

eMagazine



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Vision

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**MYSORE
CHAPTER**



CS Manjunath S.
Chairman
Mysore Chapter

Dear Professional Colleagues,

Greetings to you all.

During the month of April 2018, new CS study center was opened in Haranahalli Ramaswamy Institute of Higher Education in Hassan district. This study center will be a boon to the students in and around that district.

Secondly, six career awareness programs were conducted during the month especially for final years of B.com degree students. Many students showed interest to join the course.

Chapter is looking forward for more programs on GST, IBC and NCLT topics and we are looking forward for active participation from all the members and students

Thank you

-: Editorial Team:-

CS Vijaya Rao

CS Sherene

CS Pracheta M

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Chapter Activities

1. CAREER AWARENESS PROGRAM

Chapter conducted 06 Career Awareness Programs during April 2018. The details are as follows.

S No.	Date	Venue	Speaker(s)	No. of Participants
1	02.04.18	SDM & MMK College, Mysore	CSManjunath S,	101
2	03.04.18	Vidyavardhaka First Grade College, Mysore	CSManjunath S,	127
3	06.04.18	BEG First Grade College, Hassan	CSManjunath S,	60
4	06.04.18	N D R K First Grade College, Hassan	CSManjunath S,	55
5	06.04.18	Haranhalli Ramasamy Institute of Higher Education, Hassan	CSManjunath S,	140
6	17.04.18	University of Mysore – BIMS	CSManjunath S,	60

2. INAUGURATION OF ICSI-STUDY CENTRE

Chapter signed MoU with Haranhalli Ramaswamy Institute of Higher Education, Hassan for opening of ICSI-Study Centre in Hassan District on 06.04.2018. In his address CS Manjunath S, Chairman, ICSI-Mysore Chapter explained the students about the benefits of the study centre and professional course. Mr. Chandrashekar Iyer, Vice Chairman of M Krishna Law College delivered the vote of thanks.





GST - A Report Card..!!

Introduction

On 01.07.2017, the Parliament's historic Central Hall witnessed a historic event of nationwide launch of new Indirect Tax regime in the form of Goods and Services Tax (hereinafter 'GST'). Existence of deficiencies in the erstwhile Indirect Tax regime, compelled the Central Government to bring a 'One Nation - One Tax' Indirect tax regime to plug the stressing deficiencies. On coming 30.06.2018, GST Laws will become a one-year-old baby..!!

GST Laws An overview

There are four major Acts, besides Rules, GST Acts for each States, namely –

- a. Central Goods and Services Tax Act, 2017 (*hereinafter CGST*)
- b. Integrated Goods and Services Tax Act, 2017 (*hereinafter IGST*)
- c. Union Territory Goods and Services Tax Act, 2017 (*hereinafter UTGST*)
- d. Goods and Services Tax (Compensation to States) Act, 2017

Salient Features of GST Laws

The salient features of GST laws are as follows

1. The Central & State GST shall be imposed concurrently on all transactions of goods or services or both.
2. No cross utilisation of the credits of CGST or SGST shall be permitted against each other.
3. The credit of SGST shall not be confined to the boundaries of a State, if the goods or services or both sold in the course of interstate trade.
4. The IGST shall be equal to CGST and SGST and all available input tax credits shall be adjustable towards the liability of IGST.
5. The rates of CGST and SGST shall be decided on the basis of revenue neutrality.
6. There shall be a threshold limit which is common to both the taxes.

7. Every GST Law, whether it is SGST or CGST shall provide composite scheme for small traders.

Whether GST succeeded?

Yes..!! Implementation of GST has brought in its own advantages wherever it has been implemented all over the world. As far as India is concerned, major advantages are – it creates an integrated national market which in turn gives a boost to foreign investment in the form of FDI. It prevents cascading of taxes as input tax credit at all the stages of supply of goods and / or services. It replaces various indirect tax levies (to be precise, 17).

Succeeded - On account of

1. Subsume of various Indirect taxes

As said above, various Central, State and local levies were subsumed into GST laws. Subsumed taxes were part of the transaction chain i.e. either on the supply of goods or services. Nationwide integration allows for an easy availment of input tax credit in case of intra and inter-state transactions. Taxes, levies or duties currently subsumed into GST laws are – Central Excise Duty, Duties of Excise levied on medicinal preparations, Additional Duties of Excise levied on goods of special importance, Additional Duties of Excise levied on textiles and textile products, Additional Duties of Customs or CVD, Special Additional Duty of Customs or SAD, Service Tax. State level taxes or duties such as Value Added Tax, local Sales Tax, Luxury Tax, Entry Tax, etc has subsumed in to.

2. Borderless Economy

With effective from 01.07.2017, inter-state check posts have been dispersed across the country which reduced the travel time of long-haul trucks, cargo vehicles by at least one-fifth. Data from the 'Ministry of Road Transport and Highways' has revealed that a typical truck in India spends almost 20 percent of its time in inter-state checkpoints or borders. Recently implemented 'e-way Bill mechanism' will done

away of separate transit passes for moving goods from one State to another State.

