

# eMagazine



## Articles:

An Advance beyond 365 day –Deposit?	03
Employee data Protection and Confidentiality	05
An Overview of Payment of Gratuity Act, 1972 and recent Amendment	07

Words Worth Millions	04
Living Room	08
Web Reading	09
Students corner	10
GST Suite	12
Brainy Bits	15
Delhi Diaries	17
Newsroom	18
Regulatory update	19

*For Private Circulation Only*

### Vision

"To be a global leader in promoting good corporate governance"

### Motto

सत्यं वद। धर्मं चर। *Speak the truth, abide by the law.*

### Mission

"To develop high calibre professionals facilitating good corporate governance"

Connect with ICSI



<https://www.facebook.com/ICSI>



[https://twitter.com/ICSI\\_CS](https://twitter.com/ICSI_CS)



<https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/>



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

**MYSORE  
CHAPTER**



**CS Manjunath S.**  
Chairman  
Mysore Chapter

Dear Professional Colleagues,

I am happy to meet you all through this E-Magazine. This year saw a good increase in number of students appearing for the June Exams and also the oral coaching classes have been wound up for this session. We are anticipating to start the coaching classes for the ensuing December 2018 Exams by the end of this month and hope that many students will register for this session too.

In the forthcoming months, the management committee members are planning to conduct seminars which will help members in gaining credit hours and we look forward to these events and expect active participation from members.

Thank You

**-: Editorial Team:-**

**CS Vijaya Rao**

**CS Sherene**

**CS Pracheta M**

**CS Phani Datta**

**CS Ajay Madhaiah**

**CS Madhur N Agrawal**

**CS Parvati K.R**

**Join  
5600+ members'  
strong**

**"CS Mysore" 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/PV90lr> and fill-in simple info.

*You may send this link to your friends too!*

*Please write your comments and feedback to us:*

[newsletter.icsimysore@gmail.com](mailto:newsletter.icsimysore@gmail.com)

### **Disclaimer**

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The Chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter. All rights are reserved.



## An advance beyond 365 days-Deposits?

**If Business advance received from a Company is not appropriated for either supply of goods or providing services within 365 days, will it be treated as a Deposit?**

### Introduction

Deposit is defined u/s 2(31) of the Companies Act, 2013 (the 'Act') which states that "deposit" includes **any receipt of money** by way of deposit or loan or in any other form by a company, but does not include such categories of amount as **may be prescribed** in consultation with the Reserve Bank of India. Any money falling under prescribed 18 categories prescribed in rules are not considered as deposit.

**The question which we are discussing in this article is as follows:**

**Amount received by the Company from another Company as business advance for the purpose of either supply of goods or provided services; not appropriated for the purpose within 365 days from the date of acceptance of such advance will that amount be treated as deposits?**

For the purpose of this question, following provisions are important

Rule 2(c) of Companies (Acceptance of Deposit) Rules, 2014 defines deposit as-

"Deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include - ...

(vi) **any amount received by a company from any other company; ...**

(xii) **any amount received in the course of, or for the purposes of, the business of the company,-**

(a) as an **advance** for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is **appropriated** against supply of goods or provision of services **within a period of three hundred and sixty five**

**days from the date of acceptance of such advance:**

Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply: ...

### Analysis

Now the question is

1. Whether the money received by the Company is from another Company? - Yes
2.
  - (a) Whether the money received by the Company is from another Company as business advance? - Yes
  - (b) Whether the money received by the Company is from another Company as business advance is appropriated for the purpose of either supply of goods or provided services within 365 days from the date of acceptance of such advance? No

It is imperative to note that the condition mentioned under sub-clause (vi) is fully complied whereas the condition mentioned under sub-clause (xii) is half complied.

Out of the 18 categories, none of the exclusions states that if conditions are not complied money received will be considered as deposit except under sub-clause (vii) viz., if the allotment is not made within 60 days from the date of share application money received, it will be considered as deposit.

### Conclusions

If the money is received in full compliance of either under rule 2(c)(vi) or rule 2(c)(xii), then that money gets exempted from the definition of deposit.

Thus, any money received by a company from another company, regardless of the purpose it will be covered under rule 2(c)(vi) and will not be considered as deposit even if it falls under other categories of exclusions prescribed in rules.

# Return of deposits Due date is 30 June, 2018

## Return of deposits

Every Company (including a private limited company which has taken loan from its shareholders after 1<sup>st</sup> April, 2014) to which CAD rules apply are required to file a return of deposit in e-Form DPT-3 on or before the 30 June of every year. The return shall furnish the information as on 31<sup>st</sup> March of that year. The information provided in return shall be duly audited by the auditor of the Company.

