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# THE CTC NEWS

Monthly Newsletter of The Chamber of Tax Consultants

(For Private Circulation - Members Only)

OCTOBER 2021



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ਸਬਰ ਮੰਝ ਕਮਾਣ ਏ ਸਬਰੁ ਕਾ ਨੀਹਣੈ ॥  
ਸਬਰ ਸੰਦਾ ਬਾਣੁ ਖਾਲਕੁ ਖਤਾ ਨ ਕਰੀ ॥੧੧੫॥

Within yourself, make patience the bow, and make patience the bowstring. Make patience the arrow, the Creator will not let you miss the target. |115



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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](http://www.ctconline.org)**

**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**



## Hyderabad Study Group

Convenors: Ravi Ladia, Radhika Verma

**Day & Date**  
Saturday, 9<sup>th</sup> October, 2021  
**Time**  
04.00 p.m. to 06.00 p.m.

## Hyderabad SG Meeting on Issues in Indirect Taxation of Software Industries and App based businesses

**SPEAKER**

CA Alok Agarwal

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

in Indirect Taxation of Software Industries and App based businesses scheduled on 9<sup>th</sup> October, 2021.

### Fees

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



## Hyderabad Study Group

Convenors: Ravi Ladia, Radhika Verma

**Day & Date**  
Saturday, 23<sup>rd</sup> October, 2021  
**Time**  
04.00 p.m. to 06.00 p.m.

## Hyderabad SG Meeting on Issues in Direct Taxation of Principles of Mutuality

**SPEAKER**

Dharan Gandhi, Advocate

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

in Direct Taxation of Principles of Mutuality scheduled on 23<sup>rd</sup> October, 2021.

### Fees

|                                   |                                      |
|-----------------------------------|--------------------------------------|
| For Hyderabad Study Group Members | 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**  
Monday, 18<sup>th</sup> October, 2021  
**Time**  
05.30 p.m. to 07.30 p.m.

## SAS Meeting on Emotional Intelligence and the Power of Positive Thinking

**SPEAKER**

Vasant Agarwal, (Director at DiscoverMyMind. He has authored many books on EI and parenting with EI and is a speaker at International conferences across India and a Senior Advisor to the International Training Federation.

We as professionals daily undergo through lot of emotions like fear, anger, joy, sorrow and hundreds more. These emotions are the feeling, thought. action. reaction. Emotional intelligence (also known as Emotional Quotient or EQ) is the ability to understand, use, and manage your own emotions in positive ways to relieve stress, communicate effectively, and defuse conflict. Emotional intelligence is a neuro science which emphasises on how to perceive, identify, understand, control, manage and share emotions with empathy and compassion by self-assessment and relationship management. To understand our EQ, the Membership and Public Relations Committee has organised this very unique session on Emotional Intelligence And The Power of Positive Thinking.

### What will you learn in this workshop?

- **Why is EI important? How does it matter?**  
EI is important for Key to Happiness, Key to Success, Personal and Professional Benefits, Fear/Anger/Conflict Management, To get rid of negative thoughts and Self Affirmation

- **What are the benefits of EI?**  
Empowerment and Transformation, UGC/Covid/School, Counselling/Parenting, Influencers, Decision Making, Relationship Management and Health Physical and Mental
- **How is human capital improved by EI?**
- **How can we enhance our EI?**
- **What is the impact of EI on our daily lives?**
- **How and when is EI used?**


**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**  
Saturday, 9<sup>th</sup> October, 2021  
**Time**  
03.00 p.m. to 05.30 p.m.

**Income Tax Return Filing For AY 2021-22**
**SPEAKER**

CA Mitesh Katira

Income tax department has launched a New ITR portal. The new income tax portal is completely in a new avatar. The new portal has come up with a lot of new features and information.

Filing of Income Tax return on time on or before the due date is most important task for any tax payer. Late filing of the return takes away many benefits from the tax payer. There are also certain compliances, which should be completed before filing of the returns.

Although some teething issues in new portal are being addressed on priority by the IT Department, the assessee and their tax consultants are up against the challenges of filing the income tax returns in time.

With a view to enable the tax consultants to understand the new features and new utility for filing the Return of income on the new portal, Direct Tax Committee of The Chamber of Tax Consultants has organized a webinar on the said topic which shall act as a useful guide in filling the return of income proficiently.