3. Revenue Buoyancy

Since its inception, the collections under GST have been steady or stable every month. The Central Government has budgeted about Rs 7.44 trillion from GST in the 2018-19 financial year beginning April 1. According to the Finance Ministry officials, revenue collections from the GST could cross even Rs 1 trillion a month towards the end of March 2019 once tax evasion measures like the matching of tax data and e-way bill are put in place. The revenue collection so far as follows—

a. August	Rs. 93,590 Cr.
b. September	Rs. 93,029 Cr.
c. October	Rs. 95,132 Cr.
d. November	Rs. 85,931 Cr.
e. December	Rs. 83,716 Cr.
f. January	Rs. 88,929 Cr.
g. February	Rs. 88,047 Cr.
h. March	Rs. 89,264 Cr.
i. April	Rs 1,03,458 Cr.
j.	

Total Rs. 8,21,096 Cr.

4. Ease of doing business

5. GST - A Statistical Snapshot as on 01.05.2018

Sl. No.	Details	
1	Migrated tax payers	64,36,320
2	New registrations approved	44,10,338
3	Applications still pending	1,05,140
4	Applications rejected	6,15,991
5	Taxpayers (new as well as migrated)	1,08,46,658
6	Taxpayers who have opted for composition scheme	20,07,119
7	GSTR 1 filed till March 2018	3,13,14,296
8	GSTR 2 filed for the month of July 2017	25,72,552
9	GSTR 3B filed till March 2018	6,01,93,868
10	GSTR 4 filed till March 2018	34,42,977

GST will lead Indian economy into a simpler tax regime. Reduced multiplicity of taxes has converted our economy into an integrated market.

- Due to e-Administration, GST will reduce compliance costs over a period of time.
- Less public interface between the registered dealers and the tax department.
- GST will improve the compliance environment as all Returns to be filed electronically which encourages less paper transactions.
- Simplified Procedure has been introduced for all issues such as registration, refund, standard formats of tax returns, etc.
- Unlike earlier regime, for all transactions, a definite time frame has been provided.
- Benefits for end users or Consumers – It is expected that
 - Over a period of time, final price of goods will become lower due to seamless flow of input tax credit between the manufacturer, retailer and supplier of services.
 - A relatively large segment of small retailers will be exempted from tax in near future.
 - Average tax burden on companies will come down in near future.

Transitory Issues - On account of

1. Hurried Implementation

No doubt, theoretically, GST is a very good concept but its success is purely depends on its proper implementation. Key flaws due to its hurried implementation, may be summed up as

- Implemented in the middle of the financial year – The GST has been introduced w.e.f 01.07.2017 i.e. after three (3) month of commencement of the financial year 2017-18. In other words, the first three months, erstwhile Indirect tax regime and for remaining, total new indirect tax regime. Businesses have felt extremely difficult to migrate to a new regime, which in turn, increased their immediate cost of compliance, probable loss due to confusion, non-compliance issues.
- Lack of connectivity – Due to technical glitches on GSTN server, it is still difficult to file any given return within the due dates. For instance, the GST Council have extended the due date of returns further and reduced the late fee.
- Due to technological issues, the Central Government has suspended filing of GSTR 2, deferred the implementation of e-Way Bill mechanism, Reverse Charge Mechanism, TDS or TCS related provisions for almost a year.
- The sudden increase in operating costs of SMEs and MSMEs to avail professional services, implementation of requisite systems, training cost of their accounting staff etc.

2. Multiple tax rates

Since India is a federal country, both the Centre and States have powers to levy and collect taxes, for e.g. any intra-state supply, taxes to be paid to the Central Government in the form of CGST. Similarly, for any Inter-state supply, taxes to be paid to both the Central Government as well the State Government in the form of IGST which will have components of both CGST and

SGST. Current GST rates are – 0 or Nil rate, 5%, 12%, 18% and 28% plus applicable cess. According to World Bank's latest biannual 'India Development Update Report' ¹¹, most countries have a single rate of GST rates. The Indian GST rates are among the highest in the world, while only applying to a subset of goods and services traded, is 28 percent, which is the second highest among 115 countries which have a GST system.

3. Non-inclusion of certain goods and services

While implementing totally new Indirect Tax regime, the Central Government has kept certain goods and services out the purview of the GST. They are

- Alcoholic liquor for human consumption.
- Petroleum and its products
- Electricity.
- Employees and their services.
- Actionable claims other than lottery, betting and gambling.

Due to absence of consent of the States, inclusion of them are not as easy as thought. The reason is that the effective sales tax on petroleum products varies from state to state where in case of Maharashtra it is 40% and in the case of Andaman and Nicobar it is just 6%. Petroleum products and liquor sectors used to generate approx. 40 percent of the total indirect taxes in the erstwhile regime. With a consistent demand for inclusion of petroleum products by all sections, the Central Government and all the States concerned should bring them under the GST regime.

Conclusion

Implementation of GST is truly a remarkable achievement for any Government. There were hardly any disruptions during last ten months except compliance and refund related issues. Geographically, India is a vast country and GST law is evolving slowly but steadily, may need few more months or quarters to settle down fully. 01.07.2018 will be the first anniversary of the GST regime, with a handful of experience, all concerned should move forward to achieve 'One Nation – One Tax – One Market' more meaningfully.

SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018

On May 9th 2018 on recommendation of Uday Kotak Committee Report SEBI notified SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations 2018, (Amendment Regulations). Though it has specified effective dates, as per SEBI practice it might notify and give time for transition. Here is the compilation of the Amendment in summary for easy reference in table format. However, for detail one has to go to the original detailed Amendment.

Regulation	Issues deals with	Effective date
Reg 2(1)(zb)	Definition of related party	April 1, 2019
Reg 6(1)(b)(ii)(viii)	Definition of Independent director	October 1, 2018
Reg 16(1)(b)	Definition of material of subsidiary from reducing from 20% to 10%	April 1, 2019
Reg 16(1)(d)	Definition of Senior Management	April 1, 2019
Reg 17(1)(a)	Requirement of woman director by top 500 listed entities (based on market capitalization)	April 1, 2019
Reg 17(1)(a)	Requirement of woman director by top 1000 listed entities (based on market capitalization)	April 1, 2020
Reg 17(1)(c)	Req. to have min 6 directors by top 1000 listed companies	April 1, 2019
Reg 17(1)(c)	Req. to have min 6 directors by top 2000 listed companies	April 1, 2020
Reg 17(1A)	Appointment of a non-executive director who has attained the age of seventy five years by the listed company	April 1, 2019
Reg 17(1B)	Requirement of having a non-executive chairman who shall not be related to the MD/ CEO of the listed entity. Applicable to top 500 companies based on the market capitalization	April 1, 2020
Reg 17(2A)	The quorum for every meeting of the board of directors of the top 1000 listed entities	April 1, 2019
Reg 17(2A)	The quorum for every meeting of the board of directors of the top 2000 listed entities	April 1, 2020
Reg 17(6)(ca)	The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors	April 1, 2019
Reg 17(6)(e)	Requirement to obtain approval of shareholders by special resolution for the fees or compensation payable to promoter or promoter group in excess of thresholds	April 1, 2019
Reg 17(10)	Performance evaluation of independent director by entire board	April 1, 2019
Reg 17(11)	Recommendation by the board to shareholders for each item of S R	April 1, 2019
Reg 17A	Maximum no of directorships – equity listed entities – limit 8	April 1, 2019
Reg 17A	Maximum no of directorships – equity listed entities – limit 7	April 1, 2020
Reg 19 (2A)	The quorum for a meeting of the nomination and remuneration committee	April 1, 2019
Reg 19 (3A)	The nomination and remuneration committee shall meet at least once in a year	April 1, 2019
Reg 20(1)	Stakeholders relationship committee (SRC) to specifically look in to the various aspects of shareholders, debenture holders and security holders	April 1, 2019
Reg 20(2A)	SRC's composition to comprise of at least 3 directors with at least one being independent director	April 1, 2019
Reg 20(3)	The Chairperson of the Stakeholders Relationship Committee shall	

	be present at the annual general meetings to answer queries of the security holders	
Reg 20(3A)	SRC to meet once a year	April 1, 2019
Reg 21(3A)	Risk Management committee (RMC) to meet once a year	April 1, 2019
Reg 21(4)	Role and responsibility of RMC to cover cyber security function	April 1, 2019
Reg 21(5)	RMC to be formed by top 500 listed entities	April 1, 2019
Reg 23 (1)	The listed entity shall formulate materiality of related party transactions approved by the board and reviewed by the board at least once in 3 years and updated accordingly	April 1, 2019
Reg 23 (1A)	Related party transaction materiality involving royalty payment	April 1, 2019
Reg 23 (4)	Voting for material RPTs related party need not abstain from voting	April 1, 2019
Reg 23 (9)	Disclosure of related party transactions	April 1, 2019
Reg 24 (1)	At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.	April 1, 2019
Reg 24 A	Requirement of annexing secretarial audit report to the annual report	April 1, 2019
Reg 25 (1)	An alternate director cannot be appointed for an independent director	Oct 1, 2018
Reg 25 (8) and (9)	Declaration by independent director	April 1, 2019
Reg 25 (10)	Obtaining D and O insurance for Independent Directors by top 500 listed entities	Oct 1, 2018
Reg 29 (1)(f)	the proviso thereto shall be omitted	Oct 1, 2018
Reg 32 (7A)	Disclosures of utilization of funds in the annual report on funds raised through PA or QIPs	April 1, 2019
Reg 33 (3)(b) and (e)	Mandatory requirements to submit consolidated financial results	April 1, 2019
Reg 33 (3)(g)	Mandatory requirement to submit cash flow stmt and limited review of CFS	April 1, 2019
Reg 33 (3)(i)	Disclosure in the results for the last quarter of the financial year	April 1, 2019
Reg 34 (1)	Submission of annual report and notice of AGM sent to S/H	April 1, 2019
Reg 36 (1)	Sending soft copies of full annual report	April 1, 2019
Reg 36 (4)	The disclosures made by the listed entity should be submitted to stock exchange	
Reg 36 (5)	Notice sent to the S/H for appointment/ reappointment of statutory auditors	April 1, 2019
Reg 44 (5) and 6)	Holding of AGM by top 100 listed entities	April 1, 2019
Reg 46 (2)	The details required under the sub section should be disclosed	Oct 1, 2018
Reg 46 (2)	Separate Audited F/ Sof each subsidiary of the listed co	April 1, 2019





