



**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)

# Hyderabad Branch of SIRC

*E-Newsletter*

[www.hydicai.org](http://www.hydicai.org)

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05<sup>th</sup> June World Environment Day



Yoga for Harmony & Peace

21<sup>st</sup> June International Yoga Day

27<sup>th</sup> June MSME Day





## Chairman Writes

**My Dear Professional Colleagues,**

Communication plays a pivotal role in sharing one's thoughts. To me it gives more delight when I communicate with my professional colleagues through this channel of communication "Hyderabad Branch Newsletter" as the Chairman of the Branch. I owe this position and the successful performance to my professional fraternity in the Branch. Let me air my following thoughts this month to our esteemed members.

### The World Environment Day:

5<sup>th</sup> June is celebrated as the World Environment Day across the globe. This day is dedicated for us to re-dedicate ourselves for pollution-free environmental world-over.

The World Environment Day in 2022 is hosted by Sweden with the campaign slogan "Only One Earth" with the focus on "Living Sustainably in Harmony with Nature". We need to join together to collectively protect and transform the environment free from pollution in whatever way it affects the human life. Our commitment and pledge on the occasion of World Environment Day is to ensure that we inhale good air, intensify our drive for cleanliness and involve others for the common cause of saving the earth from menace of pollution endangering our lives.

### Professional Enlightenment and Attainment:

We are planning to have the month of June as programme-filled month with series of Continuing Education Programme covering contemporary, conventional and futuristic topics which plays a significant part in our professional activities. As "Partners in Nation Building", as we are identified in the society, we shall contribute to the vision of the Hon'ble Prime Minister of India Shri Narendra Modi in the initiative of the Government of India "Azadi Ka Amrit Mahotsav".

As a part of Azadi Ka Amrit Mahotsav (AKAM) our Branch will be organizing in the coming month iconic and unique events on Financial & Tax Literacy Drive (Jan Jagrukta Abhiyaan -Join the Mass Movement: Financial & Tax Literacy Drive), All India Tree Plantation Drive - "Go Green" movement and other projects. This initiative will drive home the point especially for the younger generation to carry forward the legacy of our rich heritage, culture and showcase the value of our Nation.

27<sup>th</sup> June is observed as the **MSME Day** since 2017. The theme for the year is '**Achieving the Sustainable Development Goals (SDGs) and an economy that is greener and fairer, requires resilient and flourishing MSMEs everywhere**'. The Micro, Small and Medium Enterprises contribute immensely to the growth of our national economy and key to achieve more inclusive and sustainable economic growth. They also largely provide professional opportunities for our members at greater level. The Branch is proposing to have a programme on MSME on 27<sup>th</sup> June. I invite members to join the above programmes and make them successful.

### International Yoga Day:

This month is also special, on 21<sup>st</sup> June the International Yoga Day is observed. The Branch will be conducting an event to mark the occasion with a renowned trainer. “Health is Wealth”. The traditional yoga dates back to centuries is the best medicine to keep us better physically and mentally which will ultimately result in positive frame of mind and plausible action. Please do join on the International Yoga Day in large numbers with spouse and children.

### Programmes for Students :

Hyderabad Branch has continued to conduct multiple batches of ICITSS (OC, ITT, MCS and AITT) courses for the benefit of students and the next set of batches are scheduled to start on June 01, 2022.

### Chartered Accountants Foundation Day Celebrations and GST Day - July 1

I take privilege in inviting members to the Chartered Accountants day Celebrations, the details of the programme would be shared in due course.

Five years after its inception, GST regime has fiscal buoyancy apart, created a national common market boosting cooperative macro management and has got rid of abundance of rates across States that posed huge obstacles to businesses. All of us should be proud that our Institute and members, over these five years, have contributed for the transformation of indirect tax regime in our country to the GST system.

### Recapitulation of Programmes of May 2022:

The Branch held numerous programmes in the month of May 2022 on diversified topics, viz.,

- \* Changes in ITR forms & provision related to updated return of income, issues in section 148 and 148A of IT act, Issues in section 148 and 148A of IT Act 1961 & Analysis of Latest Supreme Court Judgement
- \* Two Days Virtual meeting on LLP Act
- \* Issues in Taxation of Salaries and e TDS returns
- \* Important Changes in Schedule III & CARO 2020 and Auditor Responsibilities
- \* Do's and Don'ts in Cyber Security for CA's, Code of Ethics - Practical Case Studies
- \* Tools and Strategies to scale up our professional Practices.

I am happy that members evinced keen interest in all these programmes and their participation in large numbers stands testimony to the success of the programmes. I assure the members that the Branch would strive to continue to serve by extending its horizon of activities in the days ahead. I solicit your continued support to all our initiatives. Your encouragement is the boost for us to excel in our performance.

