Edition 176

December 2018

Mysore Chapter

eMagazine

Articles:

Carbon Pricing

Kotak Committee Recommendations

GST Advance Rulings - *Part 2*

Columns:

CS Manjunath S.
Chairman
Mysore Chapter

Dear Professional Colleagues,

We are happy to inform you that during the month of November 2018, we conducted programs for CS members which mainly focused on Companies (Amendment) Ordinance, 2018, IBC and GST annual audit etc. This was well received and attended by professional members from various cities.

Further, Investor awareness programs were conducted for under graduate and postgraduate students in and around the city of Mysore. I would like to wish the best of luck to our CS students who will be writing exams in the month of December 2018.

I wish you all a Merry Christmas and a Happy New year.

Thank You

-: Editorial Team:

CS Sherene

CS Ajay Madhaiah

CS Madhur N Agrawal

Join 5600+ members' strong

"CSMysore" eParivaar

http://www.groups.google.com/group/csmysore

Now it's easy to receive the eMagazine directly into your personal mail id.

Click http://goo.gl/PV9Olr and fill-in simple info.

You may send this link to your friends too!

Please write your comments and feedback to us:

enewsletter.icsimysore@gmail.com

Disclaimer

Chapter Activities

1. Investor and Career Awareness Program

Chapter conducted 03 Investor Awareness Program during the month of November 2018. The details are as follows.

S No.	Date	College Name	No. of Participants
1	20.11.2018	Field Marshal K M Cariappa College, Coorg	107
2	20.11.2018	Cauvery College, Gonikoppal	64
3	30.11.2018	V T U Regional Office, Mysore	100

Two Days Seminar on Emerging Aspects in Companies Act, SEBI Regulations & GST Annual Audit

Chapter organised a two days seminar on "Emerging Aspects in Companies Act, SEBI Regulations & GST Annual Audit" at Hotel Rio Meridian on 23rd & 24th November, 2018. The program was attended by around 65 delegates from many cities of Southern India.

The event was inaugurated on 23rd November, 2018 by Mr. T G Chethan Prasad, Promoter, Savitha Sales Corporation, Mysore. In his address he appreciated the efforts of company secretaries in ensuring the compliances. Mr. Sharath, Partner, V2 Space LLp was the guest of honor for the program. CS. Sarina Chouta Harish, Past Chairperson of the Chapter welcomed the gathering and introduced the guests.

Day 1- Registered Valuers under Companies Act 2013 – Opportunities for Company Secretaries by CA Harisurya, Associate Director, Saffron Capital Advisors Pvt. Ltd., Mumbai, Kotak Committee Report – Implications of Changes in SEBI (LODR) Regulations by CS Ramachandran V., Executive Vice President & Company Secretary, United Spirits Ltd., Bengaluru & Quality of Work Life by Prof. D Parashivamurthy, Assistant Professor, Government First Grade College.

Day 2 – Companies (amendment) Ordinance 2018 by CS Pramod S.M., Practising Company Secretary, Bengaluru, Practical Aspects of Operational Creditor and Financial Creditor under IBC by CS Dushyantha Kumar K., Practising Company Secretary, Bengaluru & GST Annual Audit & Return by CA Vageesh Hegde, Practising Chartered Accountant, Mysore.

Article

Harsha V Reddy
Head of Global Sustainability
Indorama Ventures PCL.
Bangkok, Thailand
www.indoramaventures.com
Email: harsha.r@indorama.net

Carbon Pricing

Preface

Climate change is one of the greatest global challenges and is one of the emerging risks for many of the manufacturing companies. Recent reports from the IPCC (Intergovernmental Panel on Climate Change) and others are warning the dangerous effects of climate change on agriculture, water resources, ecosystems, and human health if countries do not take action. If the world warms by just 2°C, which may be reached in 20 to 30 years, it could lead to widespread food shortages, unprecedented heat-waves, and more intense storms. We are already seeing several impacts of climate change and the same are expected to increase unless action is taken now.

As per IPCC, to stay below 2°C the world need to get to zero net emissions before the end of this century. **Carbon pricing is one of the means of the solution.**

Further, the investment strategy of many big investors has been changing gradually. In addition to economic performance, more and more investors are considering investing in stocks of companies that conduct their business in accordance with the principles of sustainable development, having strong focus on environmental and social aspects. One such aspect includes the immediate need for focusing on Carbon Pricing.

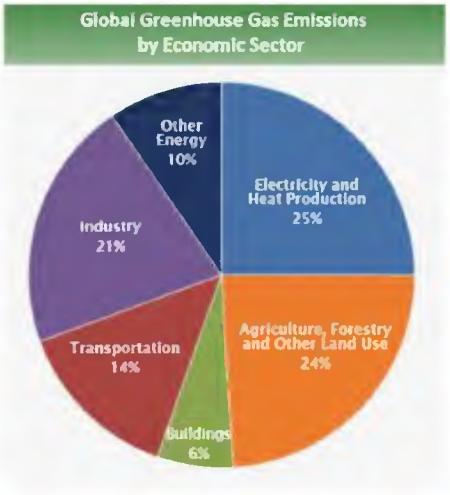
What is Carbon Pricing?

