The Malad Chamber of Tax Consultants

MNW/175/2015-17 Total Pages 12 Price ₹ 5/-

38 Years

MCTC Bulletin

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Vol. 1, No. 12 ***For members & private circulation only*** **June, 2017**

President's Communiqué

Dear Members,

As I pen this message, as my last communication with you all as the President, I take this opportunity to thank all the members for their overwhelming support throughout the year. As the president of this august association, I have tried my best efforts to make the year as eventful as possible. As my tenure as the President comes to an end, I would like to share that as much as I have tried to contribute towards the benefit of all its members, the Chamber has given me a learning experience of a lifetime. It has been a privilege for me to head this esteemed association.

I must thank all the Past Presidents for their valuable guidance and support. I hope to have kept up the valuable work done by them. I also thank the Managing Committee members as well as Sub-Committee members, for their hard work and dedication, without whom all these activities would not have been possible to conduct.

The two full days GST Seminar jointly with GSTPAM held on 2nd and 3rd June, 2017 received a humongous response from the members. Within five days of the announcement of the event, it was fully booked. While being thankful to all the participants of the seminar, I would like to apologize to all the members who were not able to be a part of the Seminar due to limitation of seats.

With the financial year coming to an end, I request you all to attend the 38th Annual General Meeting scheduled to be held on 2nd July, 2017.

As I hand over my duties, I would like to quote that-

"The price of success is hard work, dedication to the job, and the determination that whether we win or lose, we have applied the best of ourselves to the task at hand" – Vince Lombardi

I wish all the members the best of their respective areas of work and wish for our fraternity to grow manifold.

Thank you

With Warm Regards

CA. Adarsh Parekh
President

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

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Life Membership Fees ₹ 2,500 • Ordinary Membership Fees ₹ 1,000 p.a.

DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **Pradhan Mantri Garib Kalyan Yojana, 2016 [246 TAXMAN (st.) 123]**

  CBDT vide circular no 9 of 2017 dated 14/03/2017 clarified that where the undisclosed income is represented in the form of deposits in an account maintained with a specified entity, it is not necessary that the said deposits should exist on the date of making payments under the Scheme or furnishing a declaration under the Scheme. However, where the undisclosed income is represented in the form of cash, it is clarified that such cash should exist on the date of making payment of tax, surcharge and penalty under the Scheme or on the date of making the deposit under the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016, whichever is earlier.

- **Option form for taxation of income from patent u/s 115BBF [246 TAXMAN (st.) 159]**

  The CBDT vide notification no GSR 318(E) dated 31/03/2017 gives Income Tax (Fifth Amendment) Rules, 2017. It inserts rule 5G. It prescribed form no 3CFA which eligible assessee shall furnish for the purposes of exercising the option for taxation of income by way of royalty in respect of a patent developed and registered in India. This form is to be file electronically under digital signature or through electronic verification code. This form is to be furnished on or before the due date specified in Explanation 2 below sub-section (1) of section 139 for furnishing the return of income for the relevant assessment year, in case the option is exercised for the assessment year.

- **Guidelines for waiver of interest charged u/s 201(1a)(i) of the Income Tax Act 1961- TDS - Consequences of failure to deduct or pay [246 TAXMAN (st.) 134]**

  The CBDT vide circular no 11/2016 dated 24/03/2017 directs that the Chief Commissioner of Income Tax and Director General of Income Tax may reduce or waive interest charged u/s 201(1a)(i) of the Act in the classes of the cases specified in paragraph 2 of the order for the period and to the extent the Chief Commissioner of Income Tax (CCIT)/ Director General of Income Tax(DGIT) may deem fit. No reduction or waiver of such interest shall be ordered unless the principle demand u/s 200A, 201(1) or 234E as the case may be, stands fully paid or satisfactory arrangements are made for payment. The CCIT/DGIT may also impose any other condition as deemed fit.

  For the listing of classes of cases and further details of the circular one may refer to the above citation.

- **Finance Act, 2017 [246 TAXMAN (st.) 51]**

  An act to give effect to the financial proposals of the Central Government for the financial year 2017-18, namely, Finance Act, 2017 as assented by President of India on 31/03/2017 is available at above citation.