Before concluding let me invoke the words of Swami Vivekananda who said “The gift of knowledge is a far higher gift than that of food and clothes; it is even higher than giving life to a man, because the real life of man consists of knowledge”

Let us accumulate the knowledge thereby add value to our professional excellence and esteem.

**Yours Sincerely**

**CA. Deepak Ladda**  
**Chairman**  
[hyderabad@icai.org](mailto:hyderabad@icai.org)

**Forthcoming Virtual / Physical CPE Meetings – June 2022**

<b>Day &amp; Date</b>	<b>Programme Topic</b>	<b>Speaker</b>	<b>CPE</b>	<b>Delegate Fee</b>	<b>Venue</b>
<b>Thursday 02<sup>nd</sup> June2022 06.00 PM to 8.00 PM</b>	Reassessment under old vs New Regime under Section 147,148,148A & 149 of Income Tax Act & Latest Judicial Pronouncements	<b>CA. (Adv.) Nitin Mehta</b>	2	118/-	Branch Premises
<b>Tuesday 07<sup>th</sup> June2022 06.00 PM to 8.00 PM</b>	"India Entry Services - An Offering By CA Firms"	<b>CA. Guru Prasad Makam, &amp; CA. Srilakshmi P, Bengaluru</b>	2	118	Zoom
<b>Thursday 09<sup>th</sup> June2022 06.00 PM to 8.00 PM</b>	Valuation under Income Approach	<b>CA. Dr. Gopal Krishna Raju, Chennai</b>	2	118	Zoom
<b>Saturday 11<sup>th</sup> June 2022 6.00 PM to 8.00 PM</b>	Role of Chartered Accountants under RERA	<b>Dr. CA. E. Phalguna Kumar, Tirupati</b>	2	118	Zoom
<b>Wednesday 15<sup>th</sup> June2022 06.00 PM to 8.00 PM</b>	Recent Developments, Case Studies Practical Experience in Transfer Pricing	<b>CA. Bhavesh Dedhia &amp; CA. Jigar Nagda Mumbai</b>	2	118	Zoom
<b>Saturday 18<sup>th</sup> June2022 6.00 PM to 8.00 PM</b>	Standards on Auditing: Relating To Finalizing Audit SA 500,SA 501,SA 505	<b>CA. R S. Balaji, Chennai</b>	2	118	Branch Premises
<b>Monday 20<sup>th</sup> June2022 6.00 PM to 8.00 PM</b>	Professional Opportunities for Young Chartered Accountants	<b>CA. Atul Satya Koushik, Mumbai</b>	2	118	Zoom
<b>Tuesday 21<sup>st</sup> June2022 6.30 AM to 7.30AM</b>	Yoga Day Celebrations	Further details will hosted in website			

<b>Monday 27<sup>th</sup> June 2022 06.00 PM to 8.00 PM</b>	<b>MSME Day</b>	<b>Further details will be hosted in website</b>			
<b>Tuesday 28<sup>th</sup> June 2022 05.00 PM to 8.00 PM</b>	<b>Automation using RPA in Finance</b>	<b>CA. Saurabh Goenka, Bengaluru CA. Saran Kumar U Hyderabad</b>	<b>3</b>	<b>118</b>	<b>Zoom</b>
<b>Thursday 30<sup>th</sup> June 2022 06.00 PM to 8.00 PM</b>	<b>Investors Awareness programme</b>	<b>Eminent Speaker</b>	<b>2</b>	<b>Nil</b>	<b>Zoom</b>

**CPE credit on attending full programme only**

**REQUEST TO CONTRIBUTE ARTICLES TO HYDERABAD BRANCH NEWS LETTER**

**Hyderabad Branch of SIRC of ICAI is seeking articles from members to be published in its monthly E-newsletter. The article can be on following topics:-**

- 1) Articles on Academic Interest,**
- 2) Articles on Work Life Balance,**
- 3) Articles on New Age Professional Opportunities,**