Demythifying Two -Tier Board Structure

The board of any corporate entity is engaged in fulfilling three distinct types of roles: the control, strategy and service role. The way the Board is structured is integral to the level and effectiveness of corporate governance mechanisms. The Board structures differ from country to country around the world as the businesses therein operate in very different business environments and contexts

Two Tier Board Structure

Traditionally, one tier Board system emanated under the English model and the two – tier Board form emerged under the German model of corporate governance which mandates such a board structure for all listed entities. Several other countries such as Finland, Netherland, China and Indonesia. The two -tier board structure involves two separate bodies operating independently viz. The legal board of Directors and the Supervisory board. The management board is involved in day to operations oversight ,providing strategic and service support and the supervisory board comprising of senior people having multi - faceted industry and business experience elected by the shareholders, performs advisory and control role thus facilitating long term decision making pertaining to various aspects of functioning of the company. The existence of a supervisory board enhances the credibility of the company in the eyes of the investors. The Management board works closely with the Supervisory board through a constant flow of and free exchange of relevant information between them.

It should further be noted that the supervisory duty of the Board of Advisors does never exonerate the Board of Directors of its own responsibility. It would, therefore, be rare indeed that a situation would arise where members of the Board of Advisors are held liable whilst the Board of Directors is not liable. The contrary will more often

be the case, as the mere fact that the Board of Directors is negligent or at fault does not necessarily imply that the Board of Advisors has failed in its supervision.

The comparative strengths and weaknesses of one-tier and two tier boards have been widely debated by the scholars and practitioners. In essence, the main difference between the two board structure models relates to the question whether it is desirable to have independent monitors involved in decision management. The structure of one-tier boards in which executive and non-executive directors operate on the same board jeopardizes at least to some extent the board's ability to monitor executive directors. However, Major corporate governance scandals have occurred in firms using one-tier and two-tier boards. A study Based on a sample of European companies in the STOXX EUROPE50 an FTSE30 in the year 2014, empirically indicated that the companies with two-tier board structure get high firms value.

Evolving Board structures

Growing shareholders activism and compulsions for effective corporate governance are compelling companies to look out for newer kind of Board structures. For example The "1.5" Tier Board in America .The heightened governance standards have required boards to delegate responsibilities increasingly to committees, which are growing in number, expertise and responsibility. This has diluted some of the primary advantages of the single-tier board by effectively marginalizing all board members who lack the specialized knowledge required by a particular committee. The American board may in this way be better described as a "1.5" tier rather than a one-tier board. Supervisory duties, although not legally separate like in the German model, have been heightened and delegated to the specialized committees substantively different than a to evolve

a corporate governance structure which is different from a unified one-tier board.

In conclusion it may well be said that “people will not change”, “the boardroom culture is more important than the structure” and “it is all about the persons operating a board model. All board structures would be effective when the Board has appropriate composition, consisting of people who have the requisite expertise and commitment to enhancing corporate governance standards and there are effective Board processes and procedures in place.

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Words Worth Million

Once you choose hope, anything is possible

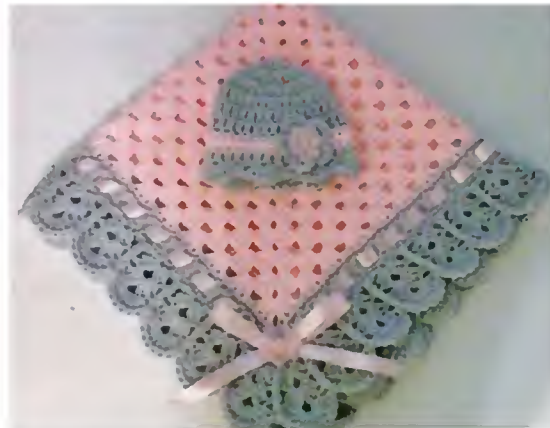
Christopher Reeves



Learn to Sew



Growing up in an all-Girls school Sewing was a subject which most of us enjoyed as kids. The colorful yarns, silk threads, sewing frames and thimbles were nothing but all fun. Crochet was a technique which is an art by itself with all its interwoven and loop stitches but the outcome is a joy forever. Many times while crocheting it leaves us with anxiety of the end result because every stitch looks like a knot and every knot is an effort. The unknown bliss we get when the pattern is finished is worth the toil. Life is something similar to sewing, we all sew our designs. Life has its ups and downs, strife's and victories, downfall and success, it is up to us to weave to a design we will enjoy and cherish. There may be times when life seems knotted up but we are in control of the knots to make it a pattern. So let's learn to sew the pattern of success overcoming each obstacle.





When we start learning English, we will learn some basic grammar right on the first lesson. We learn how to make sentence, use of tenses, punctuations etc... This is very much necessary for us to understand the structure of English. Grammar learning not only helps us to understand the language, but also helps us to improve our writing and convey our thoughts more effectively and writing is very much crucial in every nook and corner in our profession. Hence, to make writing much more efficient an app called '*grammarly*' would come in handy.

Grammarly is an AI-powered product, which helps people communicate more effectively. It helps to convey messages, documents, and social media posts clearly, mistake-free, and more impactful. As we type, Grammarly checks our text for hundreds of common and advanced writing issues. The checks include common grammatical errors, such as subject-verb agreement, article use, and modifier placement, in addition to contextual spelling mistakes, phonetic spelling mistakes, and irregular verb conjugations. Grammarly also provides synonym suggestions to make the writing more readable and precise.