**Delhi Chapter**

**Chairman:** Sanjiv Chaudhary; **Vice-Chairman:** Prakash Sinha;  
**Advisor:** C. S. Mathur, Suhit Agarwal, V. P. Verma

**Day & Date**  
Tuesday, 5<sup>th</sup> October, 2021  
**Time**  
05.30 p.m. to 07.30 p.m.

**Study Circle Meeting on Case Law Discussion**

The Delhi Chapter Committee of the Chamber of Tax Consultants is organising a Study Circle Meeting on

the topic of "Case Law Discussion". It is scheduled on 5<sup>th</sup> October, 2021.

| Sr. No. | Topics  | Chairmen / Moderator   |
|---------|---|--|
| 1.      | Case Law Discussion   | <b>Chairman:</b><br>Shri Sudhanshu Srivastava,<br>Member, ITAT Delhi       |
| a)      | Karti P. Chidambaram vs. Principal DIT 436 ITR 340 (Madras HC)          | <b>Moderator:</b><br>CA Prakash Sinha                                      |
| b)      | Nandi Steel Ltd. vs. Asst. CIT 436 ITR 238 (Karnataka HC)               | <b>Speakers:</b><br>Ruchesh Sinha, Advocate &<br>Ishita Farsaiya, Advocate |
| c)      | CIT exemption vs. Batanagar Education & Research Trust 436 ITR 501 (SC) |  |
| d)      | PSIT PTY LTD. In re – 436 ITR 474 (AAR)                                 |  |


**Study Circle & Study Group**

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

**Day & Date**  
Saturday, 16<sup>th</sup> October, 2021  
**Time**  
11.00 a.m. to 01.15 p.m.

**Study Circle Meeting on Taxation of Shares & Securities**
**Group Leader**

CA Abhitan Mehta

The Study Circle and Study Group committee of The Chamber of Tax Consultants has organised a Study Group meeting on "Recent

Judgments on Direct Taxes" scheduled on 18<sup>th</sup> September, 2021.

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





## Indirect Taxes

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

### Days & Dates

Friday, 26<sup>th</sup> November, 2021 &  
Saturday, 27<sup>th</sup> 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, Sr. Advocate |
| 2       | Session – II – Classification and Scheme of Customs Tariff Act and Principles of Customs Valuation and SVB                                  | V. Raghuraman, Advocate    |
| 3       | Session III – Specific Provisions such as bonding, warehousing and other miscellaneous topics including EOU and SEZ                         | Rohit Jain, Advocate       |
| 4       | Session IV – Important concepts under Foreign Trade Policies, various incentive schemes and issues – Bilateral and Multi-lateral Agreements | Sudhakar Kasture, Advocate |

### Fees

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



## Direct Taxes

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

### Day & Date

Wednesday, 20<sup>th</sup> October, 2021

### Time

06.00 p.m. to 08.00 p.m.

## ISG Meeting on Recent Important Decisions under Direct Tax

### SPEAKER

Fenil Bhatt, Advocate


**Pune Study Group**

**Convenors:** Sachin Sastekar, Mehul Shah, Shreedhar Pathak

**Day & Date**  
Saturday, 16<sup>th</sup> October, 2021  
**Time**  
10.30 a.m. to 12.30 p.m.

## Pune Study Group Meeting on Legal Process & Documentation for getting Private Equity or Venture Capital funds

**SPEAKER**

Vivek Sadhle, *Advocate*

The Pune Study Group of The Chamber of Tax Consultants (CTC) has organised a Pune Study Group meeting on

"Legal Process & Documentation for getting Private Equity or Venture Capital funds" scheduled on 16<sup>th</sup> October, 2021.

**Fees**

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


**Accounting & Auditing**

**Chairman:** Tejas Parikh; **Vice-Chairman:** Hemal Shah;  
**Convenors:** Prashant Daftary, Arpita Gadhia, Deepak K. Shah; **Advisor:** Jayesh Gandhi

**Day & Date**  
Saturday, 23<sup>rd</sup> October, 2021  
**Time**  
11.00 a.m. to 02.00 p.m.

## Audit Documentation Tools to Enhance Audit Quality

**SPEAKER**

CA Mitesh Katira

With the ongoing digital transformation, audit documentation procedures need an upgrade. This also means that the Auditors need to understand technology for sampling, verification, documentation, and even reporting!!

Check out this workshop as to why digital documentation, how and what can be digitized for small and medium firms. This is becoming a must-have for the peer-reviewed firms who need to organize and present their work to the reviewer periodically.

This will cover tech ideas for efficient audit planning and preserving audit documentation.

The session will cover following:

- Discussion on documentation related to Planning, Sampling, Checklists, Reporting and Archival.
- Walk through of both free and licensed tools. This would cover use of simple software / tools which are used on daily basis and off-the-shelf audit documentation tools.
- Managing workflow / Archiving / Retrieval of documentation from the above tools.
- Handling of peer review process.

**Fees**

|                     |                                       |
|---------------------|---------------------------------------|
| CTC Student Members | ₹ 200/- + ₹ 36/- (18% GST) = ₹ 236/-  |
| CTC Members         | ₹ 400/- + ₹ 72/- (18% GST) = ₹ 472/-  |
| Non-Members         | ₹ 600/- + ₹ 108/- (18% GST) = ₹ 708/- |



## 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, 22nd October, 2021

### Time

03.00 p.m. to 06.30 p.m.