**Please send your article to: [hyderabad@icai.org](mailto:hyderabad@icai.org),**

**Sd/-  
Chairman**

**Hyderabad Branch of SIRC of ICAI**

<p><b>JAN JAGRUKTA - CREATING AWARENESS ON FINANCIAL &amp; TAX LITERACY</b> <b>National Biggest Financial &amp; Tax Literacy Drive by ICAI</b></p> <p>Hosted by: Hyderabad Branch of SIRC of ICAI</p> <p>On Sunday 05th June, 2022      Timings 6:00 a.m.</p> <p>Venue: Jalavihar, Near Necklace Road Hyderabad</p> <p><b>CA. Deepak Ladda</b> Chairman <b>CA. Satish Kumar Mylavaram</b> Vice Chairman <b>CA. Ravi Sankara Reddy P</b> Secretary</p>	<p>Hosted by: Hyderabad Branch of SIRC of ICAI</p> <p><b>All India Tree Plantation Drive - "Go Green"</b></p> <p>On Sunday 05th June, 2022      Timings 7:00 a.m.</p> <p>Venue: Sanjeevaiah Park Hyderabad</p> <p><b>CA. Deepak Ladda</b> Chairman <b>CA. Satish Kumar Mylavaram</b> Vice Chairman <b>CA. Ravi Sankara Reddy P</b> Secretary</p>	<p>Hosted by: Hyderabad Branch of SIRC of ICAI</p> <p><b>2K Run &amp; MARATHON</b></p> <p>On Sunday 05th June, 2022      Timings 6:00 a.m.</p> <p>Venue: Jalavihar, Near Necklac Road Hyderabad</p> <p><b>CA. Deepak Ladda</b> Chairman <b>CA. Satish Kumar Mylavaram</b> Vice Chairman <b>CA. Ravi Sankara Reddy P</b> Secretary</p>
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## MEMBERS

### IMPORTANT ANNOUNCEMENTS

Students Skills Enrichment Board (Board of Studies-Operations)  
The Institute of Chartered Accountants of India  
13th March, 2022

#### Four Weeks Residential Programme on Soft Skills Development

The Four Weeks' Residential Programme on Professional Skills Development is being organised by the Board of Studies - Operations (SSEB) with an objective to offer unique opportunity to the Chartered Accountancy students in imbibing the professional skills required for effective functioning in business organisation and the profession. The programme environment focuses on development of communication, interpersonal, teamwork, problem solving & leadership skills.

For Girls Students:

Venue: Centre of Excellence (Hyderabad)

Dates: From 6th June, 2022 to 2nd July, 2022

Fees: Rs 12000/- (Excellent opportunity to avail a discount of 75% in fee for limited period)

For Boys Students:

Venue: Centre of Excellence (Jaipur)

Dates: From 6th June, 2022 to 2nd July, 2022

Fees: Rs 12000/- (Excellent opportunity to avail a discount of 75% in fee for limited period)

### Information System Audit - Assessment Test (ISA - AT), July 2022

Members are hereby informed that the next Information Systems Audit (ISA) Course Assessment Test (Old as well as New Syllabus) which is open to the members of the Institute will be held on 9th July 2022 (Saturday) from 9 AM to 1 PM (IST) at the following cities provided that sufficient number of candidates offer themselves to appear there from.

The Council reserves the right to withdraw any centre at any stage without assigning any reason. The above Testis open only to the Members of the Institute who are already registered with the Institute for the ISA course and fulfill the eligibility criterion laid down. The fee payable for the above Assessment Test is ₹ 2000/-

An application for admission to the Information Systems Audit (ISA) Course - Assessment Test is required to be made on-line at [isaat.icaiaexam.icaai.org](http://isaat.icaiaexam.icaai.org) from 20th May, 2022 to 2nd June, 2022 and remit the examination fee of ₹ 2000/- on-line by using VISA or MASTER or MAESTRO Credit / Debit Card / Rupay Card / Net Banking/ Bhim UPI