■■■

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah

Argus Golden Trades India Ltd vs. JCIT (ITAT Jaipur), ITA No. 522/JP/16, 24 May, 2017

Penalty for delay in filing TDS returns cannot be levied if delay was caused due to requirement of correct PAN of the deductees.

Facts of the case:

The Assessing Officer imposed penalty U/s 272A(2)(K) of the Income Tax Act, 1961 holding that the assessee company is delayed in filing quarterly e-TDS return within the stipulated time frame.

Being aggrieved, the assessee carried the matter in appeal before the CIT (A) who upheld the levy of penalty and observed that the delay was not of one or two days but there was delay of 1024 days, hence, it reveals a willful attempt for non-compliance of statutory provisions.

The provisions of section 272A(2)(K), mention the word “shall” indicating that if there is violation of these provisions, the imposition of penalty is mandatory. As per section 273B, penalty may not be imposed if the assessee proves that there was a reasonable cause for such failure. The assessee was not having any genuine ground for not filing of TDS return in time. The statutory provisions were introduced so that the deductee can take credit for the taxes it has already paid.

On further appeal, The ITAT held in the favour of assessee observing:

During FY 2010-11 which is under consideration, CBDT notified a change in filing of e-TDS returns wherein it was necessary to mention 100% valid PAN of the deductees to successfully submit the TDS return in IT system.

The assessee has submitted that since there were large number of deductees scattered throughout the country, a fact not disputed by the Revenue, it took them some time to collect the PANs of these deductees and thereafter, it was able to upload the e-TDS returns.

Further, the taxes were deducted and deposited at the prescribed rate with delay of few days. Hence, there is no loss to the Revenue which is caused due to the delay in filing of the e-TDS returns which is totally unintentional.

In light of the above, the assessee had a reasonable cause for delayed filing of its e-TDS returns in terms of section 273B and the penalty under section 272(A)(K) is not leviable.

DCIT vs. Ateev V. Gala (ITAT Mumbai), ITA NO.1906/Mum/2014, 19 April 2017

A HUF is a "group of relatives". Consequently, a gift received from a HUF by a member of the HUF is exempt from tax as provided in the Explanation to s. 56(2)(vi)

Facts of the case:

During the AY, the Assessee received Gift of Rs. 85 Lakhs from HUF of which he was a member. He declared the same as exempt u/s. 56(2)(vi). The assessing officer was of the view that HUF is not covered in the definition of "relative". Therefore, the gift of Rs.60 lakhs received from the HUF was held to be taxable.

The AO recorded that the term "relative" is distinctly defined u/s. 56(2)(vi) of the Act and that if the legislature wanted that money exceeding Rs. 25,000 received by the member of the HUF from the HUF is also not chargeable to tax, it would have specifically mentioned so in the definition of "relatives".

The CIT(A) deleted the addition against which Revenue filed an appeal.

The Tribunal held in favour of the Assessee:

Under section 56(2)(vi) along with the Explanation to that section, a gift received from "relative", irrespective of whether it is from an individual relative or from a group of relatives is exempt from tax. Thus, a group of relatives also falls within the Explanation to section 56(2)(vi) of the Act. It is not expressly defined in the Explanation that the word "relative" represents a single person. And it is not always necessary that singular remains singular. Sometimes a singular can mean more than one, as in the case before us.

The word "Hindu Undivided Family", though sounds singular unit in its form and assessed as such for income-tax purposes, finally at the end a "Hindu Undivided Family" is made up of 'a group of relatives".

In view of the above, the amount received by Assessee was held as exempt u/s. 56(2)(vi).