To understand Carbon Pricing, one should understand 'Greenhouse Gasses'.

Greenhouse Gases and Global Warming

A Greenhouse Gas (GHG) is a gaseous compound, *namely Carbon dioxide (CO2), Methane (CH4), Nitrous oxide (N2O), Fluorinated gases* in the atmosphere that is capable of absorbing infrared radiation, thereby trapping and holding heat in the atmosphere. GHGs allow sunlight to pass through the atmosphere freely, where it is then partially absorbed by the surface of the Earth. But some of this energy bounces back out towards space as heat. Of the heat emitted back to space, some is intercepted and absorbed by GHGs in the atmosphere and then re-emit it towards the Earth which increases global temperatures and keeps the Earth's surface warmer than it would be if they were not present. The increase in the amount of GHGs in the atmosphere enhances the greenhouse effect which is creating **global warming** and consequently climate change.

The major sources of GHG emissions globally in economic sector are:



Source: https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data

Carbon Price

'Carbon price' is an **'environmental tax'** imposed by the government on companies that are emitting GHGs into the atmosphere over the permitted limits. It is a kind of mechanism for force reducing global-warming potential through charges on those who emit GHGs in excess of their sanctioned limits.

Carbon price can be imposed in two ways.

First, '**Carbon Tax**' is a tax which government levies on the distribution, sale or use of fossil fuels, based on their carbon content. This has the effect of increasing the cost of those fuels and the goods or services created with them, encouraging business and people to switch to greener production and consumption.

Second, '**Cap-and-Trade**' or '**Emission Trading System (ETS)**' is a government-mandated, market-based quota system under which total allowable emissions (permits) is set in advance ("capped"). It allows companies to trade emissions allowances under an overall cap or limit. The carbon market trades emissions under cap-and–trade schemes or with credits that pay for or offset GHG reductions. In several countries cap-and-trade schemes are the most popular way to regulate emissions. The companies can trade permits between one another or purchase the credits traded in the market to neutralize the emissions over the allowable permits.

While the objective of both mechanisms is to lower emissions, the main difference is that in case of ETS the market sets and in case of a carbon tax the government sets the price of carbon.

Two or more countries can link their cap and trade markets by accepting carbon permits from each other. The effect of this is to equalize the price between the two markets. This increases efficiency.

To serve its purpose, the carbon price set by a tax or cap-and-trade scheme must be sufficiently high to encourage polluters to change behavior and reduce pollution in accordance with national targets.

At the Paris Climate Conference in 2015 (COP 21), most countries agreed to reach net zero greenhouse emissions by the second half of this century. It is an ambitious, but achievable target. It also represents an opportunity for businesses to prepare for a low carbon future. After COP 21 it is imperative for all companies to reduce their greenhouse gas emissions to the level of decarbonisation required to keep global temperature increase below 2 degrees Celsius compared to pre-industrial temperatures.

Carbon Price - An Emerging Risk - Why Carbon Pricing is important?

This is because **Carbon Price** is an indirect cost that increases the cost of goods produced and sold and reduces the EBITDA of the companies. Currently only few countries are imposing carbon tax

The company with business activities in stricter regulations of carbon emissions such as Europe faces high exposure to risks of compliance costs stemming from new or more stringent carbon regulations. The risk is not just exposure to regulatory costs. The major risk is beyond that which is from its customers. To lower overall emissions in their upstream, the customers move towards carbon efficient suppliers. Similar risk arises from suppliers to lower emissions in their downstream value chain.

It pays to be Ahead of the Curve

Many big investors have been gradually changing their practices to reflect a heightened awareness of the need for environmental protection. It is increasingly common for investors to focus on businesses that follow the principles of sustainable development, and this trend can accelerate rapidly with the adoption of carbon pricing.

As the effects of global warming increase in intensity, so will the sense of urgency toward building a sustainable future. For that reason, it is important to discuss ways that companies can prepare for a low-carbon world – and why it may make financial sense to reduce carbon emissions even before such reductions become mandated by law.

Pressure from Customers and external stakeholders

Carbon pricing initiatives are among the most practical ideas for reducing pollution through a series of incentives for business. Nevertheless, by putting a value on greenhouse gas emissions, carbon pricing indirectly increases the cost of goods produced and sold, reducing the EBITDA of manufacturers. Currently only a few countries are imposing carbon tax.

Companies in areas where carbon regulations are more strictly applied, such as Europe, face high exposure to risks. These include compliance costs

as well as potential customer dissatisfaction towards businesses that fail to ensure carbon efficient processes along the supply chain. Pressure from investors, customers, and external stakeholders begins to grow, as companies caught in the middle are pulled in the direction of sustainable practices and continued profit at the same time.