## Supreme Court's Gavel Strikes – No GST on Ocean freight under RCM in CIF contract

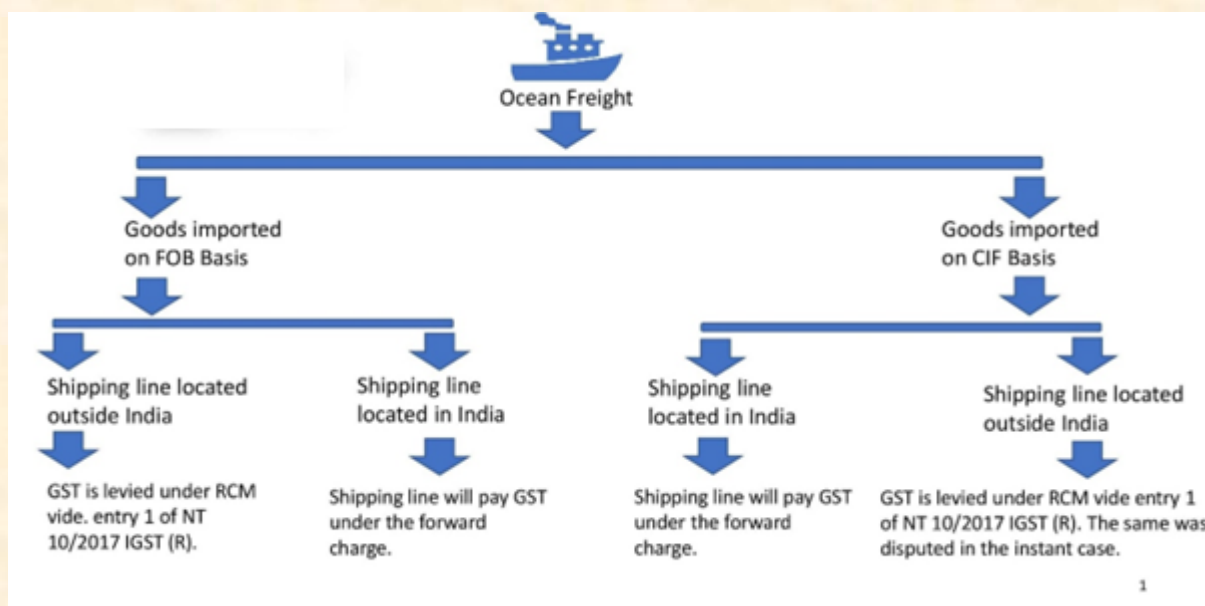
by CA Satish Saraf & CA. Venkat Prasad P

### Introduction

In this week, the Hon'ble SC has pronounced very interesting decision which has widespread in the media. The Hon'ble SC decision, besides holding that Indian importer is not liable for GST under RCM in CIF imports, has also explained several important aspects of Federal Constitution, GST council roles & rules of interpretation etc. In this article, the authors attempted to demystify the 153-page Decision and the possible course of action.

### Legal background

Ocean freight (Transportation) in import transactions is central point of the decision. Popularly there are 2 ways of arranging transportation (contractually) as depicted below along with GST applicability:



Note 1: In all aforesaid cases, the Indian importer would be paying applicable IGST at the time of import (including the value of aforesaid Transportation).

Note 2: The Notifications made the Indian importer to pay GST in 4<sup>th</sup> Scenario with a premise to provide level playing field to the Indian Shippers for the reason that if an Indian shipping company ships the goods to India, they would pay the taxes under the forward charge, and thus non taxing the ocean freight charged by the foreign companies would render the Indian shipping industry noncompetitive in CIF contracts.

The Notifications asking Indian importer to pay GST *albeit* not being a contractual party to the Shipping contract in 4<sup>th</sup> scenario was challenged before Hon'ble Gujarat HC on multiple counts. After thorough analysis of Constitution, GST provisions, history of Indirect tax on Ocean Freight, the Hon'ble Gujarat HC

has held that such notifications as *ultra vires* the IGST Act, 2017 & unconstitutional *inter alia* on several grounds as briefed below:

- The importer of goods on a CIF basis is **not the recipient of the transport services** as Section 2(93) of the CGST Act, 2017 defines a recipient of services to mean someone who pays consideration for the service, which is the foreign exporter in this case.
- Section 5(3) of the IGST Act, 2017 enables the Government to stipulate **categories of supply**, not specify a third-party as a recipient of such supply.
- The supply of service of transportation of goods by a person in a non-taxable territory to another person in a non-taxable territory from a place outside India up to the customs station of clearance in India, is neither an inter-State supply nor an intra-State supply. Thus, no tax can be levied and collected
- The location of the recipient of the service, i.e. the foreign exporter, is not in India but outside India. Thus, the provisions of sub-section (4) of Section 7 are also not applicable in the present case.
- Section 7(5)(c) of the IGST Act dealing with intra-state supply cannot be read so extensively that it conflates the “supply of goods or services or both in the taxable territory” to “place of supply”.
- Sections 12 and 13 of the IGST Act deal with determining the place of supply. Neither of them will apply if both the supplier and recipient of service are based outside India. **The mere fact that the service terminates in India does not make the service of supply of transportation to be taking place in India;**
- The provisions regarding **time of supply**, as contemplated in Section 20 of the IGST Act and applicable to Section 13 of the IGST Act dealing with supply of services, are applicable only vis-à-vis the actual recipient of the supply of service, which is the foreign exporter in this case.
- Section 15(1) of the CGST Act enables the determination of the value of the supply, only between the actual supplier and actual recipient of the service.
- Since the importer is not the “recipient” of the service under Section 2(93) of the CGST Act, it will not be in a position to avail ITC under Section 16(1) of the CGST Act; and
- The provisions relating to the returns apply where the person is either a supplier or a recipient of the supply. If the person is neither a supplier nor a recipient of supply, such provisions do not apply
- The scheme of the GST is that it is a transaction/contract based on value added tax. The tax is levied on each transaction and the tax paid at early stage is available as credit. Hence, it is a tax on consumption and not on business. It is a contract-based levy which depends on the contract between the supplier and the recipient. Thus, where the tax is sought to be levied and collected by a person other than the supplier or the supplier of service, distortions and contingency which the Act does not covers, are bound to occur.
- There is **no territorial nexus** for taxation since the supply of service of transportation of goods is by a person in a non-taxable territory to another person in a non-taxable territory from a place outside



India up to the Indian customs clearance station and this is neither an inter-state nor an intra-state supply.

