, Dates & Time	Topics	Speakers
1.	Friday, 19-11-2021 09.30 a.m. - 11.30 a.m.	Basic concepts of Transfer Pricing	CA Vispi Patel
2.	Friday, 19-11-2021 11.35 a.m. - 01.30 p.m.	FAR Analysis	CA Vaishali Mane
3.	Friday, 19-11-2021 02.00 p.m. - 04.00 p.m.	Arm's Length Price (ALP) Methods	CA Paresh Parekh, Ms. Mansi Agrawal
4.	Friday, 19-11-2021 04.15 p.m. - 06.30 p.m.	How to compute ALP-Selection of comparables - Benchmarking Exercise	CA Kunj Vaidya
5.	Saturday, 20-11-2021 09.30 a.m. - 11.30 a.m.	Documentation & Audit	CA Natwar Thakrar
6.	Saturday, 20-11-2021 11.30 a.m. - 01.30 p.m.	Master File & CBCR Compliance	CA Utpal Sen
7.	Saturday, 20-11-2021 02.00 p.m. - 04.00 p.m.	Safe Harbour Rules	CA Vishal Gada
8.	Saturday, 20-11-2021 04.15 p.m. - 06.30 p.m.	Interplay with GAAR, SEP, Profit Attribution to PE	CA Uday Ved
9.	Friday, 26-11-2021 9.30 a.m. - 11.30 a.m.	Advance Pricing Agreement- Procedure & Process and recent development due to COVID.	Mr. Sobhan Kar, Ex-IRS
10.	Friday, 26-11-2021 11.35 a.m. - 01.30 p.m.	Latest Judicial Rulings on Transfer Pricing	Eminent Faculty
11.	Friday, 26-11-2021 02.00 p.m. - 04.00 p.m.	Global perspective on Transfer Pricing Law (Acceptance of OECD and UN TP guidelines)	CA Bhavesh Dedhia
12.	Friday, 26-11-2021 04.15 p.m. - 06.30 p.m.	GST Aspects in Transfer Pricing.	K. Vaitheeswaran, Advocate
13.	Saturday, 27.11.2021 09.30 a.m.-11.00 p.m.	Case Studies on: Cost Contribution Arrangement, Software / ITES	CA Pankil Sanghvi CA Suchint Majmudar
14.	Saturday, 27.11.2021 11.15 a.m.-01.30 p.m.	Case Studies on: Trading & Distribution, Banking and Financial Services	CA Heena Khajanchi CA Hinesh Doshi
15.	Saturday, 27.11.2021 02.00 p.m.-04.00 p.m.	Secondary adjustments	CA Jatin Gajjar
16.	Saturday, 27.11.2021 04.15 p.m.-06.30 p.m.	Assessment proceedings-Do's & Don'ts based on practical experience	CA Karishma Phatarphekar

Fees

CTC Members	₹ 1,500/- + ₹ 270/- (18% GST) = ₹ 1,770/-
Non-Members	₹ 2,000/- + ₹ 360/- (18% GST) = ₹ 2,360/-
For Student Member	₹ 750/- + ₹ 135/- (18% GST) = ₹ 885/-
For Non Student Member	₹ 1250/- + ₹ 225/- (18% GST) = ₹ 1475/- (including ₹ 500/- towards Membership Fees)

Note:- Please fill Student Membership Form:- [Click Here](#) and payment through NEFT ([Click Here](#))


International Taxation

Chairman: Rajesh P. Shah; **Co-Chairperson:** Isha Sekhri; **Vice-Chairmen:** Kartik Badiani, Shabbir Motorwala, Kirit Dedhia; **Convenors:** Ronak Doshi, Kartik Mehta, Niraj Chheda, Monika Wadhani; **Advisors:** Dilip Thakkar, Rashmin Sanghvi, T. P. Ostwal;
Course Convenor: Monika Wadhani & Siddharth Parekh

Day & Date
 Wednesday,
 24th November, 2021
Time
 06.00 p.m. to 08.00 p.m.