## Details in form

The brief details which are required to be given e-form DPT-3 are as follows:

1. Details of the Company
2. Net Worth as per the latest audited balance sheet
3. Particulars of Deposits
  - a. Amount of existing deposits as at 1<sup>st</sup> April
  - b. Amount of deposits renewed during the year
  - c. Amount of deposits accepted during the year
    - i. Secured deposits

- ii. Unsecured deposits
- d. Amount of deposits repaid during the year
- e. Balance of deposits outstanding at the end of the year
4. Amount of deposits that have matured but not claimed
5. Amount of deposits that have matured and claimed but not paid
6. Particulars of liquid assets
7. Particulars of charge (if any)

## Attachments to the forms

1. Auditor's certificate
2. Copy of trust deed – Mandatory if company has trust deed and details of same are mentioned in the form
3. Copy of instrument creating charge – Mandatory if company has trust deed and details of same are mentioned in the form
4. List of depositors - List of deposits matured, cheques issued but not yet cleared, to be shown separately – Mandatory if company has balance of deposits outstanding at the end of the year.
5. Details of liquid assets



## ***Words Worth Million***

*Someone is sitting in the shade today because someone planted a tree a long time ago.*

-Warren Buffett



## Employee Data Protection and Confidentiality



The Information Technology Act, 2000 is the legislation which has attempted to address the issue of data protection and confidentiality. Section 43A provides for the protection of Sensitive Personal data or Information (“SPDI”) and Section 72A protects personal information from unlawful disclosure in breach of contracts.

**Sensitive personal data or information.**— Sensitive personal data or information of a person means such personal information which consists of information relating to;— (i) password; (ii) financial information such as Bank account or credit card or debit card or other payment instrument details ; (iii) physical, physiological and mental health condition; (iv) sexual orientation; (v) medical records and history; (vi) Biometric information; (vii) any detail relating to the above clauses as provided to body corporate for providing service; and (viii) any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise:

Employers collect SPDI of their employees for various reasons in selection process. Therefore, the employers need to observe the compliances relating to SPDI and its related consequences on non-compliances. However, employers are negligent in implementing and maintaining

reasonable security practice and procedure, it may sometime result in wrongful loss to any person. In that case, the employer is liable to pay compensation to the relevant employee.

In view of the above, the Company is required to develop and implement various parameters while dealing with employee SPDI:

- **Consent**

The employer is allowed to transfer any employee’s SPDI within or outside India after obtaining the consent of the employees and shall also ensure that the transferee shall observe same level of data protection as mandated under IT Act.

The Consent should be specific and should not be generic in nature and the Company should maintain the records of the same as per the policy of the company, but in compliance with the law. The employer shall always give an option to the employee for opting out.

The employer to ensure that the employee is aware of the requirement of collecting the information which is falling under SPDI.

- **Reasonable security practice & procedure**

The employer is required to maintain reasonable security practices & procedures to protect SPDI of the employees and it should not be less than as defined in the SPDI Rules. The SPDI rules have mandated the international Standard IS/ISO/IEC 27001 on "Information Technology - Security Techniques - Information Security Management System – Requirements.

- **Privacy Policy**

The Employer should have well documented Privacy Policy as per the requirement under the IT Act and which shall be available on the employer's website, if any or it should make available.

- **Appoint Grievance Officer**

According to the Rules, a body corporate is required to designate a Grievance Officer to address grievances of its information providers and should publish the name and contact details of such Grievance Officer on its website. The Grievance Officer is required to redress the grievances within one month.

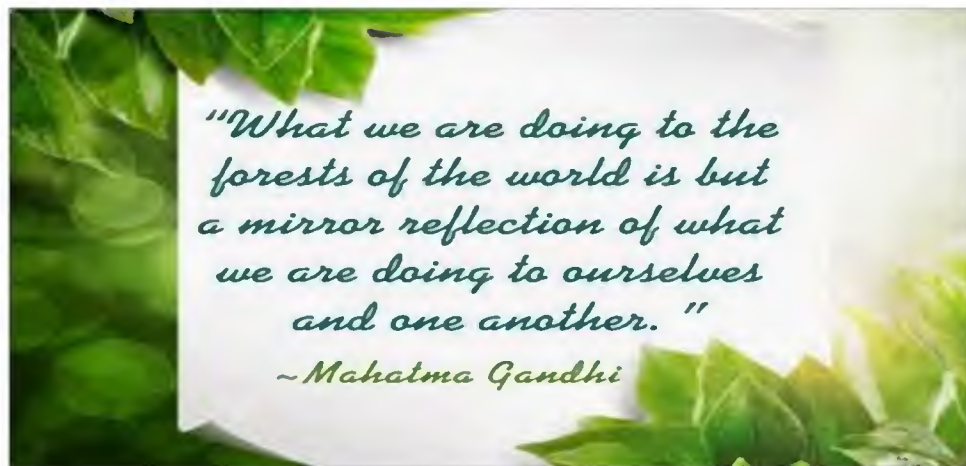
In view of above, the employer is required to have well documented policies on employee data protection and employee privacy. There should be appropriate internal control mechanism in the system. The employer shall always observe the incorporation of consent clause while drafting any employee documents for sharing SPDI data/information with third party.

### **Conclusion**

The specific requirements under the IT Act come into picture only where SPDI of an employee is collected. Having said that, as a matter of good practice, employers should take care when an employee's SPDI is being collected. Even if the specific requirements under the IT Act may not apply, an employer can be subjected to liability under common law. It is therefore important for employers to understand the requirements mandated under the IT Act and Rules and conform to these requirements so as to avoid any liability, and protect the reputation of the organization.