- Since the **importer pays customs duties** on the goods which include the value of ocean freight, the impugned notifications impose **double taxation** through a delegated legislation, which is impermissible.

Similar decision was given in service tax context also by the same Hon'ble Guj HC<sup>1</sup>.

Aggrieved by the decision of the Hon'ble Guj HC decision under GST, the Revenue department appealed it before the Hon'ble Apex Court. Painstaking arguments were made on both sides before Hon'ble SC on several aspects of Constitution (relating to GST council role & scope), GST provisions, Rules of interpretation etc.

Recently, the Hon'ble SC delivered decision on 19<sup>th</sup> May 2022 holding that Indian importer is not liable for GST on the Ocean freight in CIF import contracts under RCM. However, partly overturning the Hon'ble Guj HC, the Hon'ble SC held that Indian importer can be construed as 'Recipient of service' and the Notification is not *ultra vires* the IGST Act, 2017.

While arriving the decision, the Hon'ble SC elucidated various important principals regarding the Constitution, GST council role, GST law and interpretation rules. The highlights are tabulated below:

**The legal arguments and the decision.....**

	<b>Taxpayer counsel</b>	<b>Government Counsel</b>	<b>Hon'ble SC verdict</b>
a.	Section 5(3) <sup>2</sup> delegates the <b>power to identify the category</b> of goods or services ( <b>and not class of recipient</b> ) on which reverse charge applies. That, Nt. 10/2017 <i>ibid.</i> identifies an Indian <b>importer as a service recipient</b> for the purposes of Section 5(3), it is <b><i>ultra vires</i> the parent Act on the ground of excessive delegation.</b>	<ul style="list-style-type: none"> <li>• Recipient [2(93)(c)] any reference to a person to whom the supply is made - shall be construed as the reference to the "recipient". In terms of Section 13(9)<sup>3</sup> the supply is made to the importer.</li> <li>• Further, the term "taxable person" means - a person registered or liable to be registered. And Section 24(iii)<sup>4</sup>, casts liability on the importer to get registered, as he is liable to pay tax under the reverse charge.</li> <li>• Therefore, both the IGST and CGST Act clearly define reverse charge, recipient and taxable persons. Thus, the</li> </ul>	<ul style="list-style-type: none"> <li>• The stipulation of the recipient in each of the categories in Notification is <b>only clarificatory</b>. The Government by notification <b>did not specify a taxable entity different from that which is prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge.</b></li> <li>• On a conjoint reading of Sections 2(11)<sup>5</sup> and 13(9), read with Section 2(93), the import of goods by a CIF contract <b>constitutes an "inter-state" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service.</b></li> <li>• Section 24(iii) <i>ibid.</i> alone cannot deem an importer to be a "recipient", however, the</li> </ul>

<sup>1</sup> SAL Steel Ltd. v. Union of India — [2020 \(37\) G.S.T.L. 3](#) (Guj.)