International Taxation Study Circle Meeting on Discussion on MLI with case studies

SPEAKER
 CA Purna Peshori

Fees	
For International Taxation Study Circle	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 400/- + ₹ 72/- (18% GST) = ₹ 472/-


Direct Taxes

Chairman: Dinesh Poddar; **Co-Chairman:** Ashok Mehta; **Vice-Chairman:** Abhitan Mehta; **Convenors:** Chintan Gandhi, Radha Halbe, Viraj Mehta; **Advisor:** Mahendra Sanghvi

Day & Date
 Friday, 3rd & Saturday,
 4th December, 2021
Time
 04.30 p.m. to 08.00 p.m. on
 Friday and
 10.00 a.m. to 01.30 p.m. on
 Saturday

Webinar Series on Capital Gains - in Controversial Scenarios

Sr. No.	Topics	Speakers
1	Capital Gains on transfer of Shares and Other Securities	CA Anish Thacker
2	Capital Gains on specific scenarios like – Conversion of Company into LLP – Transfer of Depreciable assets, – Restructuring – e.g. Slump Sale, Liquidation, Amalgamation, Demerger etc – Other transactions not regarded as transfer u/s. 47	CA Vishal Gada
3	Capital Gains - Redevelopment & Joint development agreement Capital Gain-On Transfer of Immovable Property	CA Jagdish Punjabi
4	Sec 2(47), Exemptions under Section 54 to 54H and setoff & carried forward of loss	Dharan Gandhi, Advocate

Fees	
CTC Members	₹ 1,000/- + ₹ 180/- (18% GST) = ₹ 1,180/-
Non-Members	₹ 1,200/- + ₹ 216/- (18% GST) = ₹ 1,416/-



Hyderabad Study Group

Convenors: Ravi Ladia, Radhika Verma

Day & Date
Saturday, 13th November, 2021
Time
04.00 p.m. to 06.00 p.m.

Hyderabad Study Group Meeting on Issues In Indirect Taxation of Pharma Industry

SPEAKER

CA V. S Sudhir

The Hyderabad Study Group of The Chamber of Tax Consultants has organised a Study Group Meeting on Issues

in "Indirect Taxation of Pharma Industry" scheduled on 13th November, 2021.

Fees

For Hyderabad Study Group Members	NIL
CTC Members	₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-
Non-Members	₹ 300/- + ₹ 54/- (18% GST) = ₹ 354/-



Bengaluru Study Group

Co-ordinator: Sandeep C.; Convenor: Bharat L.

Day & Date
Friday, 12th November, 2021
Time
05.15 p.m. to 06.30 p.m.

Bengaluru SG Meeting on not for Profit Organisations – Recent Regulatory & Tax Developments

SPEAKER

CA Mithun D' Souza, Bangalore

The Bengaluru Study Group (BSG) jointly with the Study Circle and Study Group Committee of the Chamber of Tax Consultants is organising a webinar on the topic of

"Not for Profit Organisations – Recent Regulatory & Tax Developments". It is scheduled on 12th November, 2021.

Fees

Bengaluru Study Group Member	NIL
Study Circle Member (Direct Taxes)	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, Radha Halbe, Viraj Mehta; Advisor: Mahendra Sanghvi

Day & Date
Monday, 29th November, 2021
Time
06.00 p.m. to 08.00 p.m.

Intensive Study Group Meeting on Recent Case Laws under Income-tax Act

SPEAKER

Mr. Gunjan Kakad, Advocate

Days & Dates
 03, 04.12.2021
 10, 11.12.2021

Ind AS Programme - Practical Aspects

The accounting and auditing committee of the CTC has organised a webinar series on practical aspects of IND AS. The webinar series will be held over 4 sessions covering recent developments, practical experience of handling IND AS accounts and issues faced during accounts finalisation. The sessions will be taken by expert speakers who have practical experience in handling such situations.

With the growth in the economy and increasing number of companies going for IPO, the overall basket of companies to whom IND AS applies is continuously increasing. This leads to various day to day challenges and at time unique accounting & taxation questions

which needs to be dealt with. Through this webinar, the committee endeavours to bring to forefront the practical challenges and issues along with potential solutions.