Although the Indian legislature has made an effort to ensure protection and privacy of personal data, what is still needed is an effective and comprehensive legislation for data protection. Bearing in mind the influence and dependence on technology in today's world, it is essential that India brings its data privacy and protection laws in line with the international regulatory frameworks. As India continues to be a major outsourcing center for several offshore businesses, the concern of data privacy and protection will continue to grow. The government needs to put in place a legal framework setting standards in line with international requirements relating to the methods, purpose and protection of personal data collected both electronically and otherwise.

*We have to fight for our privacy*





# An Overview of Payment of Gratuity Act, 1972 and recent Amendment

Payment of Gratuity Act, 1972 ('Act') is a payment which is intended to help an employee after his retirement whether the retirement is the result of the rules of superannuation or of some physical disability.

**Applicability** The Act is applicable to

- every factory, mine, oilfield, plantation, port and railway company;
- every shop or establishment in which 10 or more persons are employed, or were employed, on any day of the preceding 12 months;
- such other establishments or class of establishments, in which 10 or more persons are employed, or were employed, on any day of the preceding 12 months, as notified by Central Government.

## Eligibility

An employee who has rendered continuous service for not less than 5 (five) years is entitled to Gratuity.

Gratuity is payable on termination of employment under below mentioned circumstances:

- on his superannuation, or
- on his retirement or resignation, or
- on his death or disablement due to accident or disease<sup>1</sup>.

## Computation of Gratuity

Gratuity shall be paid at the rate of 15 days wages for every completed year of service or part thereof more than six months based on the rate of his last drawn wages<sup>2</sup>. In the case of a monthly rated employee 15 days wages shall be calculated by dividing the monthly rate of wages last drawn by him by 26 and multiplying the quotient by 15.

<sup>1</sup> The completion of continuous service of 5 years shall not be necessary where termination of employment of any employee is due to death or disablement. In such circumstance, gratuity is payable to nominee or legal heir.

<sup>2</sup> Wages includes basic wages and dearness allowance, but it does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

## The Payment of Gratuity (Amendment) Act, 2018 ( Amendment 3)

Pursuant to the Amendment, the limit of the maximum tax-free Gratuity payable under the Act is revised to Rs. 20,00,000/- against the erstwhile Rs. 10,00,000.

## Forfeiture of Gratuity

The employer can forfeit the Gratuity of an employee whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to employer, *to the extent of the damage or loss so caused.*

## Protection of Gratuity

The Gratuity amount payable shall not be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

## Claim of Gratuity

The employee should make application in a prescribed form within 30 (thirty) days from the date of Gratuity become payable.

If any employer

- refuses to accept a nomination or to entertain an application for payment of Gratuity, or
- issues a notice for payment of Gratuity less than what is payable, or
- having received an application for payment of Gratuity, fails to issue any notice within 15 days

the claimant employee, nominee or legal heir can within 90 (ninety) days apply to controlling authority for issuing a direction.

Any person aggrieved by an order of the controlling authority may within 60 (sixty) days prefer an appeal before the appellate authority.

<sup>3</sup> Effective March 29, 2018.



## The Arbour and the creeper

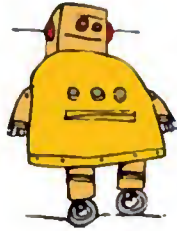


Die hard fans of Aesop fables must be thinking with a grimace, how did I miss this story as a young reader?. Relax !!! you did not miss. Have you ever been awe struck by the beautiful flowers growing on an arbor? I have done it many times .The sheer joy you get seeing so many flowers arched as an entry way is a feast. We admire the beauty of the flowers and the creeper. Little do we understand that the flowers and the creepers look beautiful because the arbor let the plant grow on it. Nature teaches a lot of things to us which we consciously ignore.

How many of us have been an arbor to a needy relative who was struggling to come up in life or been gracious enough to allow a fellow employee grow? It is so disheartening and unfortunate that we humans the most superior beings of all creations are the epitome of selfishness and greed. We fail to support one another, we are so engrossed in our own growth and selfish motives that we miss seeing those who need to be upheld. Shell out the "me", get inspired by nature and bear one another. Be an arbor and let others climb. The arbor doesn't lose anything by allowing the creeper to grow and you will not too.

Wish You All A Happy PCS Day





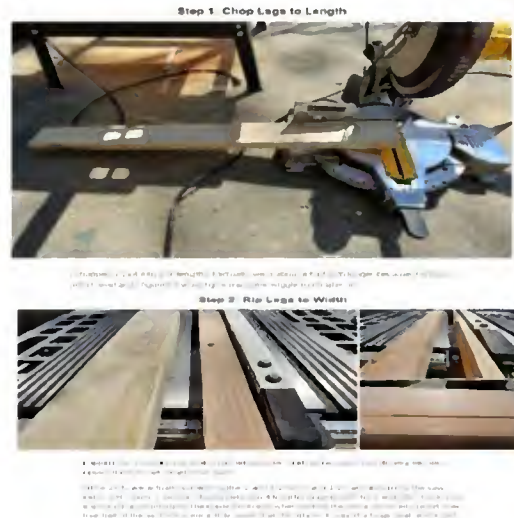
## instructables

What we do outside of work can often attribute to our success at work. Maintaining a healthy level of stress has many positive benefits but there is a thin line between health and stress which we all cross from time to time. This is the reason why all the psychological counselors and personal counselors stress on cultivating a hobby in our daily routine. Having a hobby that we enjoy brings us joy and enriches our lives. It gives us something fun to do during our leisure time and affords us the opportunity to learn new skills. We are very fortunate to have so many different options out there today. In fact, there are entire websites devoted to hobbies and interests. So here is a website for those people who love creativity and are interested in building or creating something new.