<sup>2</sup> Of the IGST Act, 2017

<sup>3</sup> Of the IGST Act, 2017

<sup>4</sup> Of the CGST Act, 2017

<sup>5</sup> Of the IGST Act, 2017

		essential legislative functions vis-à-vis reverse charge have not been delegated.	argument in respect of Section 29(3)(c) read with 13(9) founds relevance as the place of supply of such services are in India, and the importer would be the recipient in terms of Section 2(93)(c) <i>ibid.</i>
b.	The importer cannot be validly termed as “taxable person”.	From the revenue, the analogy drawn above w.r.t. “recipient”, “taxable person” read with Section 24(iii) <i>ibid.</i> was put forward to identify the “importer” as the taxable person.	The impugned NT 10/2017 identifies the importer as the recipient liable to pay tax on a reverse charge basis under Section 5(3), <b>the argument of the failure to identify a specific person who is liable to pay tax does not stand.</b>
c.	The value has to be strictly determined by Section 15(1) <sup>6</sup> and not by way of delegated legislation.	Sections 15(4) and 15(5) read with Rule 31 - enable delegated legislation to prescribe methods for determination of value, on the recommendations of the GST Council.	Rule 31 specifically provides for a residual power to determine valuation. Thus, the impugned Nt. 8/2017 cannot be struck down for excessive delegation when it prescribes 10 per cent of the CIF value as the mechanism for imposing tax on RCM. The determination of the value of supply only through rules, and not by notification would be an unduly restrictive interpretation.
d.	The conditions specified under Section 2(11) <sup>7</sup> with regard to “import of services” does not satisfy - as the recipient and the place of supply are both outside India.	Section 13(9) of the IGST Act is applicable - where in case of supply of services of transportation of goods by a supplier located outside India, the place of supply would be the place of destination of such goods and thus the conditions of Section 2(11) Mets.	The supplier, the foreign shipping line, in this case would be a non-taxable person. However, its services in a CIF contract for transport of goods would enter Indian taxable territory as the destination of such goods. The place of supply of shipping service by a foreign shipping line, would thus be India.
e.	It was argued that the present case of CIF contract would not be covered within Section 7(1)(b) <sup>8</sup> as it does not define “supply” of import of service without consideration. Here, the consideration is paid by the foreign exporter.	The above analogy of Section 13(9) read with Section 2(11) was similarly placed. Further, it was argued that Section 2(31) <sup>9</sup> defines “consideration” which includes amount paid by “ <b>any other person</b> ” within its purview.	The fact that consideration is paid by the foreign exporter to the foreign shipping line would not stand in the way of it being considered as a “supply of service” under Section 7(4) of the IGST Act which is made for a consideration.
f.	The transaction takes place beyond the territory of India and is thus, extra territorial in nature.	That, the decision in <b>GVK Industries</b> <sup>10</sup> clearly recognizes the power of Parliament to legislate	The impugned levy on the supply of transportation service by the shipping line to the foreign

<sup>6</sup> of the CGST Act

<sup>7</sup> Of the IGST Act

<sup>8</sup> of the CGST Act

<sup>9</sup> of the CGST Act

<sup>10</sup> 2011 (4) SCC 36 [“GVK Industries”]

<p>The levy of tax extra-territorially must be provided by Parliament through statute and not by the Union Government through delegated legislation.</p>	<p>over events occurring extra-territorially. The only requirement imposed by the Court is that such an event must have a real connection to India.</p>	<p>exporter to import goods into India has a two-fold connection: <b>first</b>, the destination of the goods is India and thus, a clear territorial nexus is established with the event occurring outside the territory; <b>and second</b>, the services are rendered for the benefit of the Indian importer. Thus, the transaction does have a nexus with the territory of India.</p>
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### The game changer arguments

	Party	Arguments	The Court observed
a.	Revenue	<p>Even if the above is not applicable, Section 5(4)<sup>11</sup> [amended w.e.f. 1<sup>st</sup> Feb 2019] would be applicable in the instant case. Which says -  <i>“(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”</i>            The issuance of notification under the incorrect reference i.e., 5(3) instead of 5(4), may not vitiate the action<sup>12</sup>.</p>	<p>This provision brings in a <b>deeming fiction of declaring a class of registered persons “as the recipient”</b> of the supply of taxable goods or service. In deploying the language <b>“as the”, and not “by the” recipient</b>, the applicability of the definition of recipient vis-à-vis Section 2(93) of the CGST Act is no longer necessary for determining the validity of such a notification.            The effect of the Amending Act 32 of 2018 has been as follows:</p> <ol style="list-style-type: none"> <li>I. The powers of the Central Government to specify through a notification has been clarified; and</li> <li>II. The power to specify a class of registered persons as the recipient has been recognized.</li> </ol>
b.	Assessee	<p>That the transaction, between the foreign exporter and the Indian importer, the latter is liable to pay IGST on the transaction value of goods under Section 5(1) read with Section 3(7) and 3(8) of the Customs Tariff Act. Although this transaction involves the provision of services such as insurance and freight it falls under the ambit of <b>‘composite supply’</b>.</p>	<p>The impugned levy imposed on the ‘service’ aspect of the transaction is in violation of the principle of ‘composite supply’ enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the ‘composite supply’, comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the ‘supply of services’ by the shipping line would be in violation of Section 8 of the CGST Act. The Government at first pleaded to look beyond the agreement with the foreign exporter and treated the transportation and import transaction as one. Now, treating the two legs of the transaction as independent when it seeks to tide over the statutory</p>

<sup>11</sup> Of the IGST Act.