The webinar series would be extremely useful for all the professionals engaged actively in preparation and/or audit of IND AS Financials so that the practical issues can be dealt with. Also, it will be insightful to CFO, people involved in accounts and finance function to whom Ind AS apply, students and also tax consultants. The details of the programme are as under:

Sr. No.	Days, Dates & Time	Topics	Brief Coverage	Speakers
1	Friday, 03.12.2021 03.30 p.m. - 04.00 p.m.	Key Note address	Overview on IND AS Adoption in India and recent developments	Eminent Faculty
2	Friday, 03.12.2021 04.00 p.m. - 07.00 p.m.	Financial Instruments (IND AS – 32, 109) – Session I	Overview of the standard and Practical Case Studies in relation to the Standard.	CA Ashutosh Pednekar
3	Saturday, 04.12.2021 10.00 a.m. - 01.00 p.m.	Financial Instruments IND AS – 32, 109 (Covering aspects related to NBFC in particular as well) – Session II	Overview of the standard and Practical Case Studies in relation to the Standard.	CA Ashutosh Pednekar
4	Friday, 10.12.2021 04.00 p.m. - 07.00 p.m.	Business Combination (IND AS 103)	<ul style="list-style-type: none"> Overview of Standard. Practical case studies. Inter-play with income tax (demerger/merger schemes, goodwill etc.) 	Mr Meghdoot Jajoo
5	Saturday, 11.12.2021 10.00 a.m. - 01.00 p.m.	Revenue Recognition and Leases (IND AS 115 & 116)	<ul style="list-style-type: none"> Revenue Recognition challenges – Key issues. Implementation & Impact of Lease Standard. Practical case studies dealing with these standards. 	CA Milan Mody

Fees

CTC Student Members	₹ 500/- + 90/- (18% GST) = ₹ 590/-
CTC Members	₹ 800/- + ₹ 144/- (18% GST) = ₹ 944/-
Non-Members	₹ 1,000/- + ₹ 180/- (18% GST) = ₹ 1,180/-

IMPORTANT DECISIONS UNDER GST AND SERVICE TAX LAWS

By Vinay Kumar Jain and Sachin Mishra, *Advocates*

1. **Whether amount paid during investigation due to fear of arrest could be considered as “amount paid under coercion”? Whether such payment can be considered as payment in furtherance of “Self-ascertainment” under Section 74(5) of CGST Act? Whether assessee has a right to seek refund of such amount?**

Facts and Pleadings: M/s Bundl Technologies Private Limited (hereafter referred to as “Petitioner”) operates an e-commerce platform under the name ‘Swiggy’. During holidays and festive season owing to spike in food orders Petitioner engaged third party service providers for delivery of food. The third-party service providers charge consideration for delivery and supply of food along with GST and the GST paid by the Petitioner to third party service providers is availed as Input Tax Credit by the Petitioner. An investigation was initiated by Directorate General of Goods and Services Tax Intelligence (DGGI) claiming third party service providers, i.e. ‘Greenfinch’ was a non-existent entity and accordingly, the ITC availed by the Petitioner and the GST component paid by it to ‘Greenfinch’ were fraudulent. During investigation, the Petitioner was forced to make payment of Rs.27,51,44,157/- under the threat of arrest of its Directors. As no show cause notice was issued by the Department even after about ten months of initiation of investigation, the Petitioner sought refund of the said amount of Rs.27,51,44,157/-. Department having declined to refund the amount collected illegally, the Petitioner filed a refund application before jurisdictional GST Office. However, the department is of the view that the deposit made by the Petitioner was voluntary and the power of investigation has been exercised legitimately while issuing summons to the Petitioner and its Directors and the allegation of coercion is incorrect. Hence, this writ petition was filed by the Petitioner.

The Petitioner submitted that the aforesaid sum of Rs.27,51,44,157/- was illegally collected from the Petitioner during the investigation proceedings under threat and coercion. The Petitioner also submitted that the said payments were ‘under protest’ as can be gathered from the communication made by the Petitioner to the Department after such payments were made. Further, it was submitted that as no show cause notice under Section 74 of CGST Act has been

issued and payments of the Petitioner has remained with the Department, that the investigation is still not concluded and in light of prolonged investigation, the Petitioner has a legitimate right to seek for refund of tax, which would not in any way come in the way of their obligation to honour the demand made after adjudication.