Every manufacturer must ask itself how to strike the right balance between these two forces where they are in conflict. Possible mitigation measures include:

Exclusive or increased use of renewable resources such as solar/wind/biomass energy, and bio-based raw materials

Improving operational efficiency in plant operations

Improving efficiency in upstream and downstream logistics management

Businesses can also anticipate the effects of carbon pricing through internal models, such as an Internal Cost of Carbon and Shadow Pricing.

Internal Cost of Carbon

With the risk and impacts of climate change becoming more evident and the need to pay for carbon emissions emerging as a part of the cost of doing business, companies need to evaluate the financial and non-financial impact of cost of their emissions. Internal Cost of Carbon is one way of evaluating such risk which is a method under which an assumed price is set and added by the company itself voluntarily into their business plans in order to internalize and evaluate the financial impact of its greenhouse gas emissions to future investments and operational costs.

A primary driver of internal cost of carbon is to de-risk against any future carbon pricing legislations, which is an emerging risk.

Shadow Pricing

Shadow pricing is another way of evaluating potential impact of external carbon pricing on the profitability of a project at an assumed cost for carbon. Shadow pricing enables companies to test planned projects under a range of different scenarios, such as potential carbon prices, policies and caps.

The Steps Ahead

It is no longer an option for the companies to ignore the real costs of carbon. By responding quickly to new initiatives and incorporating carbon price into decision-making processes, companies can put themselves in an advantageous position to differentiate themselves from their competitors.

As an emerging possibility, Carbon pricing has a potential financial impact on business operations in every industry. There is no way to know what shape it may take in the future, or at what speed a low-carbon world will emerge, but many observers believe that the idea will be adopted at an increasingly fast pace as the threat of global warming becomes more difficult to ignore.

Carbon tax may be levied by more and more governments in the near future, requiring big changes in industry practices. Companies should take action now to prepare for a smooth transition to a cleaner and more responsible future for us all. The advantage will be that the early starter will have an optimized business portfolio which is less carbon intensive than their competitors' and therefore should deliver more long term value.

A Final Note

The objective of this article is to create and/or enhance awareness on Carbon Pricing which is an emerging risk with potential financial impact on the business operations and finally to the Company.

While it is uncertain how it will shape up in the future and at what speed a low carbon world will emerge, but I believe strongly that it is very likely to happen at a faster pace whereby carbon tax will be levied by more and more governments in the near future.

Article

CS V.Namita
Namita & CO
Company Secretary in Practice

Kotak Committee Recommendations

In a bid to enhance Corporate Governance norms in listed Companies, the market regulator SEBI (Securities and Exchange Board of India) had constituted a committee under the chairmanship of Mr. Uday Kotak in June 2017. The Committee was requested to provide recommendations on a wide spectrum of issues ranging from ensuring independence in spirit of independent directors and their active participation in the functioning of the company to improving safeguards and disclosures pertaining to related party transactions.

After detailed discussions and deliberations, the Committee submitted its report in October 2017. Securities and Exchange Board of India's (SEBI) Board, at a meeting held on March 28, 2018, took important decisions based on the recommendations of the Committee.

All in all, SEBI has accepted 65 out of the 80 recommendations made by the Committee, thereby ushering a new lease of life into the SEBI (LODR) Regulations, 2015. While some of the recommendations are already in force, some are yet to be incorporated. This paper deals with the recommendations pertaining to the Board of Directors and the Committees thereof.

Board of Directors

Number of Directors: There should be a minimum of six directors on the Board. It will come into effect from 1st of April, 2019. It will be made applicable to the Top 1000 listed entities.

This provision will be extended to Top 2000 Listed Companies by 1st April, 2020.

Maximum No. of Directorships: The maximum number of directorships a person hold have been reduced to 8. This is applicable from 1st of April, 2019. Further, it will be reduced to 6 from 1st of April, 2020.

Independent Directors: The following recommendations have been made applicable from 1st October, 2018.

- An alternate director cannot be appointed for an Independent Director
- Any person who is in the 'promoter group' will not be eligible to be appointed as an Independent Director.

Applicable from 1st April, 2019

- An Independent Director should mandatorily disclose the reason of his resignation with 7 days of resignation to the Stock Exchange.
- An Independent Director should provide a declaration that he is not aware of any situations that will impact him in discharging his duties.

For each director, the names of the listed entities where he is a director and the category of directorship have to be disclosed in the Annual Report starting from the financial year ending 31st March, 2019.

Quorum for Board Meeting

The quorum must include at least one independent director.

Quorum stands at 1/3rd of the total strength or 3 directors, whichever is higher. This provision is made applicable to the top 1000 listed entities from 1st of April, 2019. It will be further extended to top 2000 listed entities from 1st April, 2020.

The Chairperson should be a non-executive director. This amendment shall be made applicable from 1st April, 2020 to the top 500 listed Companies.

Woman Director: The top 500 listed entities should appoint at least one woman director – this provision is made applicable from 1st of April, 2019.

The same provision will be extended to top 1000 listed entities starting from 1st of April, 2020.

Committees

Audit Committee: The scope of Audit Committee has been enhanced. The Committee will now be required to oversee the utilisation of loans from the holding Company to the subsidiary exceeding 100 crores or 10% of the asset size of the subsidiary, whichever is lower.