## COVID & CSR related expenses - Issues on allowability and taxability for taxpayers (*Jointly with IMC, BCCI & BCAS*)

All are  
cordially  
invited

The Chamber of Tax Consultants jointly with IMC Chamber of Commerce and Industry, Bombay Chamber of Commerce and Industry, and Bombay Chartered Accountants' Society is organizing a webinar on "COVID & CSR related expenses - issues on allowability and taxability for taxpayers" to be held on **Friday, October 22, 2021 from 3.00 p.m. to 6.30 p.m.**

Corporate Social Responsibility (CSR) is also often referred to as company's responsibility and its action on environmental, ethical, social and economic issues. CSR is not something new to India, and the concept of trusteeship advocated by Mahatma Gandhi, the father of the Nation, was embraced by many companies, in various forms over the years.

Paradigm shift was brought about in the dynamics of CSR in India vide the Companies Act, 2013. The 2013 Act mandated certain class of companies to spend 2% of their average net profits of the past three years on CSR activities as enumerated in the Seventh Schedule. The said shift from

the voluntary to mandatory regime is marked by corporation's choice to strict compliance.

The Indian Companies and Corporate organisations and Citizens have relentlessly helped the Nation at large in overcoming the COVID Pandemic which had brought the world to stand still and have undertaken lot of CSR activities for employees and community at large in recent time. But questions loom over allowability of amount spent on CSR and Covid relief as an expense / deduction under the Income-Tax Act.

This webinar has been organised to understand the intricacies of amendments made to CSR Act, Companies Act and Income-tax Act, in relation to CSR and Covid related expenses incurred by the organisations at large, which will give more clarity on the issues arising on account of interpretation of the provisions.

| Sr. No. | Topics  | Speakers  |
|---------|---|---|
| 1.      | Contribution to CSR Trust, amendment made in CSR Act and coverage under Companies Act and allowability of same under section 37(1) and claim for deduction under section 80G of Income tax Act  | <b>Mr. Rajiv Chugh</b><br><b>Mr. Sampath Rajagopalan,</b><br><i>Panel Discussion:</i><br><i>Moderator:</i><br><b>Mr. Rajiv Chugh</b><br><i>Panelists:</i><br><b>Mr. Anil Mehta</b><br><b>Mr. Hemant Kadel</b><br><b>Mr. Sampath Rajagopalan</b> |
| 2       | Covid related expenses incurred by companies and organisation, allowability of same under section 37(1), implications of Sec 40A(9) and taxability of amount received by employees and their family members, taxability in hands of intermediaries facilitating covid relief, etc. Key issues like <ul style="list-style-type: none"> <li>Whether benefits received are taxable as salary income? If yes, whether employer has corresponding salary withholding obligation u/s. 192?</li> <li>Whether the benefits are taxable as Income from other sources? If yes, whether employer or other person has withholding obligation?</li> <li>Whether the benefits can be claimed as not liable to tax at all?</li> <li>Corresponding tax issues in the hands of employer and intermediary.</li> </ul> | <b>Mr. Nandkishor Hegde</b><br><i>Panel discussion:</i><br><i>Moderator:</i><br><b>Mr. Nandkishor Hegde</b><br><i>Panelists:</i><br><b>Mr. Ramesh Khaitan</b><br><b>Mr. Vijay Pandya</b>  |

**Dates**  
21-10-2021 &  
23-10-2021

## TDS / TCS – Comprehensive Coverage Course

In last few years there have been significant changes in the TDS and TCS regime. The scope of TDS and TCS has been drastically increased and now virtually for any business transaction examination of applicability of TDS/TCS has become a must. Even the compliance burden has increased substantially. These compliances have become even more onerous than before with serious repercussions like penalty and prosecution. The Webinar intends to cover the entire

gamut relating to the complexity and nuances of the TDS and TCS provisions.

The Direct Tax Committee of the Chamber of Tax Consultants has organized a 6 session webinar series spread across 2-days on TDS and TCS provisions. Which shall be useful for Tax Managers, Tax Professional, Accounting Personnel and Tax Payers keen to keep abreast with the rapid changes in TDS and TCS Provisions.

| Sr. No. | Topics  | Speakers                       | Date & Timings                                |
|---------|---|--------------------------------|---|
| 1.      | Salaries U/s 192 and controversial issues   | CA Rakesh Gupta                | 21st October, 2021<br>05.00 p.m. – 06.00 p.m. |
| 2.      | Key controversies and judicial pronouncements impacting the withholding Tax on Payments to Residents (Interest, Contractors, Commissions, Rent, Transfer of Immoveable Property, Professional and Technical Fees and Dividends) | Devendra Jain, <i>Advocate</i> | 21st October, 2021<br>06.05 p.m. – 07.30 p.m. |
| 3.      | Practical issues in TDS and TCS on Purchase and Sale of Goods, TDS on cash withdrawal and Section 206B  | CA Bhadresh Doshi              | 23rd October, 2021<br>10.30 a.m. – 12.00 a.m. |
| 4.      | Tax Withholding Provisions on payments to Non-Residents and Equalization Levy and payment to E-Commerce Operators   | CA Ganesh Rajgopalan           | 23rd October, 2021<br>12.05 a.m. – 01.30 p.m. |
| 5.      | Survey, Interest, Penalty and Prosecution in relation to TDS  | Rahul Hakani, <i>Advocate</i>  | 23rd October, 2021<br>04.00 p.m. – 05.30 p.m. |
| 6.      | Difficulties /Issues relating to TRACES, Online application for lower deduction and Issues  | CA Avinash Ravani              | 23rd October, 2021<br>05.30 p.m. – 06.30 p.m. |