*Instructables* (<http://www.instructables.com>) is an interesting website that contains articles on various subjects like crafts, cooking, technology, home making, costumes etc... These articles are written by well known authors in the respective fields and people who are passionate about the relevant subjects.

These articles contain brief description about the subject matter and details description as to how the things could be built, step-by-step procedure in building them and even contain pictures of each step.

For example if you want to build a bedside table. Then you just open instructable and type let's make *table*. The website will give you lots of articles on how to build a table. Select the article which suits your requirement and the article will be displayed in following manner



The above mentioned images are just two steps in the process of building bedside table. It has 14 steps in total which contains picture by picture steps and requirements for each step.

The website has many such useful articles. One can select based on their taste and time preference. A tip to Non-Veg lovers, please visit the food section in the website as it has many articles on non-veg cuisines.

Finally, the best way to cultivate a new hobby is to try something new. The world is full of wonderful, exciting activities that we can explore and adopt as our own. Of course, all of us are unique and, therefore, our interests and hobbies vary. But once we find a hobby that we truly enjoy and are passionate about, we become hooked. It becomes part of our lives and captivates us in a very personal way.



## Commentary on Woman Director Series- 7

### Provisions

A. **Second proviso to Section 149(1)** of the Companies Act, 2013 (hereinafter referred as 'the Act') read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 as amended thereon 'Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director'.

B. **Rule -3: Woman Director on the Board**

The following class of companies shall appoint at least one woman director

- (i) every listed company;
- (ii) every other public company having –
  - (a) paid-up share capital of one hundred crore rupees or more; or
  - (b) turnover of three hundred crore rupees or more:

Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:

Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation.- For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

### Commentary

1. **Applicability:** It is mandatory for the following Companies to appoint woman director:

- i. Every listed company;
- ii. Every other public company having-
  - (a) Paid up share capital of Rs.100 Cr or more; or
  - (b) Turnover of Rs.300 Cr. or more

The term Listed Company, Public Company, Paid up Share Capital and Turnover has been defined under definition chapter u/s 2 of the Act.

The value of paid up share capital and turnover shall be taken as per latest Audited Financial Statements.

Paid up share capital includes both equity share capital and preference share capital.

### 2. **Mandatory**

It is mandatory for aforesaid companies to appoint at least one woman director as word used is 'shall'.

Since Nidhi Companies are always formed as Public Companies, if Nidhi Companies comes under the aforesaid criteria, such companies shall appoint at least one woman director.

However, appointment of woman director to the Board is not mandatory for Private Companies.

It is minimum requirement that company can have more than one woman director.

3. **Gestation period for Newly incorporated Companies:**

Newly incorporated companies which are falling under eligibility criteria, within six months from the date of incorporation shall appoint woman director.

4. Authority to appoint: The appointment may be made either by the Board in accordance with provisions of Section 161 of the Act or by the members in their General Meeting in line with the provisions of section 160 of the Act.

**5. Intermittent Vacancy**

Any intermittent vacancy of a woman director shall be filled by the Board of Directors. The board can fill the vacancy either at its Board Meeting or by passing the Circular Resolution.

Intermittent vacancy shall be filled not later than following event

Date of next board meeting; or

Three months from the date of such vacancy.

The term 'vacancy' includes resignation, removal, death or otherwise

**6. Others**

a. The provisions relating rotation of directors as stated in Section 152(6)

and (7) of the Act shall also applicable to woman director.

b. Forms: Within 30days of appointment, the company need to file Form DIR 12 along with consent letter in Form DIR2.

c. Woman director need 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.

d. The term 'month' used in the aforementioned rules shall be interpreted as Calendar Month in line with The General Clauses Act, 1897.

e. Woman director do have same rights, powers, duties similar to any other directors.

f. Woman director may be executive or non-executive director or independent or non-independent director. (SEBI regulation specifies mandatory appointment of woman independent director for specified listed companies).





## GST: Advance Rulings

Advance Ruling means the determination of a question of law or question of fact with respect to duty or tax payable in relation to an activity which is proposed to be undertaken, by the applicant. In other words, it is a 'Ruling' to determine in advance the tax liability in respect of a proposed economic or business activity.

Post globalization and in its first attempt, the Central Government vide Finance Act 1999, a scheme of Advance Rulings (Central Excise, Customs & Service Tax) has been incorporated in the Customs Act, 1962, the Central Excise Act, 1944 and in the Finance Act, 1994 by the Finance Act, 1999 to provide to issue binding Rulings, in advance, on Customs, Central Excise and by the Finance Act, 2003, same concept was introduced for Service Tax matters. In general, the scheme is intended to provide certainty or clarity to intending investors. However, the Authority became functional only during the financial year 2002-03.