JUDGMENTS UNDER SERVICE TAX FOR THE MONTH OF MAY, 2017

1. Explanation added to definition of term 'taxable service' set out in section 65(105)(zzc) by Finance Act, 2010, with retrospective effect from 1-7-2003, is neither unconstitutional or ultra vires Article 14 of Constitution. ***[Chanakya Mandal v/s Union of India [2017] 81 taxmann.com 197 (Bombay)].***

FACTS:

1. The assessee, a trust registered under the Bombay Public Trust Act, 1950, provided the necessary training and coaching so as to enable the students to appear for the Indian Administrative Services and other Civil Services examinations.
2. The Service Tax Authority issued a notice dated 27-8-2010 on the assessee stating that an Explanation had been added to the definition of the term 'taxable service' set out in section 65(105)(zzc) by the Finance Act, 2010, with retrospective effect from 1-6-2003.
3. Assessee was called upon to furnish the details of the fees collected for the respective courses from 2005-06. The Service Tax Authority also referred in the said notice a Circular which provided for levy of service tax on educational institutions.
4. The assessee filed a writ petition with a prayer to declare that the Explanation added to section 65(105)(zzc) was unconstitutional and ultra vires Article 14 of the Constitution of India.

HELD:

1. The legislature had before it an already enacted statute, namely, the Finance Act, 1994. The Finance Act, 1994 contains Chapter V and titled as 'Service Tax'. Section 65, which has been substituted by the Finance Act, 2003 with effect from 14-5-2003, contains the definitions.
2. The term 'taxable service' as defined in section 65(105) means any service provided or to be provided. Further sub-clause (zzc) of section 65(105) reads as under:

   65(105) 'taxable service' means any service provided or to be provided -

   (zzc) to any person, by a commercial training or coaching centre in relation to Commercial training or coaching.
3. Therefore, the legislature refers to a commercial training or coaching. It means any training or coaching provided by a commercial training or coaching centre. The commercial training or coaching centre means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.
4. An explanation has been inserted by Finance Act, 2010 and it says, for the removal of doubts, it is hereby declared that the expression "commercial training or coaching centre" occurring in this sub-clause and in clauses (26) and (27) and (90a) shall include any centre or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a Trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed accordingly.
5. In the instant case, the legislature has indeed acted reasonably and taxed the service provided by training and coaching centre and classes. Such clarificatory provision can operate with retrospective effect. That has been given retrospective effect in terms of the powers conferred on the legislature is apparent. In these circumstances, this is not an exercise of overruling any binding judgment of a competent court.
6. Thus, once there is a power to make retrospective amendment and of the above nature, then one cannot pick one or two words from the Explanation and read them in isolation. The Explanation would have to be read as a whole. So read, it clarifies the definition of the term 'commercial training centre' or 'coaching'. Once commercial training or coaching centre is defined and which definition is clarified by this Explanation, then the earlier views of the Benches of the Tribunal would not hold the field.

   In view of the aforesaid, the writ petition was dismissed.

2. Where part of input services i.e. transport of LNG by GAIL to assessee used for production of electricity was used in manufacture of its final product and part of it was sold to third parties, Cenvat credit proportionate to service tax paid on procurement of LNG used in generation of electricity wheeled outside to Joint Ventures/Vendors was to be denied. ***[Maruti Suzuki India Ltd. v/s Commissioner, Central Excise Commissionerate, Delhi - III [2017] 81 taxmann.com 410 (Punjab & Haryana)].***

FACTS:

1. The assessee carried on business of the manufacture of motor vehicles and parts thereof, at its two units in the State of Haryana. Central excise duty was payable on the final products.

2. The assessee had an in-house captive power plant within the unit. The assessee's power requirements were met by the electricity generated by this plant. Liquefied Natural Gas (LNG), an important raw material for the generation of power, was procured by the assessee through the pipeline from the Gas Authority of India Limited (GAIL).

3. GAIL paid the service tax for the transport of gas through the pipeline and raised taxable invoices on the assessee including in respect of the service tax. The assessee while discharging the invoices also paid the service tax and, accordingly, availed CENVAT credit in respect thereof. A part of the electricity generated in the power plant was used by the assessee in the process involving the manufacture of its products.

4. In addition to this the assessee also provided the electricity generated to third parties including its joint ventures and sister concerns; who in turn sell the products to the assessee who then uses them to manufacture its final products.