Judgement: The Hon’ble High Court has held that power of the High Court to issue appropriate direction directing refund either where assessment was without jurisdiction or where tax was collected without authority of law is vested in the High Court. The Hon’ble High Court also observed that the question of alternate remedy is of no significance, when the eventual direction in the present writ is only for consideration of the refund application. Further, Hon’ble High Court has held that the manner in which investigation was carried out in late hours of the night and the early hours of the morning with physical closing of the gates during the investigation would reasonably create an apprehension in the mind of any person including the persons of the standing of Directors of the Assessee Company and its officers. The Hon’ble High Court also observed that it must be noted that even under Section 132(1) (b) and (c)(i) to (iii) of the GST Act, 2017, the wrongful availment of I.T.C. is an offence and is punishable with imprisonment. Accordingly, the Hon’ble High Court held that the payment cannot be stated to have been made voluntarily. The Hon’ble High Court also observed that the lapse of time and lack of conclusion of investigation has only exacerbated the situation conferring upon the Petitioners a right to seek for refund of the amount. The Hon’ble High Court also observed that though there is payment of tax and even if it is accepted that payment of tax is also followed by requisite Challan DRC-03, the mere payment of tax cannot be construed to be a payment towards self-ascertainment as contemplated under Section 74 (5) of CGST Act. The Hon’ble High Court has held that that the aforesaid payment during investigation and letter of the Petitioner about payment under protest show that it has been made involuntarily. The Hon’ble High Court also observed that there is no doubt that the power of investigation cannot be interfered with nor can the court direct investigation be made in a particular manner, however, during all such

investigation, it cannot be held that the Fundamental Rights including the right of a bona fide tax payer to be treated with appropriate dignity as enshrined under Article 21 of the Constitution of India would be kept in abeyance. Accordingly, the Hon'ble High Court directed the department for consideration of the refund application filed by the Petitioner in light of the observations made by the court.

M/s Bundl Technologies Private Limited Vs UOI, High Court of Karnataka at Bengaluru, decided on 14.09.2021, Writ Petition No. 4467/2021 (T-RES)

2. Whether pre-deposit can be equated with 'output tax' as defined under Section 2(82) of the CGST Act, 2017 so as to allow payment of pre-deposit through debiting electronic credit ledger?

Facts and Pleadings: M/s Jyoti Construction (hereafter referred to as "The Petitioner") is a partnership firm engaged in the business of execution of works contract including civil, electrical and mechanical. In terms of Section 107 (6) of the OGST Act, the Petitioner was required to make payment equivalent to 10% of the disputed amount of tax arising from the order against which the appeal is filed. The Petitioner deposited the said amount from its electronic credit ledger. However, the said appeals were rejected by the Appellate Authority holding the appeals as defective on the count that this payment was required to be made by the Petitioner by debiting its electronic cash ledger as provided under Section 49(3) read with Rule 85 (4) of the OGST Rules. Hence, the present writ.

The contentions of the Petitioner were that under Section 49 (4) of the OGST Act, the amount available in the electronic credit ledger could be used for making "any payment towards output tax" under the OGST Act or the IGST Act "in such manner and subject to such conditions and within such time as may be prescribed". The Petitioner contended that since what in effect be the Petitioner was paying was a percentage of the output tax as defined under Section 2(82) of the OGST Act, the amount could well be paid by debiting the electronic credit ledger.

Department submitted that that the pre-deposit cannot be equated to the output tax. The proviso to Section 41 (2) of the OGST Act sets out the purposes for which the input tax credit (ITC) can be utilized. It can be utilized for payment of "self assessed output tax as per the return". It was pointed out by the department that self-assessment is defined under Section 59 of the

OGST Act i.e. when the tax payer files a return under Section 39 of the OGST Act and the Form GSTR-3B, the taxpayer is deemed to be self-assessed. In no other cases, can ITC be utilized to discharge any liability.

Judgement: According to Hon'ble High Court, "Output Tax", as defined under Section 2(82) of the CGST/OGST Act could not be equated to the pre-deposit required to be made in terms of Section 107(6) of the CGST/OGST Act. Further, the proviso to Section 41(2) of the CGST/OGST Act sets out the purposes for which the input tax credit can be utilized and the electronic credit ledger cannot be debited for making payment of pre-deposit at the time of filing of the appeal in terms of Section 107(6) of the CGST/OGST Act. The Hon'ble High Court also held that it is not possible to accept the Petitioner's plea that Section 107(6) of the Act is merely a "machinery provision". Hence, writ petitions were dismissed.