### Concept of Advance Ruling under GST Laws

The similar concept has been brought in under the new Indirect Tax Regime. Chapter XVII of the Central Goods and Service Tax Act, 2017 (equivalent provisions also provided in the State Goods & Services Tax Acts) deals with the said aspects. Relevant provisions spread over 12 sections i.e. Section 95 to 106. Applicable Rules on Advance Ruling has been provided in Chapter XII of Central Goods and Services Tax (CGST) Rules, 2017. Rule 103 to 107A deals with procedural aspects such as Appointment of Members, Application to the Authority, manner to move Appellate Authority, etc.

Section 95(a) of the Central GST Act, defined the term 'Advance Ruling' as a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section

(2) of Section 97 or sub-Section (1) of Section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

### Key objectives of setting up of the Authority

1. To provide certainty in tax liability in advance in relation to an activity.
2. To attract Foreign Direct Investment.
3. To reduce prolonged litigation.
4. To pronounce ruling expeditiously in a transparent and inexpensive manner, etc.

### Issues may be raised with the Authority

Sub-section (2) of Section 97 & Sub-Section (1) of Section 100 of the Central GST Act, 2017 deals with certain definite questions which are eligible to raise with the Authority. They are -

1. Whether an applicant is required to be registered or not.
2. Classification of any goods or services or both.
3. Applicability of a notification issued under the Central GST Act, 2017.
4. Determination of time and value of supply of goods or services or both.
5. Admissibility of Input Tax Credit (ITC).
6. Determination of the tax liability on any goods or services or both, etc.

### Procedural aspects

Rule 104 of Central GST Rules prescribed a FORM GST ARA-01 and shall be accompanied by a fee of Rs. 5,000 rupees, to be deposited in a specified manner. Due to the absence of an online mechanism, for the time being, an application for advance ruling can be made manually, in quadruplicate.

### Rectification of Mistakes

The Central GST Act provides due powers to both Authority for Advance Ruling (AAR) and Appellate Authority (AAAR) to amend their own order to rectify any mistake within a period of six months from the date of the order. A mistake may be noticed by the authority suo motu, by the applicant or the jurisdictional officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of Input Tax Credit (ITC), the applicant must be heard before the order is passed.

### **Advance Rulings and Its Binding**

An advance ruling pronounced by the AAR shall be binding on the applicant who raised the question, the jurisdictional Officer and the authorities subordinate to him, in respect of the applicant subject to change in law or facts as the case may be. The Hon'ble High Court of Delhi High in *UAE Exchange Ltd. v. UOI 236 ELT 223* affirmed the above-stated position. However, an applicant or interested person may challenge an advance ruling by filing a writ petition under Articles 226 with the jurisdictional High Court or under Article 32 with the Supreme Court of India.

### **Appeals against the Order of AAR**

Any aggrieved party can file an appeal with the AAAR. An appeal must be filed within thirty days from the date of the receipt of the advance ruling. The appeal has to be in prescribed form and has to be verified in a prescribed manner. The AAAR must pass an order after hearing the parties to the appeal within a period of ninety days of the filing of an appeal. In case of difference of opinion among members of AAAR, it is presumed that no such advance ruling is issued in respect of the question under appeal.

### **States & Its Appellate Authority**

The all-powerful GST Council recently pushed both Central and State Governments to set up appellate authorities under Section 99(2) of the CGST, Act, 2017 to appeal against orders of the AARs. According to State GST laws, all States are required to set up at least one AAR for seeking advance ruling over GST levy and one AAAR to hear appeals against the AAR Order.

About 13 states, including Karnataka, Tamil Nadu, West Bengal, Gujarat, Madhya Pradesh, Rajasthan and Uttar Pradesh, have issued notifications for setting up of AAARs. State GST laws mandates that the appellate authority shall have two members such as the Chief Commissioner of Central Tax as designated by Central Board of Indirect Taxes & Customs (CBIC) and the Commissioner of State Tax. *For instance, Karnataka Appellate Authority will be headed by,*

1. The Principal Chief Commissioner, Bengaluru, GST & CX Zone, and
2. The Commissioner of Commercial Taxes (Karnataka), Bengaluru.

### **Constitutionality of Advance Ruling Authority Challenged**

1. The Hon'ble Gujarat High Court in last February admitted a Public Interest Litigation (PIL) challenging the constitutional validity of the provisions relating the Authority of Advance Ruling (AAR) and the Appellate Authority of Advance Ruling (AAAR) under the Central GST Ac, 2017.  
*W. P. - Nipun Praveen Singhvi v. Uoi & Ors.*
2. In one more instance, the Hon'ble Rajasthan High Court in last April admitted a Public Interest Litigation (PIL) challenging the constitutional validity of the provisions relating the Authority of Advance Ruling (AAR) and the Appellate Authority of Advance Ruling (AAAR) under the Central GST Ac, 2017. D. B. Civil W. P. – Abhishek Chopra v. Uoi & Ors.  
Hon'ble High Courts outcome is awaited.