5. The show cause notices were issued alleging that the assessee wrongly availed the credit of the service tax on transport of gas (LNG); that as part of the electricity produced was sold to joint ventures and sister concerns, the credit of duty paid on the inputs used for generation of electricity wheeled out of the assessee's factory was not available and that the assessee had suppressed various facts with an intent to avail credit wrongly and had thereby evaded the payment of duty. Accordingly, it was held that the assessee was liable to have the proportionate credit reversed and was also liable for penalty.

ASSESSEE'S ARGUMENTS:-

Assessee contended that the electricity that was wheeled out was used by the third parties for the purpose of manufacturing components for the assessee and these components were used by the assessee for the manufacture of its final product. Service tax was paid in respect of inward transportation of LNG by GAIL through its pipeline to the assessee; the LNG was used for the production of electricity; the electricity was wheeled out to third parties; the third parties used the electricity to manufacture final products for sale to the assessee and the assessee used these final products purchased from the third parties in the manufacture of its final product. Accordingly, the input service that was originally routed to the assessee found its way back to the assessee. This, according to the assessee, constitutes indirect use of the LNG by it.

HELD:

1. CENVAT credit is claimed in respect of the transport of LNG from GAIL to the assessee. "Input service" includes services used in relation to inward transport of inputs. The transportation of LNG by GAIL to the assessee is covered by the definition of input service. For a service to fall within the ambit of the definition of "input service" the service must be used by the manufacturer. The use of the service whether direct or indirect must be by the manufacturer/assessee, who claims the CENVAT credit.

2. Further, the use by such manufacturer, i.e. the assessee, must be in or in relation to the manufacture of the final product. Also, the service must be used by the assessee in or in relation to the manufacture of the assessee's final product and clearance of the final product from the place of removal.

3. The use of the input service must be by the manufacturer who claims the CENVAT credit i.e. the assessee. The use may be direct or indirect. It must, however, be used by the manufacturer concerned. It cannot be the use of another unless such use is for or on behalf of the assessee.

4. The assessee having sold the electricity to the third parties lost all control or rights in respect thereof. The electricity that was wheeled out to the third parties was, obviously, not used in the manufacture of the assessee's final product. Therefore, the LNG, to the extent used for production of electricity wheeled out to third parties, was not an input and the service of inward transportation thereof was not an input service, thus the assessee can not avail CENVAT credit of the same.

5. Further, there was no fraud or suppression on the part of the assessee. These involved complex questions of law. It is not the case of the Revenue that the appellant withheld any information for any mala fide reasons. Thus, issue of penalty and extended period of limitation was waived.

3. Where assessee allowed IHCL to use her premises for running hotel business, she was not liable to pay service tax under category of 'renting of immovable property services'.[***EX Maharani Mahendra Kumari v/s.Commissioner of Central Excise & Service Tax, Jaipur, [2017] 81 taxmann.com 228 (New Delhi - CESTAT)]***

FACTS:

1. The Assessee is owner of the Land measuring 7 acres along with building, structures situated on the said Land.

2. The Assessee entered into a contract with the IHCL whereby it allowed the IHCL to use their premises for running hotel business.

3. They received consideration in the form of percentage of gross operational profit or minimum guaranteed profit.

4. The Commissioner (Appeals) took a view that the assessee had provided taxable services under the category of 'renting of immovable property service'.

HELD:

1. Assessee has agreed to permit IHCL to use the aforesaid land, building and structures for the purpose of carrying out the business of hotel.

2. Sub-clause (d) under Explanation 1 to section 65(105)(zzzz), provides that service of renting of immovable property does not include the buildings used for the purpose of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

3. The Assessee claimed exclusion under the category of building used for the purpose of accommodation including hotels. The building and the land as appurtenant thereto are used for the purpose of running the hotel. The term "hotel" is not defined in the Finance Act, 1994. As generally understood, a hotel is for temporary accommodation of people paying for their rooms and meal. Many hotels will have various other incidental facilities relating to entertainment, personal care, etc. The presence of these facilities does not exclude the building from the category of "hotel".