### Fees

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



## IMPORTANT DECISIONS UNDER GST AND SERVICE TAX LAWS

By Vinay Kumar Jain and Sachin Mishra, *Advocates*

1. **Whether the electronic credit ledger of a person can be validly blocked beyond the expiry of a period of one year from the date of imposing such restrictions under Rule 86A of the CGST Rules, 2017?**

**Facts and Pleadings:** M/s. Sahil Enterprises (hereinafter "Petitioner") is a trading company, that had paid the applicable GST to the seller on the purchases made by them. However, the provisional attachment of the Petitioner's ledger account, under Rule 86A was ordered on 21-05-20, as the seller had not deposited the tax collected to the Government. Subsequently, vide a show cause notice dated 07-01-2021, the Commissioner of CGST, invoked the powers under Rule 86A of the CGST Rules, 2017 by disallowing the debit of an amount equivalent to ₹ 1,11,60,830/- from the electronic credit ledger of the Petitioner. Therefore, the Petitioner has filed the present writ petition challenging the vires of Section 16(2)(c) of the CGST Act 2017, and the validity of the blocking of credit beyond the expiry of a period of one year from imposing such restrictions.

The Petitioners submitted that Section 16(2)(c) of the CGST Act is violative of Article 14, 19(1)(g), and 300A of the Constitution of India. They argued that having paid CGST on the purchases made form a registered dealer, the Petitioner thereafter has no control over the seller to ensure that such tax is deposited with the Government, as the same is statutorily his obligation. It was submitted that denying the Petitioner ITC on such purchases on which they have already paid tax on such grounds would amount to double taxation. The Petitioners relied upon various High Court rulings furthering their position. The Petitioner also argued that provisional attachment under Rule 86A can be made only for a period of one year and not more than that, and since a year has passed, such attachment ought to be lifted.

The Respondent argued that the Petitioner has claimed tax credit without the tax being deposited

with the Government revenue, and that in order to safeguard the interest of the revenue, the Commissioner had exercised powers under Rule 86A of the CGST Rules, 2017.

**Judgment:** The Hon'ble High Court of Tripura observed that as per Rule 86A of the CGST Rules, 2017, it can be established that the restrictions that can be imposed on use of an amount available in electronic credit ledger of a person can be by way of a temporary measure for a period not exceeding one year. The Court observed that the same is an interim measure and, therefore, cannot take shape of a permanent arrangement, and that if the department wants to permanently disallow credit of accumulated amount in the ledger of a dealer, it must adjudicate the issue and pass an order after bi-partite hearing. Further, it was stated that sub-rule (3) of Rule 86A clearly brings about this legislative intent while it provides that such restrictions shall cease to have effect after the expiry of a period of one year. The Court also stated that the two things significant in this sub-rule are that firstly, there is no scope of extension of this time and secondly, upon expiry of a period of one year the effect of the restriction seizing to take effect would be automatic. Therefore, in the present case the Court held that the department cannot continue to subject the Petitioner's electronic credit ledger to the restrictions imposed by the Commissioner, on 21.05.2020, and the same shall be released. However, the Court did not grant any further relief and stayed the further proceedings, until the Respondents filed a full reply to the main petition.

**M/s. Sahil Enterprises vs Union of India, High Court of Tripura, decided on 14.09.2021, in IA No. 1/2021 with WP(C) No. 531/2021.**

2. **Whether the Appellant was eligible for the refund of the Cenvat Credit of CVD and SAD paid by them on imported inputs in terms of Rule 3 of the Cenvat Credit Rules, 2004 and Section 142 of the CGST Act 2017?**

Facts and Pleadings: M/s. Flexi Caps and Ploymers Pvt. Ltd. (hereinafter “Appellants”) are engaged in the manufacture of excisable goods, and were paying Central Excise Duty, and also availing Cenvat Credit of duty paid on inputs, capital goods and input services. Accordingly, on 09-07-2018, the Appellants had in terms of sub-section 8(b) of Section 142 of the CGST Act, 2017 filed an application for the refund of Countervailing Duty (CVD) and Special Additional Duty (SAD) paid, on the ground that though they had obtained the advance license for import of duty-free imports but could not actually fulfil the conditions of the said license. However, the same was rejected and a SCN was served upon the Appellants proposing the rejection of the said refund on the ground that there was no assessment/adjudication order issued, and the letter issued by DGFT asking the Appellants to pay Customs Duty cannot be construed as assessment or adjudication. Subsequently, vide an order, the refund was sanctioned to the Appellants. However, the Department reviewed the said order and filed an appeal before the Commissioner (Appeals), who subsequently, allowed the same. Therefore, being aggrieved thereto, the Appellants have filed the present appeal before the CESTAT.