Grammarly can be added to Google chrome as an extension. This tool is very much helpful when you write a mail or when you need to write something online. Further, grammarly is also available for windows, where we need to install the grammarly app. We can drop our document in the grammarly

environment and rest of the work is done by grammarly.

Another, feature of this app is that, they will send weekly/monthly report card which shows us the common mistakes that we do, new words used by us, level of our grammar ability etc... The only drawback of the app is that it is an online application; hence, the computer must be connected to an active internet connection for its use.

There is a paid version of grammarly called "Grammarly Premium" which offers over 400 types of checks and features, checks for grammatical errors, provides vocabulary enhancement suggestions, detects plagiarism, and provides citation suggestions.

A demo document when uploaded to grammarly will be in the following manner:

Demo document

For years I have been driving an old used car with a lot of mileage and I hate it. It gets me where I need to go but I'm tired of fixing leaks and broken parts all the time. It's annoying that I have to take it to mechanic every time. Even when they take care of everything, I know in a week I'll just end up going back there.

I have finally decided that I am not going to do it anymore. I have decided to buy a new car! Unfortunately, I have a problem. I have no idea what car to get. Do I want something fast? Do I want something big? Do I want something stylish? Something economical? I have so many choices that I don't even know where to begin. I am not sure if I will be able to make the decision on my own. I don't have a lot of money either, so I probably don't have many options.

After I did some research, I knew that I would need some expert advice. Eventually, I went to a local dealership to check out some new models. I talked to the saleswoman and I entered at the dealership. Her honesty and professionalism were really impressive.

It not only highlights the errors but also shows the rectification to be made. Grammarly can be downloaded freely from the following link [https:// www.grammarly.com/](https://www.grammarly.com/).



Commentary on Alternate Director Series 6

Provision: Section 161(2)

The Board of Directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Commentary:

1. Applicability: Applicable to all types of companies i.e. Private Company, Public company and One Person Company.
2. Authority: Only Board of Directors can appoint an alternate director. Managing director or committee's of Board or WTD or even original director do not have power to appoint an alternate director.
3. Mandatory: It is not mandatory to appoint an alternate director as word is 'may'.

4. Resolution: Appointment of an alternate director may be passed either at the Board Meeting or by resolution by Circulation.
5. Authorization: If authorized by articles, an alternate director may be appointed; otherwise articles needs to be amended suitably or board may be entrusted with aforesaid power by shareholder. In absence of both, Board do not have power.
6. Meaning of any Person: Person refers to individual only as individuals alone are eligible to become directors of the company in line with Sec.149(1) r/w Sec.153 of Act.
7. Person not eligible:
 - a. Alternate director can act as an alternate director for only one original director in the same company; he cannot act as an alternate director for more than one director in same company. However in any other companies, he can act as an alternate director.
 - b. Companies Amendment Act 2017: erstwhile Section 161(2) does not prohibit the appointment of an existing director as an alternate director and that same individual acting as a director and alternate director for some other director of the same company leads to conflict of interest and also ambiguity in the calculation of quorum. Hence there is a prohibition under Amendment Act 2017 for appointing a director of a company as an alternate director in the same company.
8. When we can appoint an alternate director: The Alternate Director can be appointed in place of original director during his absence for a period of not less than three months from India. The period of three months is continues period of three months. Absence of 3 months is a pre condition to form an opinion to appoint an alternate director. However the original director may come back to India before 3

- months itself. Practically whenever an original director returns back to India, an alternate director ceased to be the director, consequently Form DIR 12 needs to be filed before ROC for every cessation and if company wants to appoint an alternate director again, same procedure for appointment needs to be followed which increases compliances burden.
9. India: Erstwhile Companies act 1956, it was 'State'. Now wording is 'India'. As per my opinion, India means territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976), and the air space above its territory and territorial waters.
 10. An alternate director for an independent director: An Alternate director can be appointed for an independent director if an alternate director complies the provisions of Section 149 read with Schedule IV to the Companies Act 2013.
 11. Tenure:
 - a. An alternate director shall not hold office for a period longer than that permissible to the original director. If an original director vacates the offices by reason of death or disqualification etc., an alternate director also vacates office automatically.
 - b. An alternate director shall vacate the office if an original director returns to India for any purpose whether official or personal.
 12. Alternate director cannot be Managing director and vice-versa: If an original director is MD of the company, then an alternate director cannot become MD automatically. The provisions of MD appointment shall be followed for his appointment as MD. Similarly vice versa also.
 13. Leave of absence: The provisions of Section 167(1)(b) is presumed for an original director.
 14. Position:
 - a. Additional directors do have same rights, powers, duties similar to any other directors.
 - b. An alternate director is not proxy or an agent of an original director.
 - c. Could an alternate director be said to be interested in a contract or arrangement in which an original director was interested but an alternate director himself has no interest? – Dept clarified the matter negatively.
 15. Forms: Within 30days of his appointment, the company needs to file Form DIR 12 along with consent letter in Form DIR 2. Once original director returns back to India, then within 30days, the company needs to file Form DIR 12 for his cessation.
 16. An alternate director need to disclose his interest in Form MBP 1 within 30days of his appointment in line with Sec.184 and the company need to update the relevant Statutory Registers.
 17. If board meeting held outside India and both an alternate director and an original director attended the board meeting. Then presence of an original director shall be considered. However notice of the meeting needs to be sent to both directors as per para 1.3.7 of SS1 and as a good secretarial practice, minutes may be circulated to both directors.