This will also apply to the investments made by the holding Company in the subsidiary.

These amendments are made applicable from 1st of April, 2019.

Nomination and Remuneration Committee

The role of Nomination and Remuneration Committee (NRC) has also been enhanced.

The NRC should now recommend all payments which are to be made to the senior management. Company Secretary and the CFO are specifically included in this category.

Risk Management Committee

The requirement of constituting a RMC has been extended to the top 500 listed entities from the current requirement of top 100 entities.

Given the nature of cyber-crime, the RMC has to specifically cover cyber-crime.

Stakeholders' Relationship Committee

Members: Minimum of 3 members which include at least one independent director.

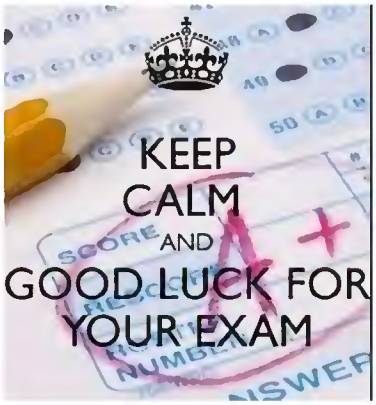
The Chairperson of the SRC should be present during the AGM.

This amendment is made applicable from 1st April, 2019.

It is also required that the members of SRC, NRC and RMC should meet at least once a year.

Words Worth Million

Our greatest weakness lies in giving up. The most certain way to succeed is always to try just one more time. - *Thomas Alva Edison*



Sumant Hegde
B.Com, ACS
sumanthegde.hegde@gmail.com

CS MINERVA
The Student's Corner

Commentry on Principle of Proportional Representation – Series-13

Provisions: Section 163 of the Companies Act, 2013 ('the Act'):

Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

Commentary

1. **Purpose:** Under corporate democracy, shareholders holding 51% or more of the share capital are in a position to appoint and remove all the directors of the company. Whereas minority shareholders holding less than 51 % of the capital may not be in a position to appoint any director. This provision provides an opportunity to the minority shareholders to have their representative on the Board, since directors are elected by the shareholders in proportion to their shareholding.
2. **Applicability:** Applicable to all Companies excluding Government Companies as follows:
   a. Government Company in which ***the entire paid up share capital*** is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments
   b. A subsidiary of a Government company, referred to in (a) above, in which the **entire paid up share capital** is held by that Government company.
   And which has not committed a default in filing its financial statements and annual return with the Registrar vide exemption notification dated 05/06/2015.
   However, if government(s) is not holding entire paid up share capital, this provisions is applicable.
3. **Overriding effect** The provisions of Sec. 152, 162 and other conflicting provisions if any are not applicable as this provision will have overriding effect over other provisions as wording used is 'notwithstanding anything contained under this Act'.
4. **Provision in the AOA:** If authorized by articles, director may be appointed, otherwise articles needs to be amended suitably.
5. **Minimum Number of director's appointment** – at least 2/3rd of total directors needs to be appointed under this method. In other words, remaining directors may be appointed by regular method of appointment.
6. **Casual vacancy** – Interim casual vacancies can be filled up in accordance with the provisions of Sec.161 (4) of the Act.
7. **Removal of Director:** As per Sec. 169(1) of the Act – director appointed under this provision shall not be removed before expiry of his period.
8. **Others**
   i. Forms: Within 30days of appointment, the company needs to file Form DIR 12 along with consent letter in Form DIR 2.
   ii. Director needs to disclose the interest in Form MBP 1 within 30days from the date of appointment in line with Sec.184 and the company need to update the relevant Statutory Registers.

Article

Prabhakar K S
Proprietor
Shree Tax Chambers, Bengaluru, India
shreetaxchambers@bsnl.in

GST: Advance Rulings – *Part 2*

In 175th Edition of e-Magazine, covered five key 'Advance Rulings'. They were: M/s. Shree Construction (AAR – Maharashtra), M/s. RFE Solar Private Limited (AAR – Rajasthan), M/s. Jaimin Engineering Private Limited (AAR – Rajasthan), M/s. Sapthagiri Hospitality Private Limited (AAR-Gujarat), Sri. Ashok Kumar Basu (AAR – West Bengal). This issue or Part – 2, exclusively meant for Maharashtra AAR's controversial Ruling issued in the case of M/s. Vservglobal Private Limited - *Advance Ruling No. GST-ARA-03/2018-19/B-59 dated 07.07.2018.*

Brief Facts & Issues before the Authority

M/s. Vservglobal (the Applicant) is a Mumbai based Company provides back-office support services to its overseas companies which are engaged in trading and of chemicals and other products internationally. Indian Company engaged in certain back-office services on behalf of those overseas companies. Its services are includes accounting services, payroll services such as procuring sales and purchase details, creating purchase and sales orders, invoicing, liaison with cargos and other such ancillary activities which is in the nature of pure back office services. The applicant has approached the Authority for Advance Ruling, Maharashtra, seeking the clarity on the aforesaid services is 'Zero Rated Supply' under Section 16 of the Integrated GST Act, 2017.