The Appellant submitted that the inputs were imported by the Appellants without making the complete payment of duty, since they were already granted the advance license. However, since they could not fulfil certain conditions of the license, they approached the office of DGFT for redemption of Export Obligations, which was extended, and the assessed amount of duty was duly paid by the Appellant along with the interest as well as the penalty. The Appellants argued that as per Rule 3 of the CCR 2004, they were entitled to take Cenvat Credit on the CVD paid, and therefore they had filed the refund application in question. The Appellants also submitted that the since before the credit thereof could be taken, the new GST Act 2017 became effective, however, the refund was still available in terms of Section 142 of GST Act for such amount for which it was otherwise available under erstwhile law Section 11B thereof.

The Respondents submitted that there is no denial for the impugned duty to be of the previous period, and that the request of refund thereof under the new law is otherwise not sustainable. The Respondents also impressed upon the findings of the Ld. Commissioner (Appeals), wherein it was stated that a letter of DGFT cannot be considered as the assessment. The Respondents lastly, objected the jurisdiction of the Tribunal on the ground that the refund application has been filed under GST Act, and that the said Tribunal is not the competent authority.

**Judgment:** The Hon’ble CESTAT, Principal Bench, New Delhi, observed that it was nowhere denied that the Appellant could not fulfil the export obligation arising out of the said license, and therefore the only course of action with the Appellant in the said circumstances was to seek redemption which has also not been denied. The Tribunal stated that the entire customs duty with respect to the inputs imported by the Appellants stands fully deposited by the Appellants as was directed by the DGFT while seeking redemption, and in light of such admitted facts, it was sufficient to hold that the Appellants are entitled to avail Cenvat Credit of CVD/SAD on the imported inputs in terms of Rule 3 of the CCR, 2004. The Tribunal also observed that in view of Section 142 and its sub-section 8(b), denying the said entitlement, on the ground that the letter of DGFT cannot be considered as the assessment order is not appropriate, and therefore, the order of the Commissioner (Appeals) is also not appropriate. Lastly, on the question of Jurisdiction the Tribunal observed that the appeal before the Commissioner (Appeals) itself was not maintainable under GST Act for a refund application which was filed under the erstwhile law, thus the said order cannot sustain, and was liable to be set aside.

**Flexi Caps and Polymers Pvt. Ltd. vs. Commissioner, CGST & Central Excise-Indore, CESTAT, Principal Bench, New Delhi, decided on 15-09-2021, in Excise Appeal No. 50114 of 2020.**

**3. Whether parallel proceedings can be initiated by the State and Central Authorities, and what are the implications of Section 6(2)(b) and Section 70 of the CGST Act on the same?**

**Facts and Pleadings:** Kuppan Gounder (hereinafter “Appellant”) is the MD of M/s. KPN Travels India Ltd engaged in the business of transportation. The Appellant received a notice dated 17.12.2020 from the Assistant Commissioner, Salem stating that there are discrepancies in the GST returns in GSTR-3B filed by the Appellant for FY 2018-19 and 2019-20, while compared with the online service providers returns of the Appellant i.e. GSTR-8. Subsequently, the Appellant were also issued the summons by the DGGI New Delhi (Respondents) dated 08.07.2021 under Section 70 of the CGST Act, 2017. Thus, the Appellants had filed a writ petition challenging the summons issued by the Respondents dated 08-07-21, however, the same was dismissed. Aggrieved by the same, the Appellants have filed the present appeal.

The Appellants submitted that the Appellant’s company falls within the State jurisdiction under the SGST Act 2017, whereas the Respondent is an authority with central jurisdiction, therefore they have no jurisdiction to initiate any proceedings under CGST/SGST Act, especially when the State authority has already initiated action and the matter is pending at different stages. Further, it was submitted that there is no notification or order empowering the respondent to initiate assessment proceedings or raise a demand against the appellant, as they fall within the jurisdiction of the State authority under the SGST Act. As per the Appellants, the writ court had erred in rejecting the contention advanced by the Appellant by referring to Section 6(2)(b) of the CGST Act. The Appellants submitted that parallel investigation cannot be done by the State as well as the Central authority, and that the summons issued by the Respondents is liable to be quashed on the ground of lack of jurisdiction.

The Respondents submitted that a writ petition challenging a summons is not maintainable, and

that the Ld. Writ Court had rightly dismissed the writ petition directing the Appellants to submit to its jurisdiction. As per the Respondents, they had sufficient jurisdiction to invoke Section 70 of the CGST Act. The Respondents referred to the clarification issued by the CBEC dated 05-10-2018, to submit that that the Central Board has clarified that the officers of both the Central tax and the State tax are authorised to initiate intelligence-based enforcement action on the entire taxpayer’s base irrespective of the administrative assignment of the taxpayer to any authority. The Respondents have also placed reliance upon a plethora of judgments, wherein the Courts have considered the challenge to summons with regards to the effect of Section 6(2)(b) and Section 70.