Conundrums for Supply of Services to a SEZ Unit under GST

Almost ten months passed away post implementation of GST, a ton of unsorted & contradictory clarifications have been dwelled upon by the law makers in the interest of Public by way of FAQ's, Notification, circular, pliers etc.; When an attempt is made by the policy makers to bring in a new reform always a room exists for parallel citations having equal priority as per the legal framework set. When such situations travel to the desk of the official concerned, a simple litmus test theory may not work all the time. The issues concerned cannot be adduced with a coin having two sides and tossing up the same to conclude a situation affirmatively. A similar recent issue concerned with Supply of Services to a SEZ under GST, has been brought under litmus test by the authorities concerned with a single window clearance approach. A similar incident under existing law has to travel upto CESTAT which has been settled in favour of the applicant. [*Sobha Developers Ltd. vs. CCE, Bangalore [2012 (25) S.T.R. 136 (Tri.-Bang.)*]

Recently the Authority for Advance Ruling LGSTO 390 No.KARADRG-2/2018 has given its ruling in the case of M/s Gogte Infrastructure Development Corporation Ltd., in relation to Supply of Services of Hotel Accommodation, Restaurant Service as an Intrastate supply and is taxable accordingly for rendering the services to a SEZ unit/developer.

Practical issues for accepting the above Ruling
Identification of Place of Supply for the Service by application of Section 12 in case of all the Services rendered to SEZ

- Difficulty in uploading the periodical returns on Common portal. Once a supplier incorporates GSTIN of a SEZ recipient, system automatically picks up IGST. Common portal has to carefully follow the Ruling to make itself accommodative for computing SGST & CGST

- Discrepancy & disturbance amongst the Tax Official and the Tax Payer for identifying which Tax to be paid
- Discrimination & blockage of working capital by way of Taxes in the hands of the supplier/ recipient

The above citation shall be binding upon the applicant and jurisdictional officer concerned as per Section 103 of CGST Act, 2017. However, in practicality, all the officers concerned with administrative authority shall adopt the above ruling as a *man datum* to be religiously followed in the coming future.

The above ruling has forgotten the whole gamut of the authority vested in Section 16 read with Section 7 of IGST Act, 2017 for examining the Supply and coverage for levy of Taxes. Benefits available apparently under the above provisions have been grossly mis-interpreted while conferring the above ruling.

It is highly recommended that GST provision or trade practices should not be interpreted based on FAQ's handled on twitter or Advance Ruling based on outcome or how the GSTN portal responds to a particular scenario. A proper cognizance of the legal provision to be harmoniously read with the relevant Notifications or Circulars issued in harmony with the legal framework set.

Citations of case laws from earlier law are very much relevant for the above confirmation of the legal provision

To examine the complexity reposed under GST, let us examine the below three instances

Instance 1 services rendered completely outside SEZ

For instances services such as Advertisement Services, Airport Service, Hotel Accommodation, Restaurant, Port Services are some of the services where service provider shall render the services

outside the SEZ premise to a SEZ unit or a developer

Instance2 Services rendered partially within SEZ Based upon the nature & extent of support, there could be another category of services where the Service provider performs some of the Services which shall be partially consumed within the SEZ premises such as Banking & other financial services, Transportation service, Professional services, Business Support Service

Instance3 Services performed within SEZ The third category where services shall be associated with the SEZ unit for their rendition such as Security, Manpower, Housekeeping, Works Contract etc., where the Service provider needs to render the services within the SEZ unit

There could be a slight variation in the magnitude of classifying the above three categories bases on actual user test formulae. As per the Ruling every service provider has to examine the nature of services and its Place of Supply to draw an interpretation for construing it to be an Intra-State supply.

The key ingredients examined from GST perspective by the authorities concerned are as below

- Place of Supply
- Location of Service Provider
- Supply of goods/ services to a SEZ Developer or a SEZ unit has been wholly missed out

Legal provision

Section16 of IGST Act, 2017 specifies the supplies to be construed as Zero-Rated supply i.e. Supplies exported out of India or Supplies made to a SEZ Developer or SEZ unit. Careful examination of the above provision doesn't impose any reference to any other provisions of GST Act, rather than focusing on mere supply to a SEZ unit or a Developer. Though there is no reference to the term 'authorised operations' in Section16, **Rule 46** carves out the declaration to be mentioned in a Tax Invoice as below

"SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX" or –"SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF

UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX"

On the other hand, reference to **Section 12** of IGST Act, 2017 identifies the Place of Supply of Services when the Service provider and recipient are in India. All the three scenarios discussed as above can be fitted into the above three categories for the purpose of examining the Place of Supply.

Section 7 & Section 8 of the IGST Act, 2017 refers to identification of a Supply to be an Intra/ Inter-state supply for the purpose of levy of respective taxes. Careful examination of **Section 7(5)(b) of IGST Act, 2017 specifies the supply of Goods/Services to/by a SEZ Developer or a SEZ unit be an Inter-state supply.**

A careful examination of the above provisions, Section12 identifies the Place of Supply in case of Services and the same is a **general provision** to be applied for all.