Applicant's Contentions

The Applicant has submitted that his services satisfy all the conditions provided under Section 16, Definition of 'Export of Service' under sub-Section (6) of Section (2).

Concerned Officer's Contentions

The Concerned Officer relied on sub-section (1) and (2) of Section 97 of the Central GST Act, 2017 Application to the Authority, Sub-section (1) & (2) of Section 12 of Integrated GST Act, 2017 deals with the Place of supply, sub-section (2) of Section 14 and Section 8 of the Integrated GST Act, 2017 which deals with 'Recipient of Service' and Intra-State Supply respectively.

Authority's Ruling

The Authority after hearing the applicant's contentions and its submissions including a sample copy of Service agreement held that back-office accounting services and payroll services rendered by him to overseas companies, does not constitute as 'Zero Rated Supply' provided under the Section 16 of the Integrated GST Act, 2017.

Consequences

Since these services could not be qualify as 'Export of Services' will be liable to attract GST at 18 per cent. The said 'Ruling' surprised the IT and ITeS sectors across the Country. The National Association of Software and Services Companies (NASSCOM), a representative trade body of IT and ITeS has sought clarity from the concerned. The said Industry Body termed that it will lead to protracted litigation and uncertainty in case of exports once these services are treated as 'intermediary' instead of 'Exports' under the GST laws. In 2017-18, India's ITeS sector has exported over $126 billion. The latest Ruling came has a damper and will pave way for substantial tax demand from these companies which will definitely have an impact on their Financials.

Immediate Impact

Relying on this 'Adverse Advance Ruling', the Department has started issuing 'Preliminary Notices' to the units of Indian as well as foreign companies involved in offshore support services and sought explanations in this regard. The all-powerful GST Council's next Meeting is scheduled to be held on 22.12.2018 at Delhi. Since strong apprehension from the Industry backed by their representative Body NASSCOM, it is said that GST Council may assign this issue to one of its 'Law Committee' and thereafter due clarification in this regard.

To be continued.....

Living Room...

That morning the students were surprised to see something out of the ordinary on the school notice board. The notice read, "One of the team, who attempted to stop you from being successful in life, died of a heart attack yesterday. Their remains are in the hall; we welcome you for the final rites." Everyone was shocked to read this announcement, but they were also curious to learn who the person was. In hushed tones they said to each other, "That's so tragic! But it's good that someone like that isn't around anymore." One by one, the students entered the hall to see the body. One by one, they left the hall with ashen faces, as though they had seen a ghost.

In the hall, there was only a mirror with a note hanging from it. The note read, "You are the only one who would stop you from achieving success in life."

Just as you are the only one who can achieve happiness and freedom for yourself, you are the only one who can stop yourself from achieving those things. No one else can really do anything for you. Changing your teachers, headmaster or headmistress, or school won't change your life. To change your life, you must first change yourself. Being sad or upset, or getting angry, will only cause you to lose more. Just as the chicken must emerge from an egg by itself, so must you change from within of your own accord. An egg broken open from outside produces no chicken and a life changed by outside forces produces no success. Let the change you wish to see begin from within, and let it begin today.

Original-A.P.J.Abdul Kalam

CS ABHISHEK GOYAL

FCS, LLB(P)

GST Primer-Treatment of GST in Transport

In this short article, treatment of GST in case of transport is discussed.

Applicability of RCM in case of transport:

It may be well known that reverse charge (RCM) applies on transport sector. Reverse charge effectively means reverse levy of tax i.e. on recipient of services rather than provider of such services.

While RCM under section 9(4) has been deferred till March 2019, it continues to be applicable on services provided by goods transport agency (GTA). Thus first and foremost thing to remember is that RCM applies in case of services provided by GTA.

What is GTA

GTA has been defined as a transport agency which issues consignment note by whatever name called. Thus any transporter who issues consignment note such as bill or builty etc by whatever name called will be a GTA and RCM will apply accordingly. This also means that RCM is not applicable on every transport service. This also means that the test of determining whether a transporter is GTA or not would depend upon the issuance of consignment note.

Rate of RCM

RCM is payable at 5% by the persons specified under section 9(3). In other words if transport services are availed by any of the persons referred to in section 9(3) such as a registered person, a partnership firm, a casual taxable person etc., GST at 5% will be payable on reverse charge basis by such recipients.

Whether GTA is required to register itself in GST

The answer is NO if a GTA supplies its services exclusively to persons specified in section 9(3). In other words, a GTA will not require compulsory registration in GST if it supplies its services only to persons liable to reverse charge under section 9(3). However if a GTA opts to pay tax at 12% with ITC, it will have to mandatorily register itself.

Whether GTA is entitled to claim ITC

In this respect GTA has two options available to it, either to avail ITC or not to avail.

If it chooses to avail ITC, GST on its services will be applicable at 12% whereas if does not avail ITC, the tax rate to be charged will be 5%. However it is important to note here that irrespective of whether ITC is availed by GTA or not, RCM is fixed at 5%.