**Judgement:** The Hon’ble High Court of Madras observed that the State tax authorities and the Central tax authorities enjoy concurrent jurisdiction, and that as per the clarification dated 05-10-2018, it is clear that if an intelligence-based enforcement action is taken against a taxpayer, which is assigned to the State tax authority, the Central tax authority is entitled to proceed with the matter and take it to the logical conclusions, and vice versa. Reliance was placed upon *Siddhi Vinayak Trading Company vs UOI* (Writ Tax No. 822 of 2020 dated 23-02-21). The Court further observed that the bar contained under Section 6(2)(b) is with regards to any proceedings initiated by a proper officer on a subject matter, on the same subject matter, the proper officer under the Central Act cannot initiate any action referred. However, the Court stated that the scope of Section 6(2)(b) and Section 70 is different and distinct, since the former deals with any ‘proceedings on a subject matter/same subject matter’ whereas, Section 70 deals with power to summon in an inquiry and therefore, the words ‘proceedings’ and ‘inquiry’ cannot be mixed up to read as if there is a bar for the Respondents to invoke the power under Section 70 of the CGST Act. The Hon’ble Court also placed reliance upon the case of *G. K. Trading Company vs. UOI*, to observe that the key words occurring in both the provisions viz. ‘in any inquiry’ and



‘proceedings on the same subject matter’ indicate the crucial difference between the two provisions. Thus, the writ appeal was dismissed.

**Kuppan Gounder P. G. Natarajan, MD, M/s. KPN Travels India Ltd. vs. DGGI New Delhi, High Court of Madras, decided on 01-09-2021, in W.A.No. 2003 of 2021 and C.M.P No. 12863 of 2021.**

4. **Whether it is necessary to interpret Rule 89(5) of the CGST Rules, 2017 so as to include the words 'input services' within the definition of Net ITC? Whether Section 54(3)(ii) is violative of Article 14 of the Constitution? Whether Rule 89(5) is in conformity with Section 54 of the CGST Act 2017?**

**Facts and Pleadings:** The Division Bench of the Gujarat High Court, in VKC Footsteps India Pvt. Ltd. vs. UOI held that the explanation (a) to Rule 89(5) which defines the refund of ‘unutilised input tax’ paid on “input services” as part of “input tax credit accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act, 2017. Therefore, the High Court directed the Union Government to allow claim for refund made by the petitioners before it, considering unutilised ITC on input services as part of “Net ITC” for the purpose of calculating refund in terms of Rule 89(5), on furtherance of Section 54(3). However, the Division Bench of the Madras High Court in Tvl. Transtonelstroy Afcons Joint Venture v UOI, held contrary to the Gujarat High Court, and concluded that Section 54(3)(ii) does not infringe Article 14. Therefore, the divergence in views of both the courts, forms the subject matter of this batch of appeals.

**Judgement:** The Hon’ble Supreme Court observed that to construe ‘inputs’ so as to include both input goods and input services would do violence to the provisions of Section 54(3) and would run contrary to the terms of Explanation-I. The Court stated that whether one construes the first proviso as an exception or in the nature of a fresh

enactment, the clear intent of Parliament was to confine the grant of refund to the two categories spelt out in clauses (i) and (ii) of the first proviso, and the same is evident by the use of a double - negative format by employing the expression “no refund” as well as the expression “in cases other than”. Therefore, Court stated that with the clear language which has been adopted by Parliament while enacting the provisions of Section 54(3), the acceptance of the submission which has been urged on behalf of the assessee would involve a judicial re-writing of the provision which is impermissible in law. Reading the expression ‘input’ to cover input goods and input services would lead to recognising an entitlement to refund, beyond what was contemplated by Parliament. It was further observed the proviso to Section 54(3) is not a condition of eligibility but a restriction which must govern the grant of refund under Section 54(3). The Court also observed that when there is neither a constitutional guarantee nor a statutory entitlement to refund, and such an interpretation, if carried to its logical conclusion would involve unforeseen consequences, circumscribing the legislative discretion of Parliament to fashion the rate of tax, concessions and exemptions. Thus, the Court held that the Bench is unable to accept the challenge to the constitutional validity of s.54(3) of the Act, 2017. It was also observed that Clause (ii) of the first proviso is not merely a condition of eligibility for availing of a refund but a substantive restriction under which a refund of unutilized ITC can be availed of only when the accumulation is relatable to an inverted duty structure, namely the tax on input goods being higher than the rate of tax on output supplies. There is, therefore, no disharmony between Rule 89(5) on the one hand and Section 54(3) particularly Clause (ii) of its first proviso on the other hand. Explanation (a) to Rule 89(5) in defining ‘Net ITC’ to mean ITC availed on inputs (goods) is, as a matter of fact, entirely in line with the main provision, Section 54(3). The Court stated that the formula is not ambiguous

in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on accumulation of unutilised ITC, it is merely the case that the practical effect of the formula might result in certain inequities. The reading down of the formula as proposed by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible. However, given the anomalies pointed out by the assessee, Bench strongly urges the GST Council to reconsider the formula and take a policy decision regarding the same. Thus, the Court affirmed the judgment of Madras High Court, and allowed the appeals against the judgment of the Gujarat High Court.