M/s Jyoti Construction Vs DC CT & GST, High Court of Orissa at Cuttack, decided on 07.10.2021, in W.P.(C) Nos.23508, 23511, 23513, 23514 and 23521 of 2021

3. Whether Cenvat credit on inputs and capital goods / services used in fabrication, erection, installation of towers and shelters is admissible to the appellants?

Facts and Pleadings: M/s Vodafone Cellular Limited (hereinafter "Appellants") are providers of cellular mobile telephone services to their subscribers, taxable under category "Telecommunication services". The disputed credit was mainly pertaining to capital goods and input services used in the fabrication, erection and commissioning of towers and shelters for base units and credit availed on other services.

The issue relating to the admissibility of credit of inputs/capital goods and services used in the fabrication, erection and installation of towers and shelters has been long in dispute. Bombay High Court in *Bharti Airtel Ltd. Vs CCE*, 2014 (35) STR 865 (Bom.) & *Vodafone India Ltd. VS CCE*, 2015 (40) STR 422 (Bom.) held that to produce telecommunication service, Cenvat credit on towers, prefabricated shelters and their accessories cannot be availed as the towers are fixed to the earth and became immovable property and ipso facto, non-marketable and non-excisable. Whereas, Delhi High Court in *Vodafone Mobile Services Ltd. & others Vs CST*, 2018 (11) TMI 713-Delhi High Court have taken a contrary view after examining and distinguishing the judgment of Bombay

High Court.

In this case, the department had alleged that the erection of towers and shelters and the services utilized in the erection, commissioning or installation of towers and shelters is not in or in relation to the services rendered by the Appellants.

The Appellants had submitted that the scope of Rule 2(l) is vast especially for the period up until 01.04.2011. As per Appellants, the input service credit was admissible for all 'activities relating to businesses' and hence the Appellants are eligible for credit of inputs/capital goods and services used in the fabrication, erection and installation of towers. The Appellants had also relied on Hon'ble Delhi High Court Decision in Vodafone (supra) to submit that this judgement had considered Hon'ble Bombay High Court's decision in Bharti Airtel (supra) and disagreed with the ratio thereof. The Appellant further submitted that the decision of Larger Bench of Hon'ble Tribunal in Tower Vision India Pvt Ltd Vs CST 2016 (3) TMI 165 - CESTAT New Delhi (LB) must be considered overruled as it had followed the aforesaid decision of the Hon'ble Bombay High Court in Bharti Airtel (supra). The Appellants also relied on decision of Chandigarh Bench of the Hon'ble Tribunal in CCE Vs Bharti Infratel, 2019 (2) TMI 1736 - CESTAT Chandigarh which had considered all the above decisions and held that credit of duty paid on inputs used in towers and shelters is eligible.

Judgment: The Hon'ble Tribunal also referred to the decision of Hon'ble Delhi High Court in Vodafone (supra) and decision of Chandigarh Bench of the Hon'ble Tribunal in CCE Vs Bharti Infratel (supra) to held that credit, of inputs / capital goods and services utilized in fabrication, erection, installation of towers and shelters by the Appellants, is admissible to the Appellants. The Hon'ble Tribunal has also observed that it is required to follow the decision of Hon'ble Delhi High Court as the jurisdictional High Court has not passed any orders on this issue as on date and the decision of the Delhi High Court being subsequent to that of Bombay High Court.

M/s Vodafone Cellular Limited vs CGST & CE, CESTAT, Chennai decided on 1.10.2021, Service Tax Appeal No. 42404 of 2013.

4. Whether the entire cost recovered by the Appellant as reimbursement/cost charged to the Joint Account

by the Appellant namely, salaries of employees working for the joint venture should be subjected to service tax recoverable from the Appellant with interest and penalty.