<sup>12</sup> Union of India v. Tulsi Ram Patel (1985 3 SCC 398)

			provisions governing composite supply. For the reasons stated above, the appeals are accordingly dismissed.
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### The powers of the GST Council Clarified:

The Hon'ble Apex court held that

- The GST council recommendations are not binding on the Union and States and only have a persuasive value to foster cooperative federalism and harmony between the constituent units
- The 'recommendations' of the GST Council are the product of a collaborative dialogue involving the Union and States. They are recommendatory in nature. To regard them as binding edicts would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST. It is not imperative that one of the federal units must always possess a higher share in the power for the federal units to make decisions. Indian federalism is a dialogue between cooperative and uncooperative federalism where the federal units are at liberty to use different means of persuasion ranging from collaboration to contestation
- The Government while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. **However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279A (4) are binding on the legislature's power to enact primary legislations.**

### The suggested course of action:

Hon'ble SC gives big sigh of relief to the Indian importers. It would be interesting to see how the Government will react. The suggested course of action is tabulated below:

S. No	Status	The suggested course of action
1	Not paid GST under RCM on Ocean freight	Not liable to paid & pending demands, if any can be contested
2	GST Paid under RCM, availed it as ITC & utilized	No action required
3	GST Paid under RCM, availed it as ITC but could not be utilized	Reverse unutilized ITC & can claim refund
4	Future period	<ul style="list-style-type: none"> <li>➤ Continue to remit if taxpayer can utilize the ITC. This is to shield against the possible amendments to nullify the decision.</li> <li>➤ If could not be utilized, can stop paying it or also pay under protest</li> </ul>

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# SURVEY, SEARCH AND SEIZURE UPDATE

by: CA. Hari Agarwal & CA. Vivek Agarwal

## 1. ASHOK NARULA vs. DEPUTY COMMISSIONER OF INCOME TAX

ITA Nos: 616 & 617/Asr/2018, 648 & 649/Asr/2018

(2021) 63 CCH 0535 AsrTrib

Search and seizure—Prior approval given in mechanical manner—Assessee filed return—A search was conducted at residence of assessee—Notices dated 08.05.2015, 14.09.2015 and 28.09.2015 and detailed questionnaire dated 08.05.2015 and 05.08.2015 were issued but no compliance to same was made by assessee—Since assessee had no intention to extend desired cooperation in completion of assessment in a mechanical manner—Accordingly assessment was completion u/ s. 144—Assessee preferred appeal before CIT(A) who partly allowed appeal of assessee—Held, approval u/s. 153D was given in case of all four assesses including 10 more assesses—Co-ordinate Bench in Sh. Madan Lal Vs. DCIT, Central Circle-1, Jhalandhar in ITA No. 112 to 118/Asr/2018 held that approval which is granted in a mechanical, stereotype manner, without assigning any reasons and without considering draft assessment order is not sustainable in eyes of law—Approval u/s. 153 was obtained mechanically and ritualistically without any application of mind on part of Addl. CIT is purely legal in nature not requiring examination of new facts as relevant facts are available in assessment records and, therefore, additional *ground of* assessee was admitted—Assessee's appeals allowed.

## 2. Conversion of Income Tax Survey Into Search: No Hasty and Slipshod Approach

Ashish Parashar - [2022] 134 taxmann.com 127 (Article)

As we head towards the third wave of this never-ending Covid-19 Pandemic and in the midst of the upcoming elections to be held in different parts of the country next month, the most common news hitting the professional circuits nowadays is that of "Income Tax Searches" regularly conducted on large business houses u/s 132 of the Income Tax Act, 1961 (The "Act") and various Surveys u/s 133A of the Act conducted on such associates and entities having close nexus with the person(s) so searched u/s 132.

Hence, it remains an important question in the mind of the assesseees at large to understand that whether the Income Tax Department within its power, can convert the Income Tax Surveys u/s 133A into Search Proceedings u/s 132 of the Act and the legal provisions in this regard.

In this article, the author has tried to encompass the practical aspects to demonstrate on the cited subject as to whether the survey proceedings u/s 133A can be converted into search proceedings u/s 132.

### 3. [Principal Commissioner of Income-tax v. Vikas Telecom Ltd.](#)

[2022] 135 taxmann.com 362 (Delhi)

IT APPEAL NO. 112 OF 2020

Section 68, read with section 153C, of the Income-tax Act, 1961 - Cash credit (General) - A search and seizure operation under section 132 was carried out in case of 'RD' group and certain incriminating documents belonging to assessee-company were seized and proceedings under section 153C were initiated against assessee - During post-search enquiries, it was gathered that 25 companies applied and allotted shares of assessee-company and later family members/companies of RD group bought back shares at a much lower price - Assessing Officer treated amount received from companies as unexplained cash credit under section 68 and added said amount back to income of assessee-company - Assessing Officer had not made use of any seized documents while making additions to total income of assessee under section 68 and on other hand, had used extensive enquiries made by Investigating Wing, as basis to make said addition - Whether since no seized material or statement had been relied upon by Assessing Officer while making addition, said addition was to be deleted - Held, yes [Para 7] [In favour of assessee]