### **Latest Advance Rulings**

#### **1. Taxability of High Sea Sales**

High Seas Sales are the sales taking place prior to the imported goods crossing the Customs frontier. The Authority for Advance Ruling, Gujarat, held that the taxability of High Sea Sale falls under the domain of Customs and not under the Goods and Services Tax Laws. 94 *taxmann.com 155 (AAR-GUJARAT)*

#### **2. Krishi Kalyan Cess paid prior to GST Regime**

Whether accumulated credit by way of Krishi Kalyan Cess as appeared in the Service tax

return of Input Service Distributor (ISD) on June 30, 2017, which is carried in the electronic credit ledger maintained by the Company under CGST Act 2017 will be considered as admissible input tax credit? No. The Authority for Advance Ruling, Mumbai, held that accumulated credit by way of Krishi Kalyan Cess as on June 30, 2017, cannot be considered as admissible Input Tax Credit (ITC). *Kansai Nerolac Paints Limited, Mumbai, Order No. GST ARA-18/2017-18/B-25 dated 05.04.2018*

### 3. **GST on 'Duty-Free' shops at Airports**

The Authority for Advance Ruling, New Delhi recently held that the GST can be levied on Duty-Free Shops stating such outlets at the Delhi International Airport are not free duties under the GST regime. However, Ministry of Finance, GoI, recently clarified that international passengers are not subject to GST for buying goods at the airport 'Duty-Free shops. *Official Circular is awaited.*

### 4. **Taxability of Dried Tobacco Leaves**

The Authority for Advance Ruling, New Delhi recently held that the GST on dried Tobacco can be taxable at the rate of 14 per cent Central GST and 14 per cent State GST or 28 per cent Integrated GST. In the instant case, the applicant claimed that the Dried Tobacco Leaves shall be taxable at the rate of 5 per cent. However, Dried Tobacco leaves undergone the process of curing after harvesting of Tobacco leaves are unmanufactured tobacco. *Sri Shailesh Kumar Singh, Advance Ruling No. 04/DAAR /2018 dated 06.04.2018*

### 5. **Canteen Services to Employees**

The Authority for Advance Ruling, Kerala, recently held that recovery of food expenses from the employees for the canteen services provided by the company is nothing but an 'outward supply' under Central GST Act, 2017 and taxable accordingly. *Caltech Polymers Private Limited, Malappuram, Order No. CT/531/18-C3 dated 26.03.2018*

### 6. **Coaching Centres for Entrance Exams**

The Authority for Advance Ruling, Maharashtra, recently held that the coaching centres providing tuition to prepare students for entrance examination are subject to liable to pay GST at rate of 18 percent. An application was filed to seek whether the services related to providing the coaching for entrance examination will come under the ambit of the Goods and Services Tax regime. *Sri. Simple Rajendra Shukla, Order No. GST-ARA-06/2017/B-05 dated 09.03.2018*

### 7. **Hotel or Restaurant services provided to SEZ units**

The Authority for Advance Ruling, Karnataka, held that Hotel or restaurant services provided to SEZ developers or SEZ Units will not be treated as 'zero-rated' supplies, hence taxable under the Goods and Services Tax regime. *M/s. Gogte Infrastructure Development Corporation Limited. Advance Ruling No. Kar /ADRG 2/2018 dated 21.03.2018*

### 8. **GST Registration & Reverse Charge Mechanism**

The Authority for Advance Ruling, New Delhi, recently held that the registration under GST is mandatory if there is GST liability under Reverse Charge Mechanism. *M/s. Sonka Publications (India) Private Limited, Advance Ruling No. 05/DAAR/ 2018 dated 06.04.2018*

### 9. **Classification of skin care preparation as medicament**

The Authority for Advance Ruling, West Bengal, recently held that merely manufacturing a skin care preparation using an Ayurvedic authoritative text book does not imply that the product is a medicament. May classified them as and when it is used for cure from treatment or for prevention of specific skin disease. In the given case, the skin care preparation products were classified as medicaments or cosmetic products post consideration of various factors. *M/s. Akansha Hair & Skin Care Herbal Unit Private Limited AAR Case No. 01 of 201809.04.2018*



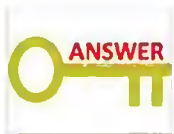
**Gella Praveen Kumar**  
B.Sc., MBA, FCA, Grad CMA  
Faculty at ICAI for GST training  
Practising Chartered Accountant  
Gella & Co. Bangalore  
gellapraveen@gmail.com



M/s ABC & Co., a Registered Firm under GST in the state of Karnataka, are into the business of Event management. The firm has sought for Casual Taxable Person registration in the state of Telangana. All the procurements pertaining to the Event in Telangana are billed duly to the CTP registration. Post completion of the event, the firm noted that IGST input tax post adjustment of tax payable on the outward supply has a surplus balance of Rs.500,000/- at the time of surrendering CTP.

Does the firm is entitled for claiming refund of the above ITCsuplus?