However, Section 16 dealing with supply of goods/ services to a SEZ unit/ Developer read with Section 7(5)(b) is a **specific provision**. When a dichotomy exists in application of two parallel legal provisions, a specific provision shall prevail over the general one. Further, reference to Notification No.F.No.D.12/19/2013-SEZ issued by Ministry of Commerce & Industry Dtd:02.01.2018 towards identifying 66category of services which shall be a Default Authorised services for a SEZ. The above Notification clearly indicates the availability of IGST exemption for the identified 66category of services.

A harmonious reading of above Notification issued by Ministry of Commerce read with Rule 46 of CGST Rules, 2017 when 66 categories of services are identified as Authorised services, the same cannot be questioned by an authority concerned with GST administration towards denial of benefit of IGST under Section 16.

Conclusion

To conclude Section 7(5)(b) read with Section 16 read with Rule 46 read with the Notification issued by Ministry of Commerce, the Service rendered to a SEZ can be a Supply of Service to SEZ unit which entails itself with the benefit of Zero-Rated Supply in the hands of the Supplier.

Disclaimer

The above views expressed are as per the understanding of the present GST provision by the author. Any corrections or suggestions may be sent to praveen@gella.in



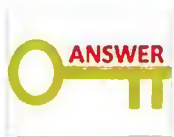
M/ s APL Ltd., a manufacturing company registered under Central Excise have duly migrated to GST. During verification of their records of Input tax credit, it was noticed that Input Tax credit has been availed twice on a particular transaction as below:

1. Accounted as Purchase during June 2017 and availed Cenvat for Rs.3,50,000/- in ER1 filed
2. Accounted during July 2017 again and availed ITC for Rs.3,50,000/- u/ s140(5)

Examine whether the above excess availment should be paid back in cash as Central Excise or through ITC under GST

Please send your opinion to,

enewsletter.icsimysore@gmail.com



Opinion To Last Month's Brainy Bits

Facts to Consider

- Availability of stock records & due entries in the stores register
- Existence of a valid purchase order, correlation of the goods movement with respective transit/ transport bills
- Adjustment of sales based on annual performance by way of Discount or Credit Notes

Transaction	Accounting in Books
Goods received before 31.03.2018	Pending for approval by Purchase Department
Goods received and rejected	Not took place
Adjustment of Debit/ Credit Note	Not took place
Goods not received, but Invoice was received	Can't take place in March 2018 unless goods are received

Relevant Provisions:

Section 16(2)

Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- (b) he has received the goods or services or both

Section 34(1)

Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or

both, may issue to the recipient a credit note containing such particulars as may be prescribed
 Section 38: Furnishing details of inward supplies
 Section 41: claim of Input tax and provisional acceptance thereof
 Section 42: Matching, reversal reclaim of input tax credit

Reference to GST council meeting held on 04.05.2018 relevant excerpts as below:
 No automatic reversal of credit:

Conclusion

There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.,

Filing of Inward details as per Section 38 has not been made mandatory

Transaction	Accounting in Books	Availment of ITC	Documentary evidence
Goods received before 31.03.2018	Pending for approval by Purchase Department	Eligible since goods were received on or before 31.03.2018. ITC can be availed in March 2018	Receipt entry for goods in stock records
Goods received and rejected	Not took place	Not eligible, since goods were not accounted for	Receipt and communication for rejection
Adjustment of Debit/ Credit Note	Not took place	Reversal or availment of ITC to be examined case to case basis	Details of goods short receipt, rejected, difference in price escalation etc., and corresponding Purchase Order
Goods not received, but Invoice was received	Can't take place in March 2018 unless goods are received	Not available since goods are not received and accounted for during Mar'18. However, the input tax can be availed during Apr'18	Update of Stock register

Disclaimer:

The above views expressed are as per the understanding of the present GST provision by the author. Any corrections or suggestions may be sent to praveen@gella.in



Delhi Diaries 2

Solved cases of Supreme Court and NCLAT

Disqualification of directors of defaulting companies

One of the stringent requirements of the Companies Act, 2013 is found in Section 164(2). If a person is or has been the director of any company which has not filed its financial statements or annual returns for three years, he/ she is not eligible to be reappointed as a director in that company or be appointed as director in any other company for a period of five years.

While this provision seems like an innocuous measure to ensure compliance at first glance, in practice it turned out to pose major problems to several directors. Things came to a head in September 2017, whereupon the Ministry of Corporate Affairs identified an astonishing 3,09,614 directors associated with companies that had failed to file financial statements or annual returns for a period of three years. (A brief analysis of the provision, authored by Ms. Peer Mehboob, had been published in the October 2017 edition of this Magazine) This placed the directors in a Catch 22 situation because if they were then willing to come forward and file the financial statements as necessary, they could not do so as they stood disqualified and their DIN numbers were deactivated. Pursuant to this action of the Ministry, there were several representations to the Ministry seeking a relaxation of the above rule.

Several Directors approached the High Courts contending *inter alia* that they had not been issued show cause notices prior to disqualification and hence did not have adequate opportunity to rectify the flaws in filing if any.