### 4. [Discussions About the Electronic Evidence \(Including WhatsApp Chats\) Found During Search Proceedings](#)

[Ruchesh Sinha, Adv., R K Aggarwal, FCA, Pawan Aggarwal, FCA](#)

[2022] 134 taxmann.com 156 (Article)

It has been recently observed that the WhatsApp chat messages which forms electronic evidence are often relied to frame the assessee under the income tax proceedings. The same are used as corroborative evidence. In this regard, it is stated that sections 62 and 63 of the Evidence Act, talk about Primary and Secondary evidence. Primary evidence is some document or thing that is produced before the court in original for inspection. Secondary evidence is certified copies of the original document or oral accounts of the contents of the original. WhatsApp messages may be accepted by a court as secondary evidence subject to the fulfilment of the provision section 65B of the Evidence Act. In this regard, reference is invited to the case of Supreme Court in the case of *Ambalal Sarabhai Enterprise Ltd Vs. KS Infraspace LLP Limited and Another* in Civil Appeal No(s). 9346 of 2019 dated 6th January, 2020. Wherein pertaining to WhatsApp evidence, the Hon'ble Supreme Court observed that "The WhatsApp messages, which are virtual verbal communications, are matters of evidence with regard to their meaning and its contents to be proved during trial by evidence\_ in \_chief and cross-examination. The e-mails and WhatsApp messages will have to be read and understood cumulatively to decipher whether there was a concluded contract or not". Thus, in this case, pertaining to the aspect of WhatsApp message the Supreme Court observed that the contents of the same is required to be proved during trial. No concrete observation was made by the Court in this regard. It may therefore be clarified that in regard to the WhatsApp messages presently there is no final clarity and the position can only be clear when the "Data Protection Bill" is notified.

## GLIMPSES OF CPE PROGRAMMES

Changes in ITR Forms & Provision related to updated return of Income on May 9, 2022



Resource Person Dr. CA. Abhishek Murali, Chennai seen along with CA. Deepak Ladda, Chairman, CA. Satish Kumar Mylavarapu Vice Chairman & CA. Ravi Sankara Reddy P, Secretary Hyderabad Branch

LLP Act & Amendments to LLP Act 2021 on May 17, 2022



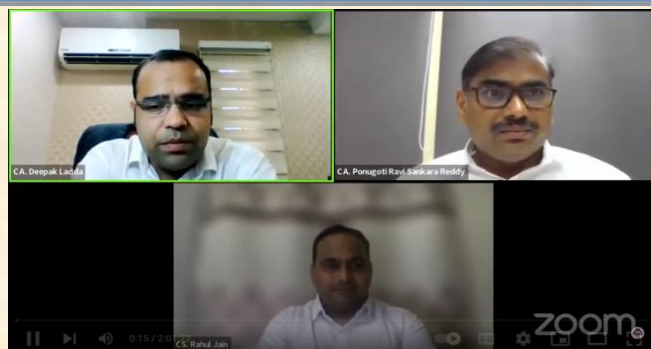
Resource Person: CS Pavan Kumar Bhattiprolu, Hyderabad seen along with CA. Deepak Ladda, Chairman, CA. Ravi Sankara Reddy P Secretary & CA. Saran Kumar U, SICASA Co Chairman, Hyderabad Branch

Issues u/s 148 & 148A of IT Act 1961 & Analysis of Latest Supreme Court Judgment on May 13, 2022



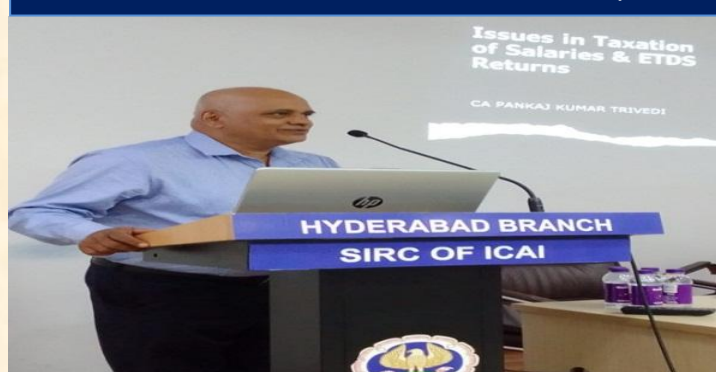
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