Facts and Pleadings: B.G. Exploration & Production India Ltd. (hereinafter referred to as "Appellant") is primarily engaged in the business of developing, exploring and producing oil and gas from the contracted areas in Mid and South Tapti Fields and Panna & Mukta Fields (Offshore areas of Western India). The Appellant had entered into a Joint Operating Agreement with Reliance Industries Ltd. and ONGC for the discovery and exploitation of petroleum resources in 'Panna and Mukta' and 'Mid and South Tapti' fields for Government of India. The said agreement defined their respective rights, duties and obligations with respect to their operations under the Contracts. In terms of the Agreement, liabilities incurred by any Holder were required to be borne by all the Holders in accordance with the ratio for performing their obligations. These expenses were required to debited in the joint account and cash calls raised and reimbursement taken from the Joint Account, basis the participating interest of each of the parties to the Contract. There was to be no profit margin on the reimbursement/cost charged to the joint account; in fact, such a profit was strictly prohibited under the Agreement and the same was to be charged on actual.

The department alleged that Appellant, RIL and ONGC jointly i.e. PMT-JV are unincorporated association of persons/joint venture. The department also alleged that the Appellant, RIL and ONGC as an unincorporated association of persons and the Appellant individually are distinct persons, in accordance with Explanation 3(a) of Section 65B (44) of the Finance Act, 1994. The department further alleged that the Appellant is providing its employee i.e. Manpower service to said unincorporated association of persons and are charging salary expenses in relation to those manpower service to their account by way of book adjustment, thus constituting consideration within the meaning of Section 67 for the provision of the said service.

The Appellant submitted that it had not rendered any service to the PMT-JV, nor did it receive any consideration from PMT-JV for the supposed service rendered by it. It was also submitted that Employing manpower for undertaking the operations of PMT-

JV was Appellant's share of capital contribution to the venture. The Appellant also argued that PMT-JV, not being a juridical person, had employed the Appellant and consequently no service was rendered by the Appellant to the unincorporated joint venture. The Appellant was only acting on behalf of the unincorporated joint venture by executing the employment contract. Further, in the absence of any service having been rendered, the said Explanation (3) to the definition of 'service' in section 65B (44) of the Finance Act, 1994 has no application.

Judgement: The Hon'ble CESTAT has observed that in the contract in question, the Central Government was to bring in its rights over the resources, while ONGC was to handle contracts and documentation, RIL was to manage financial and commercial requirements and the Appellant was vested with the responsibility of undertaking the technical operations. The Hon'ble CESTAT held that the man power deployed by the Appellant was in furtherance of its own interest as also that of the joint venture and not by way of any service to unincorporated joint venture. Also, the cost incurred by the Appellant for this purpose was its capital contribution to the joint venture and it cannot be said that consideration was received by the Appellant for arranging man power. The Hon'ble CESTAT held that the equity brought in by the co-venturer, in this case by making available man power, cannot be considered as a service rendered to the unincorporated joint venture. It is this capital contribution along with the capital contribution made by others which forms the hotchpotch of the unincorporated joint venture. The Hon'ble CESTAT relied upon Mormugao Port Trust vs. Commissioner of Central Excise [2017 (48) STR 69 (Tri-Mum)] in this regard. The Hon'ble CESTAT also held that there is no contractor-contractee or principal-agent relationship between the co-venturer and the joint-venture, which is a pre-requisite for a service to be liable to tax under the Finance Act.

B.G. Exploration & Production India Ltd Vs CCE, CESTAT, Mumbai decided on 06.10.2021 in Service Tax Appeal No. 85028 of 2021.

5. Whether a show cause notice which is vague and does not disclose the offence or contraventions and is a mere mechanical reproduction of the provisions of Section 74 of the CGST Act, 2017 without striking of the irrelevant portions is sustainable in law?

Facts and Pleading: M/s Nkas Services Private Limited (hereinafter referred to as "the Petitioner") has challenged show cause notice dated 7.6.2021 issued against them before the Hon'ble High Court by way of an writ petition on the count that impugned show-cause notice is vague and does not disclose the offence and contraventions as it is a mere mechanical reproduction of the provisions of Section 74 without striking of the irrelevant portions. It is thus incapable of any reply and does not fulfill the ingredients of a notice in the eyes of law. Petitioner would be denied opportunity to properly defend itself. It is, therefore, in violation of principles of natural justice. The essential requirement of proper notice is that it should specifically state charges which the noticee has to reply. In this regard reliance is placed on the decision of the Apex Court rendered in the case of Oryx Fisheries P. Ltd. Vs. Union of India reported in (2010) 13 SCC 427. It was also submitted that the expression 'appears to the proper officer' in Section 74 has not to be a casual act but should show full application of mind by the 'proper officer'.