4. The Tribunal in the case of ***Jai Mahal Hotels (P.) Ltd. v. CCE [2015] 53 taxmann.com 206/49 GST 504 (New Delhi - CESTAT)*** held that in terms of sub-clause (d) under Explanation 1 to section 65(105)(zzzz), the building used for or as hotels does not amount to immovable property.

The appeal is allowed in favour of the assessee.

4. Where assessee claimed for refund of unutilized Cenvat credit of service tax paid on input services, qua services used in export of output services, rejection of claim, on ground that the business premises of the assessee was not registered with concerned Authority, was not justified. ***[Commissioner of Service Tax-III, Chennai v. _____, [2017] 81 Taxmann.com 202 (Madras)]***

FACTS:

1. The Assessee is in the business of providing IT and Business Support Services and registered with the department on 23/01/2009, which was later on amended on 11/07/2013.

2. The services were exported to overseas company from the building taken on lease by the assessee but not registered with the concerned authority.

3. The Assessee, filed a refund claim dated 31.10.2013 by seeking refund of input service tax credit which was used in export of output services, which was received in the office of the concerned Authority on the very same date. The refund claim was made by the Assessee, for a sum of Rs.4,56,924/- for the period from October, 2012 to December, 2012.

4. The Assistant Commissioner allowed refund to the extent of Rs. 86,457/- and balance amount was rejected on the two grounds (i) non registration of the premises and (ii) limitation.

5. Being aggrieved the Assessee filed appeal with the Commissioner of Service tax, who reversed the original order.

6. Being aggrieved Revenue filed appeal against the order of the Commissioner before the Tribunal. The Tribunal following the judgment of the Karnataka High Court in the case of mPortal India Wireless Solutions (P) Ltd. vs. CST (2012) 34 STT 322 held that in the absence of a statutory provision prescribing that registration of the premises was mandatory for availing input service tax credit, the assessee could not be denied refund of unutilized cenvat credit of service tax paid on input services. Accordingly Tribunal rejected the appeal of the revenue.

7. On appeal to High Court, the revenue contended that the Notification No. 5/2006-CE (NT), dated 14-3-2006 would disentitle the claim of the assessee qua refund of cenvat credit.

HELD:

1. A bare perusal of the Notification No. 5/2006-CE (NT), dated 14-3-2006 would show that it only sets out the procedure for claiming refund of unutilized input service credit. Clause 3 of the said notification, on which reliance is placed by the revenue, has no bearing on the issue arising in the instant case.

2. A bare perusal of clause 3 of the aforesaid notification dated 14-3-2006 would show that in so far as the provider of output services is concerned, for making an application for refund of Cenvat credit, he is required to file an application in the prescribed form and the said application is required to be made to the Deputy Commissioner or the Assistant Commissioner, as the case may be. In so far as the jurisdiction of the concerned Officer is concerned, the same is fixed, in consonance with the location of the registered premises of the service provider, from which the output services are exported. Furthermore the application is required to be accompanied with a copy of the relevant invoices and a certificate from the bank, indicating therein the realization of export proceeds.

3. The fixation of jurisdiction of the concerned Officer, to whom an application is to be made, by correlating it with the location of the registered premises, cannot by implication be read in a manner that it obliterates the rights of the exporter of output services to obtain refund of Cenvat credit. What is relevant to note is that rule 5 does not stipulate registration of premises as a necessary prerequisite for claiming a refund.

4. A perusal of sub-rules (2) and (3) of rule 4 of the Service Tax Rules, on which reliance is placed by the revenue, does not bring to fore any limitation with regard to grant of refund for unutilized Cenvat credit, qua export services, merely on the ground that the premises are not registered. The only ground, on which refund claim made by the assessee was rejected, was that the additional building taken on lease was not registered with the concerned Authority.

   Therefore, there was no error in the approach adopted by the Tribunal and accordingly appeal petition of revenue was dismissed.

5. Where assessee received housekeeping and land scaping services in its factory, it was eligible to avail cenvat credit of service tax paid on such services.***[Wipro Ltd. v. Commissioner of Central Excise, Pondicherry [2017] 81 taxmann.com 229(Madras)].***

FACTS:

1. Appellant is in the business of manufacturing computers and automatic data processing machines, falling under Chapter Heading 8471 of schedule to the Central Excise Tariff Act, 1985.