Whether input is available to recipient on payment of RCM

Yes, upon payment of RCM, the recipient can avail ITC.

Is there any exemption provided in respect of GTA services

Yes, the following are exempted services:

Where GTA provides transportation of:

(i) agricultural produce;

(ii) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;

(iii) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;

(iv) milk, salt and food grain including flour, pulses and rice;

(v) organic manure relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(vi) or defence or military equipment's are exempted.

Who is the recipient of transport services

In terms of notification no. 13/2017, the person who pays or liable to pay freight for transportation of goods shall be treated as the person who receives such service. This is important from the point of view of levy of RCM.

Place of supply in case of transport services

According to CGST Act, in case goods are transported to a registered person then place of supply shall be location of such registered person. In case of supply made to unregistered person, place of supply shall be the place at which goods are handed over for transportation.

For example, if ABC a registered dealer of Rajasthan sends goods through GTA to a registered dealer of Madhya Pradesh, and it is agreed that ABC will pay the freight. Then ABC will be treated as recipient of services, and RCM will be payable at 5% IGST. Because the place of supply is in Madhya Pradesh, i.e. location of registered person to whom goods are transported.

BRAINY BITS

Gella Praveen Kumar
B.Sc., MBA, FCA, Grad CMA
Faculty at ICAI for GST training
Practising Chartered Accountant
Gella & Co. Bangalore
gellapraveen@gmail.com

Few individuals have joined hands together to form a club for enlarging the interest of its members in the specified areas. Club derives income by way of Membership fee from its members. Assuming Rs.20lakhs has been raised from April 2018 till September 2018, does the Club need to register under GST and start collecting GST on the Membership fees collected

Please send your opinion to, enewsletter.icsimysore@gmail.com

ANSWER

Opinion To Last Month's Brainy Bits

M/s ABC & Co., have registered under GST as a normal tax payer in the state of Karnataka. M/s ABC & Co., are in to providing Service to their customers in the area of Power solutions. On enquiry made by a customer, M/s ABC & Co., have to move the goods [Testing Equipment worth Rs.8,50,000/-] to Tamil Nadu for the testing purpose at customer site and has to bring back such goods post service completion. M/s ABC & Co., charge Rs.30,000/- to their customer for the above testing activity. Explain whether EWB has to be prepared for movement of such goods

Facts to consider

- M/s ABC & Co., (hereinafter called as Service Provider) have registered in the state of Karnataka under GST and has No registration obtained in the state of TN
- Service provider, renders the Testing service at the Customer Site. Corresponding Test Results and Analysis related Test Report, shall be submitted to the customer post Test completion
- Service provider has to use the infrastructure available at Head Office i.e. in Karnataka for doing the above analysis and to issue the Test report. This helps the

Service provider to establish the Services being rendered from the state of Karnataka as an Interstate supply

- Goods used by the Service provider are accounted as Capital Goods and are moved to the customer location for testing purpose as and when need arise
- Value of the Services performed are based on Internal Cost allocation for the resources deployed for such service and the cost is always pre-determined for each category of service

Relevant Provision

- Section 31 – Tax Invoice
- Rule 138 – E-Way bill provision – for movement of goods

Conclusion

Movement of goods by Service provider is in relation to Supply. Few technical questions arise here with respect to the following:

- Should a Tax Invoice have been issued prior to removal of goods or post completion of service
- Can the value of goods to be factored for issuance of EWB or the Service portion to be considered for preparation & issuance of EWB
- What if 100% advance is received from the customer for the services to be performed? Can a Tax Invoice to be issued on receipt of Advance or to wait till completion of service? Can the position change when the Advance received is non-refundable in nature?
- Should the Capital goods used for testing purpose to be removed only on the strength of a Tax Invoice or a Delivery challan as per Rule 55
- Whether Capital Goods to be disclosed in the EWB should be as per Book value after depreciation at the time of removal or the original cost at the time of procurement or current market value

The above aspects are more debatable on case to case basis. Due care to be exercised for issuance of a Tax Invoice or a Delivery challan on the basis of facts and circumstances prevailing and reference to the GST provision for preparation of Tax Invoice and issuance of EWB should be considered.

One has to understand that for filling up Part-A in the EWB, document used for movement of goods i.e. a Tax Invoice/ Delivery challan is the relevant source of information. Accordingly, if a Tax Invoice has been issued for Rs.30,000/- then Department officer cannot question for the Book Value/ Market value of the goods concerned, since EWB shall have a reference to the Tax Invoice and Part-A has to be filled up as per Tax Invoice only.

When the Supply value is only for Rs.30,000/- should the EWB to be issued for its movement the answer is affirmative. Reference is drawn to Rule 138, where there is a reference drawn to a Consignment value and not the Supply value. EWB provision as read in Rule 138 is a guiding provision to enable the trade and administrative mechanism for issuance of EWB only when the Goods movement has got a consignment value of Rs.50,000 or above. Currently the above threshold limit has been fixed at various amounts state to state.