Judgement: The Hon'ble High Court held that the impugned show-cause notice is a notice issued in a format without even striking out any irrelevant portions and without stating the contraventions committed by the Petitioner i.e. whether its actuated by reason of fraud or any wilful misstatement or suppression of facts in order to evade tax. The Hon'ble High Court observed that in absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend itself. The Hon'ble High Court held that this would entail violation of principles of natural justice which is a well-recognized exception for invocation of writ jurisdiction despite availability of alternative remedy. The Hon'ble High Court also observed that proceedings under Section 74 of the Act have to be preceded by a proper show cause notice. Further, it has been held that a summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the JGST Rules, 2017 cannot substitute the requirement of a proper show-cause notice.

M/s Nkas Services Private Limited Vs The state of Jharkhand and Ors., High Court of Jharkhand at Ranchi, dated on 06.10.2021, in W.P. (T) No.2444 of 2021

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UNDER SEMINAR PRESENTATIONS - UNREPORTED DECISIONS

UNREPORTED TRIBUNAL DECISIONS

By Ajay R. Singh Advocate and CA Rohit Shah

1. S. 54EC: The tax-payer cannot be asked to do impossible- Investment within 6 months of receipt of consideration after date of transfer :

Assessee had sold TDR for an amount of Rs. 1,45,92,750/- vide agreement dated 06-08-2008 and long term capital gains to the tune of Rs. 47,35,420/- were computed by the assessee as per provisions of the Act. It was observed by the AO that capital gain of Rs. 24,85,420/- was claimed to be invested in NHAI/ REC Bonds on 26-03-2009 and exemption u/s 54EC of 1961 Act was claimed by the assessee. The AO observed that the last date of making investment in REC/NHAI Bonds for claiming exemption u/s 54EC should have been on or before 06-02-2009 hence claim of the assessee for exemption u/s 54EC of the Act was rejected. Before Ld. CIT(A), it was submitted by the assessee that last payment towards sale consideration on transfer of TDR was received on 15-11-2008 and period of 6 months should be reckoned from this date. The assessee relied upon circular no 791 dated 02-06-2000 issued by CBDT. The Ld. CIT(A) held that the CBDT circular covers the situation of conversion of capital asset into stock-in-trade and the time is allowed till when the stock-in-trade is actually sold or otherwise transferred by the assessee which is not the issue in the present case and, hence, this circular is not applicable to the facts of the assessee's case and thus upheld action of the AO.

The Hon'ble ITAT held that, the second installment of Rs. 35,00,000/- was received on 26-09-2008 and if the period of six month is reckoned from this date of second installment, the assessee has made the investment within time stipulated u/s 54EC of Act of six months as investment in REC/NHAI

Bonds of Rs. 43,51,000/- was made on 26-03-2009. The section encourages making investments in REC/ NHAI bonds out of long-term capital gains on transfer of original asset earned by tax-payer and is to be construed reasonably to give full effect to the beneficial provisions and it cannot be interpreted in a manner to frustrate the intent of legislature. The tax-payer cannot be asked to do impossible, as in cases if the consideration is not received by the tax-payer on sale / transfer of long-term capital assets but is received subsequently as provided in an agreement to sale, the tax-payer cannot be expected to invest in REC/ NHAI Bonds out of his own other sources or to make borrowings to invest in NHAI/REC Bonds to claim exemption u/s 54EC of Act and thus, allowed the appeal.

Lemes E. D' Souza Vs. ITO Ward- 21(3)(3) [ITA No. 5802/MUM/2013 ; Bench : A ; dated : 10/4/17 ; A.Y. 2009-10]

2. Condonation of delay in filing the appeal before Ld. CIT(A) - by making delay in filing appeal before the Ld.CIT(A), the assessee would not achieve anything – Delay condone:

Assessment order under section 144 rws 147 of the Act was passed by the AO on 21.12.2017. Against this order assessee preferred a belated appeal before the Ld. CIT (A), there was a delay of 66 days. The reason explained that Assessee was not aware about the passing of the assessment order, and the proceedings which were going on before the AO. The Ld. CIT (A) observed that there was no reasonable and sufficient cause which prevented the assessee to file the appeal within the stipulated time. He accordingly rejected the

delay condonation and dismissed the appeal. Assessee filed appeal against the order of the Ld. CIT (A), before the Tribunal. Assessee reiterated submission made before Ld. CIT (A). It was prayed that small delay of 66 days in filing the appeal be condoned and matter be remitted to the Ld. CIT (A) for adjudication on merit, because the assessee has good case on hand and hope to succeed the same.