2. The assessee received housekeeping and land scaping services in its factory. It availed Cenvat credit of service tax paid in respect of housekeeping and land scaping services.

3. The Tribunal held that the assessee was not eligible to avail Cenvat credit of service tax paid on the aforesaid services.

HELD:

1. A cursory reading of the judgment of the Madras High Court rendered in the case of CCE & ST v. Rane TRW Steering Systems Ltd. [2015] 57 taxmann.com 131/51 GST 249 reveals that the facts in issue therein are similar to the facts in the instant case. It is clear from the decision that where an employer spends money to maintain its factory premises in an eco-friendly manner, the tax paid on such services would form part of the cost of the final products and the same would fall within the ambit of 'input services' and, therefore, the assessee is entitled to claim the benefit.

2. The Hon'ble Court followed the ratio laid down by the Karnataka High Court in the case of CCE v. Millipore India (P) Ltd. (2011) 6 taxmann.com 363 and held that the assessee was eligible to avail Cenvat credit of service tax paid on house keeping and land scaping services

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT - RERDA

**"Maharashtra Real Estate (Regulation and Development)
(Registration of real estate projects, Registration of real estate agents,
rates of interest and disclosures on website) Rules, 2017 - [Main Rules - Main]"**

**"Maharashtra Real Estate (Regulation and Development)
(Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.)
Rules, 2017 - [Recovery & Forms - R&F]"**

**"Maharashtra Real Estate Regulatory Authority
(Form of Annual Statement of Accounts and Annual Report) Rules, 2017 - [Annual Report - AR]"**

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY (GENERAL) REGULATIONS, 2017 [Regulations - Regu]

FAQs for MahaRERA website [FAQs]

"DIGESTED COMPILATION - Maharashtra - May 2017 (PART 2)

by CA A P Ruparelia, Mumbai

Tag Code	Tag Description	RERD Act 2016	Mah RERD ... Rules 2017	MahaRERA Regulations 2017		Digest
		Section #	Rule #	Regu #	Form #	
Defn - Carpet Area	Carpet Area defined	2(k)				"carpet area" means the net usable floor area excluding the exclusive balcony or verandah area and exclusive open terrace area
Defn - Common Area	Common Area defined	2(n)				Common Area mean entire land for the RE project or the phase and other common areas
Defn - Competent Authority	Competent Authority defined	2(p)				Competent Authority means the local authority having power to give permission for development of property
Defn - Estimated Cost of RE Project	Estimated Cost of RE Project defined	2(v)				"estimated cost of real estate project" means the total cost involved in developing the real estate project
Defn - Interest	Interest payable and period defined	2(za)	Main / 18			**"Interest payable by Developer and Allottee shall be at same rate. Period for which Interest is payable is also defined. Rule 18 : Rate of Interest shall be SBI Highest Marginal Cost of Lending Rate (MCLR) plus 2% (at present 8.15%+2%=10.15%)"**
Defn - Person	Person defined	2(zg)				**Inclusive definition of Person**
Defn - Project	Project defined	2(zj)				Project means Real Estate Project
Defn - Promoter	Promoter defined	2(zk)				Extensive definition of Promoter. In case where Person who constucts the project and Person who sells are different, and also in case of Joint Development with Land Owner etc. then both will be deemed to be promoters.
Defn - Carpet Area	Real Estate Project defined	2(zn)				Real Estate Project defined
Defn - Common Area	Sanctioned Plan defined	2(zq)				Sanctioned Plan means all plans sanctioned by competenet authority and includes all permissions such as environment permission etc.
Regn RE Agent	Registration of Real Estate Agent and Revocation	9	Main / 11, 12, 13, 15		"Form G - Application for Regn Fomr H - Regn Certificate Form I - Rejection / Revocation of Regn"	No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section. Maha Rules : 11(1) - Application for Registration shall be made by RE Agent FORTHWITH, in any case before engaging in any marketing or selling of apartment.