*Please send your opinion to,*  
[enewsletter.icsimysore@gmail.com](mailto:enewsletter.icsimysore@gmail.com)



## *Opinion To Last Month's Brainy Bits*

### **Facts to consider**

- Eligibility of Cenvat under Cenvat Credit Rules, 2004 is not under dispute for the transaction identified as above
- Goods being manufactured and dealt by M/ s APL Ltd., are duly taxable both under Central Excise and GST
- Proper documents existed during June 2017 for availment of Cenvat credit for the above transaction
- Goods procured by M/s APL Ltd, are not capital goods and to be treated as Inputs for the Manufacturing activity
- There is a clerical mistake of the Registered person for accounting the transaction twice. One in June 2017 and another in July 2017
- Electronic Credit ledger is updated with the credit of CGST on account of inputs received and availed under sections 140(5)

### **Relevant Provision**

**Section 42:** Matching, Reversal and Reclaim of Input Tax credit

**Section 49:** Payment of Tax – specific reference to the term Tax dues and Other dues

**Section 73 & 74: Determination of tax not paid**

**Section 140(5):** Transitional provision

**Rule 71:** Communication and Rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit

**Table 11 in GSTR2 – ITC reversal and reclaim**

### **Conclusion**

Cenvat availed during June 2017 shall not be questioned for its ineligibility cum reversal due to subsequent availment during July 2017 through Tran-01, since Cenvat Credit Rules, 2004 doesn't have any of such provision.

M/ s APL Ltd., has not availed the Input tax credit for the supplies made on or after 01.07.2017, rather the same has been availed on the basis of a Document issued prior to 01.07.2017. The above aspect, confirms that Section 41 and 42 of OGST Act, 2017 read with Rule 69 to 72 shall not be

applicable for matching the Outward supply of the supplier vis-à-vis the Inward supply of the recipient.

Input tax credit availed during July 2017 shall not be eligible for Input Tax under GST u/ s140(5), since the goods were received during June 2017 and already Cenvat has been availed in this regard. Careful examination of the above provision indicates that goods/services should have been received on or after the appointed day. Accordingly, Input tax availed by M/s APL Ltd., has to be reversed under GST itself.

Disclosure shall be as per Table 11 of GSTR2 and relevant provisions for the above reversal shall be covered by Section 50 read with Section 73 & 74 of CGST Act, 2017

**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](mailto:praveen@gella.in)*

## ***Opinion To Last Month's Brainy Bits by our Reader***

CSDattanand M. Raikar  
Proprietor  
DMR & ASSOCIATES, Company Secretaries  
316/ 4, 2nd Floor, Bhatkande Complex  
SPM Road, Belgaum - 590001  
Ph. 0831 420 5646  
Mob. +91 876 281 3071

**FACTS**

Purchase is made during June 2017 and also ITC is availed in the pre GST regime. Duplicate accounting entry is made in July for same transaction and ITC is availed again under GST.

**Relevant provisions under GST**

Section 43(6) of CGST

As per the above section any reduction in output tax liability due to duplication of claims shall be added back in the month in which such duplication is communicated.

Section 50(8) of CGST

As per the above section the registered person is liable to pay interest on the amount of ITC wrongly claimed by him.

Rectification of Accounts: Proper accounting entries for nullifying the affect of duplicate entry for purchases is required to be passed.

**Conclusion**

The amount of ITC wrongly claimed, in the month of July, must be reversed by adding back the amount of said ITC to the output tax liability in GSTR3B of the following month or such month in which the error was discovered. The ITC shall be paid along with interest under section 50(8) for the period from date of wrongly claiming of ITC to the date of adding back of the same.







## Delhi Diaries 3

Solved cases of Supreme Court and NCLAT

# Enforcement of an Arbitral Award Directing Transfer of Shares

The usual method for enforcement of an arbitral award is through proceedings under Section 36 of the Arbitration and Conciliation Act, 1996, which is filed in the High Court, if it is sought to be enforced within the jurisdiction of a High Court which has an original side jurisdiction, such as the High Court of Bombay, Madras High Court, High Court of Delhi and Calcutta High Court. In other cases, the relevant court is the District Court as defined under Section 2(1)(e) of the Arbitration Act.

Such a procedure for enforcement is understandable in the case of a money decree. However, when it comes to transfer of shares, it poses a peculiar problem. If for a moment, we keep aside the fact of arbitration, transfer of shares would have to be *vide* proceedings under Section 111 of the Companies Act, which would be before the National Company Law Tribunal (Company Law Board earlier). How then does one reconcile this with Section 2(1)(e) of the Arbitration and Conciliation Act, read with Section 36 which together mandates that enforcement of arbitral awards in District Courts or High Courts as the case may be.

This conundrum was resolved by the Supreme Court of India in its recent judgment in *Cheran Properties Ltd. v. Kasturi and Sons Limited and Ors.* The dispute arose out of an agreement whereby Kasturi and Sons Ltd. (KSL) agreed to sell its subsidiary Sporting Pastime India Limited (SPIL) to one Mr. K.C. Palanisamy (KCP) for a lumpsum consideration of an amount specified therein. The agreement also contemplated that some outstanding liabilities from SPIL to KSL would also be transferred to KCP. KCP agreed to discharge the liability within 180 days from the date on which he

took management control of SPIL. The agreement contemplated the resolution of disputes if any, by arbitration. At the instance of KCP, 95% of the shareholding was transferred to Cheran Properties, the appellant.

However, as KCP did not fulfil the agreement arbitration was initiated and an award was passed directing Cheran Properties and KCP to transfer the shares back to KSL. All challenges mounted by KCP and Cheran Properties to the Arbitral Award failed.

KSL for its part initiated proceedings under Section 111 of the Companies Act, 1956 for rectification of the register of SPIL. NCLT allowed the petition and the said decision was affirmed by NCLAT on 3 May 2017.