The Hon'ble Tribunal while directing Ld. CIT(A) to condone the delay held that the expression "sufficient cause" employed in the section has also been used identically in sub-section 3 of section 249 of the Act, which provides powers to the Ld. CIT(A) to condone the delay in filing the appeal before him. Similarly, wordings has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Court as well as before the Hon'ble Supreme Court, then, Hon'ble Court were unanimous in their conclusion that this expression is to be used liberally. Reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353 was also taken:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

The Tribunal held that the assessee was not aware about the assessment order or about the proceedings at the level of the assessment officer. Immediately, when she came into the knowledge about the order, she e-filed the appeal, and in the process delay of 66 days was occurred. It is pertinent to take note that by making delay in filing appeal before the Ld.CIT(A), the assessee would not achieve anything. Thus, such delay cannot be adopted as a strategy. The ITAT condoned the impugned delay, and set aside order of the Ld.CIT(A).

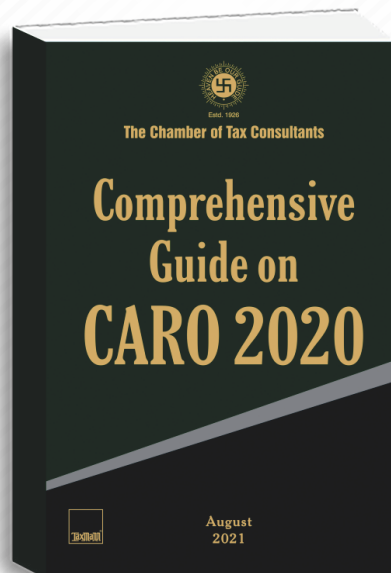
Smt.Rupa Maheshbhai Gandhi vs ITO, Ward-3(2)(10) Ahmedabad [ITA No.2224/Ahd/2018 ; Bench SMC ; dated: 1/6/2021; AY: 2010-11]

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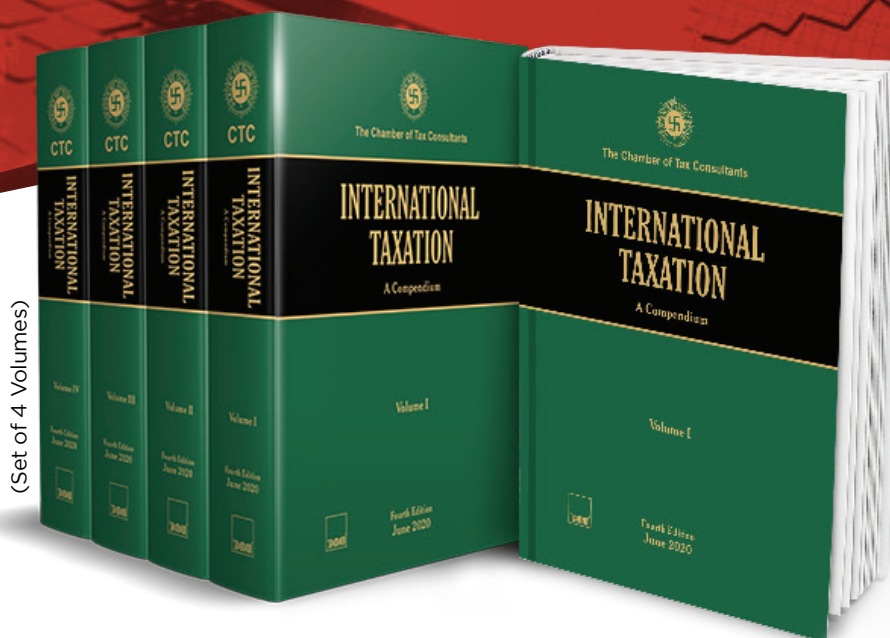
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