In response to the representations, the government brought in place a delay condonation scheme between 01.01.2018 and 31.03.2018 (Subsequently extended to 30th April). In *Shikha Pahuja and Ors. v. Ministry of Corporate Affairs* in a Writ Petition filed by one of the disqualified

directors, the Delhi High Court issued orders to give wide publicity to this delay condonation scheme.

This delay condonation scheme appears to have solved the problem for the time being, at least for such directors who were desirous of continuing active engagement in the affairs of some company. The limited nature of the amnesty leaves open several questions. There are bound to be several persons who once served on the board of companies which have since gone defunct. They would not have noticed that their DIN has been deactivated because they are no longer actively engaged or may not even be in the country. When once they again seek directorship of a company, they will again be faced with such a problem and it would then be too late to rectify the defect.

The grounds raised by the petitioners are still valid. The Registrar of Companies had struck off the names of the Companies by operation of Section 248 of the Act. However such a step cannot be taken without due notice to the directors and affording an opportunity to them to be heard.

A further practical problem that came up at the time of resolution of these issues in court was regarding the payment of Rs. 30,000/- by way of fee for submission of financial statements. However, as the Company no longer existed on the books of the registrar, the fee could not be paid. The Delhi High Court *vide* order dated 22.03.2018 in W.P. 9439/ 2017 and connected matters has for the time being resolved the issue by directing the petitioners before it, i.e., the disqualified directors, to deposit the sum of Rs. 30,000/- per company by way of fixed deposit receipt in the Court and has permitted the disqualified directors to submit the relevant papers in hard copy. A full and final solution is awaited.

News Room



Express News

- Sebi proposes listed companies disclose payment delays
- Hinduja National Power acquires Kiran Energy
- NCLT approves Tata Steel's bid submitted by Bhushan Steel's resolution professional
- Retail inflation up at 4.58% in April: Rising prices will force RBI to hold rates, turn hawkish, says economists
- Jaypee group's home buyers divided on promoter takeover bid for bankrupt Jaypee Infratech
- The NCLAT made the remarks while hearing an application filed by UltraTech in the Binani Cement insolvency matter.

Sebi proposes listed companies disclose payment delays

Sebi on Monday proposed that listed companies have to disclose any delay or expected delay in payment related to their debt securities within 24 hours from occurrence of such an event.

Job market brightens up: Over 300,000 workers to be employed in solar, wind energy sectors in India, says ILO

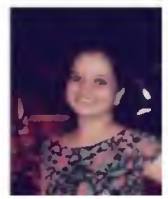
United Nations: Over 300,000 workers will be employed in the solar and wind energy sectors in India to meet the country's target of generating 175 gigawatts of electricity from renewable sources by 2022, the International Labour Organisation (ILO) has estimated in a report

IDBI Bank loan fraud: Two independent directors quit after CBI files FIR in connection with Rs 600 cr scam

Two independent directors Ninad Karpe and SRavi have resigned from the board of state-owned IDBI Bank days after CBI filed FIR in connection with Rs 600 crore loan given by the bank to former Aircel promoter CSivasankaran, his son and companies controlled by him.

Now, Numetal bats for 2nd round of bids for the bankrupt Essar Steel

Numetal, a prominent bidder for the bankrupt Essar Steel NSE 0.00 %, has done a U-turn on its stance on the need for a second bid by asking the National Company Law Appellate Tribunal (NCLAT) to consider the second round where it would have an advantage over rivals



Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Appointment and Qualification of directors) Rules, 2014 which is to be known as (Appointment and Qualification of directors) second amendment rules, 2018.

In the principal rules, rule 5 shall be numbered as sub-rule (1) and following sub-rule shall be inserted after sub-rule (1),

“(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-

(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or

(ii) Has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.”

Companies (Appointment and qualification of Directors) second amendment rules, 2018, Dated 7th may, 2018.

MCA has amended Companies (Meetings of Board and its powers) Rules, 2014 which is to be known as Companies (Meetings of Board and its powers) Amendment Rules, 2018.

The following proviso shall be inserted after rule 4 in the principal rules, “Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through Video conferencing or other audio visual means.” In the principal rules, for rule 13, the following rule shall be substituted

“13. Special Resolution: A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the board of directors are authorized to give such loan or guarantee, to provide such security or make such acquisition.

The company shall disclose in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186.”

Companies (Meetings of Board and its powers) Amendment Rules, 2018, dated 7th may, 2018.

MCA has amended Companies (Registration offices and fees) rules, 2014 which is to be known as Companies (Registration offices and fees) second amendment rules, 2018. In the principal rules, following proviso shall substitute proviso to sub-rule (3) of rule 10.

“Provided that Registrar shall allow fifteen days, time for re-submission in case of reservation of a name through web service -"RUN for rectifications of defects if any.” MCA has also given a table of additional fee, which shall be applicable for delay in filing forms other than for increase in Nominal share capital or forms under section 92/ 137 of the Act.

Companies (Registration offices and fees) second amendment rules, 2018, dated 7th may, 2018.

Notifications

MCA has designated 9th Court of Additional District and Sessions Judge, Kanpur Nagar, state of Uttar Pradesh as special court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more.

S.O. 1710(E), dated 23rd April, 2018.