Accordingly, to conclude if the Book Value of Capital Goods is more than Rs.50,000/- then EWB is a must for the supply caused by the service provider.

Disclaimer

The opinion & interpretation drawn above by is purely on the basis of understanding & interpretation drawn by the author. User is directed to read the statutory provision for having a better clarity on the Interpretation aspects. For further clarifications/ suggestions, please reach on praveen@gella.in

Web Yatra

Punith Ravindra
M.com, CS Professional
Tax Associate @KPMG
Bangalore
Punithravindra@gmail.com

friends2support.org
[Where strangers become friends]

"The blood you donate gives someone another chance at life. One day that someone may be a close relative, a friend, a loved one—or even you."

One of the best feelings in the world is giving. The positive energy is contagious. With just one act of kindness, you can inspire others to go out and plant seeds of happiness through giving, too. Out of various forms of donations blood donation ranks at the top. The reason is that when you donate blood you are saving someone else's life along with that you also improve your health. But finding blood in the needy situation is difficult job, but not anymore. There is a website cum app called (http://www.friends2support.org) which will be handy for anyone.

"Friends2support" is an organization that brings voluntary blood donors and those in need of blood on to a common platform. Through this website, the organisation seeks donors who are willing to donate blood, as well as provide the timeliest support to those in frantic need of it. This was started with just 100 volunteers in the year 2005 but now the numbers have grown beyond thousands.

As mentioned earlier this is a platform that brings blood donors and people seeking blood together. People who wish to donate blood should get themselves registered in this website. The donors have to give some basic info about the age, blood group type, and address. They also have to create an account in the website.

If you wish to find blood then all you need to do is to type in the blood type required and filter the details on the basis of geographies. The website will give you the details along with their mobile and landline number, if any. It also shows the status of the donor as to whether they are available for donating blood or not. Further you can report to the technical team of the friends2support if the phone number mentioned is incorrect.

This website has an app in the same name which can be downloaded from Google play store, windows app, IPhone app or even on java app. At present the service of friends2support is available in India, Yemen, Nepal, Sri Lanka, Bangladesh, Malaysia and Oman. Apart from the app, the team has also taken various CSR initiatives like supporting needy students in pursuing higher education, adopting poor students with good academics etc...

"Do you feel you don't have much to offer? You have the most precious resource of all: the ability to save a life by donating blood! Help share this invaluable gift with someone in need."

Vikram Hegde, Advocate
No. 10, Lawyers' Chambers
Supreme Court of India
New Delhi – 110001
vikramhegde87@gmail.com

Delhi Diaries 9

Solved cases of Supreme Court and NCLAT

Derivative Suits and Territorial Jurisdiction

Company law affords some peculiar remedies to investors and shareholders to meet the unique demands of the associated stakeholders. Some remedies are less known than others. One such remedy is a derivative suit. Normally the board of directors takes decisions on behalf of the company. In a derivative suit, the shareholders of a company, acting in the beneficial interest of the company, sue a third party which may include the directors of the company.

Recently, on 26th November, 2018, in *Ahmed Abdulla Ahmed Al Ghurair v. Star Health and Allied Insurance Company Ltd. and Ors.* the Supreme Court adjudicated upon an important aspect of such derivative suits, *viz.* territorial jurisdiction.

The factual background in this case ran thus. Respondents 3-7, all members of one family, were shareholders in Star Health and Allied Insurance, which was an Indian incorporated Company. It was contended on behalf of the Petitioner-Plaintiffs that it was Respondent No. 2, a company incorporated in Dubai, which had a beneficial interest in those shares and they sought that declaration of beneficial interest of Respondent No. 2 in the shares which are in the names of Respondent 3-7. Respondent No. 11 ETA Star Holding LLC, was yet another company based in Dubai which was the holding company for the entire enterprise. The claim of the Plaintiffs was based on their minority shareholding in Respondent No. 2. In support of their claim, the Plaintiffs brought on record several proofs to show that all expenses of the Indian incorporated company were met through the Dubai based Companies. The Plaintiffs also claimed that the shares of the Indian company held by the Respondent No. 2 was about to be sold to a private equity investor and the Plaintiffs would be deprived of their beneficial interest in the shares unless the same was stopped.

The defendants entered appearance and filed applications dismissal of the suit on the basis that the Courts in India had no jurisdiction over the matter as the subject matter of the suit was situated outside India.

The single judge of the Madras High Court dismissed the applications on the ground that there were factual issued to be gone into in the matter. The decision of the single judge came to be overturned by the Division Bench of the Madras High Court thus withdrawing the leave granted to file the suit in Madras High Court.

The Supreme Court in particular looked into the statements made by the Plaintiffs in the suit regarding the territorial jurisdiction of Madras High Court. Largely the basis was that Defendant No. 1 was registered in Chennai and that the monies of Defendant No. 2, a Dubai Registered Company, in which Plaintiffs were shareholders were invested in Chennai, in Defendant no. 1.