**UOI & Ors. vs. VKC Footsteps India Pvt. Ltd., Supreme Court of India, decided on 13-09-2021, in Civil Appeal No. 4810 of 2021 and others, with Writ Petition (C) 489 of 2021.**

5. **Whether GST would be payable on the whole amount collected by the Resident welfare associations or only on the amount in excess of ₹ 7,500/- in view of the exemption granted under Entry 77 of Notification 12/2017-CT(Rate) dated 28-05-2017?**

The Single Bench of the Hon'ble High Court of Madras had, in the case of M/s. Greenwood Owners Association & Ors vs. UOI on 01-07-2021, held that the exemption notification must be strictly interpreted, and that the plain words employed in Entry 77 being, 'upto' an amount of ₹ 7,500/- can thus only be interpreted to state that any contribution in excess of the same would be liable to tax. Therefore, the Single Bench of the Hon'ble High Court quashed the impugned order of the AAR and the impugned Circular, finding the same as contrary to the express language of the Entry in question. Aggrieved by the said order, the Department has preferred an appeal before the Division Bench of the Madras High Court. In pursuance of the said appeal the Division Bench is of the view that the legal issue has to be decided as because the learned Single Bench not only quashed the proceedings of the Tamil Nadu Authority for Advanced Ruling, but also the Circular issued by the Department, which needs verification. Thus, it seems that the Division Bench has put an interim stay on the Single Bench's order by admitting the said appeals.

**Madras High Court, Division Bench, decided on 09-09-2021, in W.A.Nos. 2318 and 2321 of 2021.**

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## **UNREPORTED TRIBUNAL DECISIONS**

**By Ajay R. Singh Advocate and CA Rohit Shah**

1. **Cash Investment in House Property out of savings and streedhan :**

Assessee had e-filed its return of income for A.Y. 2011-12, declaring a total income of ₹ 5,08,190/-. Original assessment was framed by the A.O. u/s. 143(3) after making addition of ₹ 7,15,000/- (being ₹ 3,60,000/- against investment out of current years income and ₹ 3,55,000/- out of Savings of earlier years). On Appeal before Ld. CIT (A), a partial relief was given and disallowance was restricted to ₹ 2,15,000/-. Assessee preferred appeal before Hon'ble ITAT against the same. Before both the appellate authorities and

Assessing Officer, assessee demonstrated the source of these savings, the assessee has given break up of personal drawings of the cash as well as break up taken out by the husband and two unmarried sons which were, in turn, invested in House Property and hence contended that no addition was required to be made.

The Hon'ble ITAT held that: Assessee has given the reason that Indian women generally keep some savings with them to meet contingency expenses and urgent needs. The explanation given by the assessee appears to be tenable as she has demonstrated through



her written submissions that the cash of ₹ 2,15,000/- has an element of savings for the contingencies of the family of four which also includes her "Streedhan". Though the CIT(A) has raised the doubt that these "Streedhan" cannot be in cash, it is in fact in Indian tradition certain amount in cash is given by the relatives to the women in the family especially from the woman's father side. Further, the assessee is also a self employer/entrepreneur who derives certain income from sale and purchase of spices and therefore, has to keep certain amount of cash in hand for purchase of the items/necessary goods for preparing spices in case of emergency/contingencies and thus, allowed the appeal.

**Smt. Anu Agarwal vs. ITO Ward-1(1) [ITA No. 68/DDN/2019; dated 24-3-2021; A.Y. 2016-17 Dehradun Circuit Bench]**

**2. Voluntary Contribution Received by a trust not registered u/s. 12A with a Specific Direction**

Assessee, a public charitable and religious trust registered under the Indian Trust Act, 1882, filed its return of income for AY: 2014-15 declaring total income of ₹ Nil. The return of income filed by the assessee has been processed u/s. 143(1) of the Act, by CPC, Bengaluru and determined total income of ₹ 55,82,600/- by making additions towards disallowance of donations received. Before Ld. CIT(Appeals), the assessee contended that corpus donations received by any trust or institution is excluded from the income derived from property held under the trust u/s. 11(1)(d) of the Act and hence, even though trust is not registered u/s. 12AA of the Act, corpus donations cannot be included in the income of the trust. The learned CIT(A) rejected contention of the assessee and held that conditions precedent for claiming exemption u/s. 11 of the Act is registration of trust u/s. 12A of the Act. The learned CIT(A) relied on the decision of Hon'ble Supreme Court in the case of M/s. U. P. Forest Corporation & Another vs. DCIT in Civil appeal No. 9432 of 2003 dated 27-11-2007. Aggrieved by the learned CIT(A) order, the assessee preferred appeal before Hon'ble ITAT.