The order of the NCLAT was challenged by Cheran Properties claiming that it was not a party to the arbitration agreement. Cheran Properties also claimed that NCLT was not empowered to enforce arbitral awards.

The question of Cheran Properties not being party to the arbitration agreement was answered with reference to law laid down by the Supreme Court in its earlier decisions in *Chloro Controls v. Severn Trent Water Purification Inc.* wherein it had been held that though an entity is not party to an arbitration agreement, it can be arrayed as a respondent in the resultant arbitral proceedings if the claimant has raised a claim through an entity which is a party to the arbitral agreement.

But what is of greater interest to us is the order of the court regarding the power of the NCLT to enforce the arbitral award, insofar as it seeks an action within the jurisdiction of the NCLT. The

Court referred to the fact that under Section 35 of the Arbitration and Conciliation Act, 1996, an award would operate as if it were a decree of Court. On this basis the Court held that the NCLT was right to transfer shares upon application under Section 111 of the Companies Act, 1956.

This judgment is likely to cause further conundrums in the future. A similar award could not be made in the case of a Public Listed Company as that would be considered as a public law remedy. How then would the Courts treat a similar order in the case of a Public Listed Company? Or for that

matter, would the Sub registrar be bound to transfer a property in some person's name if an arbitrator says so, without the intervention of a Court? Even if it is a decree of Court, a transfer can be effected only pursuant to enforcement proceedings. It is the opinion of this author that such a direction under Section 111 of the Companies Act could have been passed only if the Court had directed so in a petition under Section 36 of the Act.

---

## News Room

### [Express News](#)



- **Centre rejects Niti Aayog's disinvestment proposal**
- **Khadi takes Fabindia to high court, seeks Rs 525 crore in damages for brand misuse**
- **Pre-GST goods with revised price stickers now could be sold till July 31**
- **Trade deficit widens to 4-month high of \$14.62 bn**
- **Govt directs all unlisted companies to dematerialise shares by September**
- **Softbank expected to invest up to \$100 bn in India's solar power project**

### **Japanese advertising company buys majority stake in FHO Communications**

Japanese advertising company Daiko Advertising has acquired a majority stake in New Delhi-based creative advertising firm From Here on Communications (FHO). Post-acquisition, the company will be re-branded as Daiko FHO.

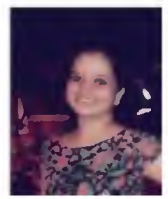
### **Funds collected under GST anti-profiteering rules to be split between Centre, state**

Centre and the 'concerned state' will equally share the amount deposited by erring businesses in the consumer welfare fund set up

as part of the GST anti-profiteering rules, as per Finance Ministry notification.

### **TCS board clears Rs 16,000 crore share buyback at Rs 2,100, 15% premium to current price**

The board of India's IT major Tata Consultancy Services on Friday approved a Rs 16,000 crore share buyback plan, in an attempt to distribute available cash among its shareholders. The company will buy back some 7.6 crore shares under the scheme at a price of Rs 2,100 per share.



## Companies Act, 2013

### Updates on Amended Rules

MCA has amended Companies (Appointment and qualification of directors) Rules, 2014 which is to be known as Companies (Appointment and qualification of Directors) Third Amendment Rules, 2018.

This new rule shall come into force on the date of their publication in the official gazette.

Through this rule MCA has introduced new forms DIR-3 and DIR-6 which shall substitute existing forms DIR-3 and DIR-6.

***Companies (Appointment and qualification of Directors) Third Amendment Rules, 2018, Dated 12<sup>th</sup> June, 2018.***

### Notifications

MCA has notified following sections of Companies (Amendment) Act, 2017.

1. Clause (i) and Clause (Xiii) of section 2;
2. Section 8;
3. Section 13;
4. Sections 18 and 19;
5. Clauses (i) and (ii) of section 21;
6. Clauses (iii) and (iv) of section 23;
7. Section 30 and 31;
8. Section 33;
9. Section 39 and 40;
10. Section 46;
11. Section 49;
12. Section 52;
13. Sections 54 to 58;
14. Sections 61 and 62;
15. First Proviso to clause (i) of section 80;

16. Section 83

17. Sections 86 to 89.

***S.O. 1833(E), Dated 7<sup>th</sup> May, 2018.***

### Circulars

Clarification – Condonation of delay scheme, 2018.

it is stated that this Ministry has received representations from stakeholders raising doubts regarding filing requirements of e-CODS, 2018, in such cases, where petitions have already been filed before NCLT under section 252 of the Companies Act 2013, during the currency of the scheme and orders are pending before the NCLT and whether such struck off companies can file CODS upon obtaining orders for the same even after 01.05.2018.

The matter has been examined and it is clarified that as per para 4(v) of the General Circular No.16/ 2017 dt 29.12.2017,

which states "In the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated only NCLT order of revival subject to the company having filing of all overdue documents".

MCA has directed companies to raise ticket in such cases through Change Requirement Form (CRF) along with copy of NCLT order, E-governance shall activate DIN of the directors.

**The directors whose DINs are proposed to be activated through CRF should not be directors on any other company which has been struck off under section 248(1) of the Act (other than the one revived through NCLT order as mentioned in CRF).**

***General Circular 05/2018, dated 17.05.2018.***