Before the Supreme Court, the Defendants not only challenged the suit on the basis of jurisdiction but also on the basis that the Plaintiffs had no direct interest in the property with regard to which relief was sought.

Situs of the share is an issue which has been examined in detail by the Supreme Court in *Vodafone International Holdings BV v. Union of India.* The following extract from the said case is relevant:

"According to the Revenue, since CGP was a mere holding company and since it could not conduct business in the Cayman Islands, the situs of the CGP share existed where the "underlying assets are

situated", that is to say, India. We find no merit in these arguments.

...

we are not inclined to accept the arguments of the Revenue that the situs of the CGP share was situated in the place (India) where the underlying assets stood situated"

The Appellants placed reliance upon the judgment of the Calcutta High Court in *Starlight Real Estate (Ascot) Mauritius Ltd. v. Jagrati Trade Services P Ltd.* to state that where a third party is party to a fraud in an action against the company, the shareholders can initiate action against the directors and such third party. They also relied upon a judgment of the Bombay High Court in *Nirad Amilal Mehta v. Genelalc Limited* to buttress the same point.

The Supreme Court, after considering the various views canvassed affirmed the view of the Division Bench of the Madras High Court that "by the laws of Dubai. The Plaintiffs are its shareholders. Therefore, any dispute between them will have to be resolved under the laws of Dubai. Hence, the contention of the learned Senior Counsel appearing for the plaintiffs that they are stepping into the shoes of the defendant no. 2 seeking a relief against the defendant no. 1 cannot be countenanced. This is also for the reason that there must be declaration in clear terms qua the status of a beneficial interest holder before seeking a relief against the defendant no. 1. More so, when defendant no. 2 itself denies it"

Though the Supreme Court did not make any express reference to the judgement of a Constitution Bench in *Union of India v. Charanjit Lal Chowdhury* the principle therein has been followed.

News Room

Express News

- India Achieves 20% reduction in emissions intensity: Power minister
- Investment bankers' equity market fee pool rises to 21% at $321 mn in 2018
- L&T IT twins: Deal wins, client relationships offer revenue visibility
- Xerox Becomes a Fallen Angel as Moody's Cuts Rating to Junk

4 of 11 banks may see lifting of lending restrictions in Q4

The Reserve Bank of India (RBI) has estimated that around four out of the 11 banks facing lending restrictions could come out of the prompt corrective action (PCA) framework with some capital infusion. This was indicated in the central bank's board meet on Friday.

SC stalls IHH's acquisition of Fortis Healthcare

In a blow to the IHH-Fortis deal, the Supreme Court on Friday gave directions that will stall the Malaysian healthcare group's acquisition of the

India's second largest hospital chain, lawyers said.

Infosys looks to tap Japan market, forms joint venture with Hitachi

India's second largest IT services firm Infosys on Friday announced the formation of a joint venture with Japan's Hitachi Ltd., Panasonic Corporation and Pasona Inc., as it looks to enhance its presence in the island nation.

Infosys will acquire 81 per cent stake in Hitachi Procurement Service Co., a fully owned subsidiary of Hitachi which currently handles indirect materials purchasing function for the Hitachi Group. The three Japanese firms will hold the remainder of the 19 per cent stake in the joint venture.

IL&FS group selling cars, furniture, electrical appliances to raise funds

IL&FS invited bids for lump sum sale of used furniture and white goods on 'as is where is' basis at its properties in Mumbai and Kolkata

Debt-laden Infrastructure Leasing & Financial Services (IL&FS) group firms are selling high-end cars, office furniture, electrical appliances and other assets in a bid to raise funds.

Regulatory Updates

Amendments

MCA has issued Companies Cost (records and Audit) Rules, 2018.

Following Rules Amended.

--Rule-3 : Table under the Heading B-Non regulated Sectors, -amendment certain serial number

--Rule 6 : below proviso is added:

" Provided that the Companies which have got extension of time of holding Annual General Meeting under section 96 (1) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013."

-Form CRA—1,Unit of Measurement to be inserted as Paragraph no 31 -form CRA-3 –Note 3 to be added Unit of Measurement (UOM)

"The Unit of Measurement (UOM) for each Customs Tariff Act Heading, wherever applicable, shall be the same as provided for in the Customs Tariff Act, 1975 (51 of 1975) corresponding to that particular Customs Tariff Act Heading."

Companies (cost records and audit) Amendment Rules, 2018

Circulars

Extension of the last date of filing of Form NFRA-1 will be 30 days from the date of deployment of the form on the website of Ministry/ National Financial Reporting Authority (NFRA) for all bodies corporate governed by the said rule (excluding companies as defined under sub-section (20) of section 2 of the Companies Act, 2013, which are not required to file this Form).

General Circular No. 12/2018 dtd. 13th December, 2018

Extension of time for filing Cost Audit Report for the financial year ended 31.03.2018 on account of various factors , it has been decided to relax the additional fees payable by companies on CRA-4 lCost Audit Report in XBRL format) upto 31.12.2018, wherever additional fee is applicable

General Circular No. 11/2018 dtd. 10th December, 2018