The submitted that donations have been received for specific purpose and such donations have been utilized for the purpose it was received. In support of the contention, assessee relied on various judicial precedents including the decision of ITAT, in the

case of ITO vs. Serum Institute of India Research Foundation (2018) 169 ITD 271(Pune), Bank of India Retired Employees Medical Assistance Trust vs. ITO(Exemption) 2018 172 ITD 78(Mum) which supported Assessee's view that this is a capital receipt and hence, it is outside scope of income. Referring to financial statement of the assessee submitted that the assessee has received donations to the specific purpose of construction of building and said donation has been used for construction of building, therefore, same is outside the scope of income of the trust.

The Hon'ble ITAT dismissing Appeal of Assessee held that:-The definition of income as defined u/s. 2 of sub-section (24) includes voluntary contribution received by any trust created wholly or partly for charitable or religious purpose. This means, for any assessee, including trust or institution voluntary contribution is income. The provisions of section 11, 12A & 12AA, deals with taxation of trust or institution. The provisions of section 11(1)(d) of the Act excludes voluntary contributions received by trust, with a specific direction that they shall form part of corpus of trust or institution. Provisions of section 12A states that provisions of section 11 & 12 shall not apply in relation to income of any trust or institution, unless such trust or institution fulfill certain conditions. As per said section one of the conditions for claiming benefit of exemption u/s. 11 & 12 of the Act is registration of trust under sub-section (aa) of the Act. From conjoint reading of the above provisions, it is very clear that income of any trust including voluntary contributions received with a specific direction is not includable in the total income of the trust, if such trust is registered u/s. 12A / 12AA of the Income Tax Act, 1961. This principle is supported by the decision of the Hon'ble Supreme Court in the case of M/s. U. P. Forest Corporation & Another vs. DCIT (supra). In view of above ITAT held that voluntary contribution received by the trust with a specific direction that they form part of corpus of the trust is income of the trust within the meaning of section 11 & 12 of the Income Tax Act, 1961. Therefore, confirmed additions made by the Assessing Officer towards disallowance of corpus donations.

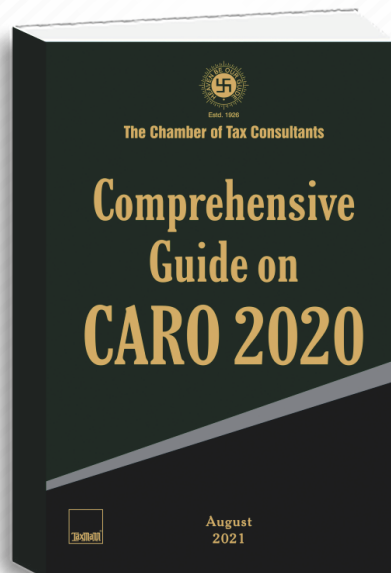
**Veeravel Trust vs. ITO, Exemption, Salem [ITA No. 2064/Chny/2019; dated 22-7-2021; AY 2014-15; Bench : C Chennai ITAT]**

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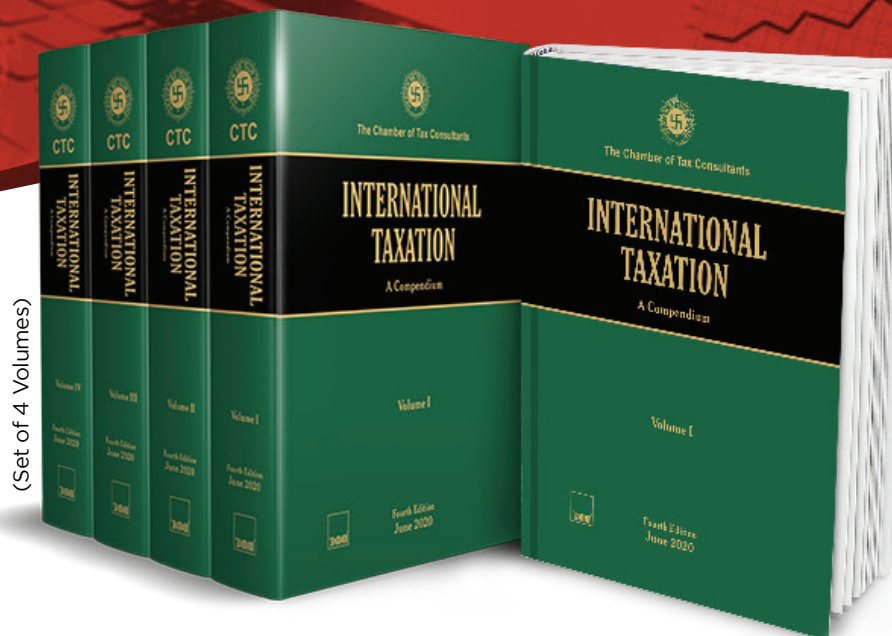
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