Tag Code	Tag Description	RERD Act 2016	Mah RERD ... Rules 2017	MahaRERA Regulations 2017		Digest
		Section #	Rule #	Regu #	Form #	
						11(2) - Application shall be in Form G, accompanied with specified documents (inter-alia IT Returns for last 3 years, details (if any) of all real estate projects and their promoters on whose behalf he has acted as real estate agent in preceding five years, authenticated copies of all letter heads; rubber stamp images, acknowledgement receipts proposed to be used by the real estate agent etc.) and filing fees of Rs. 10,000/- (Individual RE Agent) or Rs. 1,00,000/- (Other entities).
						11(5) - RE Agent shall maintain and preserve books of accounts, records and documents separately for each such real estate project.
						12. Regn Certificate shall be in Form H. Rejection of Regn shall be in Form I. Regn shall be valid for 5 years. Explanation. - The public authorities established under Special Local Laws which may sell Apartments or Buildings or Plot under any real estate project through Public Lottery as per their Rules or Regulations shall not be required to be registered as real estate agent, under these rules.
						13. Application of RENEWAL of Regn shall be made in Form J, at least sixty days prior to the expiry of the registration, alongwith same documents U/R 11(2)(a) to (i) (duly updated) alongwith same fees i.e. 10,000/- or 1,00,000/-. Renewal of Regn shall be in Form K. Rejection of Renewal shall be in Form I. Renewed Regn shall be valid for 5 years from date of renewal.
						MahaRERA Order : MahaOnline charges for RE Agents : New Registration Rs. 500+Taxes; Renewal of Registration Rs. 500+Taxes
						15. Revocation - Cicumstances and procedure prescribed. Revocation shall be in Form I. Fresh application for Regn can not be within 6 months.
RE Agent Obligations	Obligations and Functions of RE Agent	10	Main / 14, 16, 17			"10. Every real estate agent registered under section 9 shall— (a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority; (b) maintain and preserve such books of account, records and documents as may prescribed; (c) not involve himself in any unfair trade practices, (d) facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be; (e) discharge such other functions as may be prescribed. Maha Rule : 14 - Prominently display Regn Cert Number at the all business places and also on all documents, advertisements etc issued by him alongwith Regn Number of RE Project. 16. Maintain and preserve such books of accounts, records and documents as required under IT Act, Companies Act and other applilcable Laws and shall produce the same. 17. Provide assistance to enable the allottee and promoter of each real estate project, to exercise their respective rights and fulfil their respective obligations at the time of marketing and selling, purchase and sale of any plot, apartment or building. Shall not involve himself in any unfair trade practices as defined."

Tag Code	Tag Description	RERD Act 2016	Mah RERD ... Rules 2017	MahaRERA Regulations 2017		Digest
		Section #	Rule #	Regu #	Form #	
Promoter Obligations	Obligations and Functions of Promoters	11	Main / 9(1)	Regu / 4, 5		"Important Obligations of the Promoter - inter alia - are …. 1. to create webpage for the RE project on the website of RERA, providing specified details of the project with QUARTERLY updates 2. to display sanctioned plans and approvals at the site and to provide stage wise time schedule of completion of the project to the allottees 3. obligations under the RERDA and the Agreement with allottees 4. obligations to rectify structural defects without cost upto 5 years from date of possssion 5. to obtain OC and BCC and Lease Certificate and make it available to Allottees and Society 6. be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees 7. formation of Soceity and Federation of Allottees as per LOCAL LAWS applicable 8. to execute Registered Conveyance Deed for apartments in favour of the allottees and for common areas in favour of Society 9. to pay taxes, outgoings and maintenance charges collected from Allottees 10. after he executes an agreement for sale for any apartment, plot or building, as the case may be, shall not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be 11. No cancellation of allotment except in terms of the agreement. Allottees will have right of redressal from RERA 12. prepare and maintain all such other details as may be specified, from time to time."
						"Maha Rules : 9(1) - Formation of Society etc. - Promoter to make application for formation within three months from the date on which fifty one per cent of the total number of allottees in such a building or a wing, have booked their apartment. - Promoter to make application for formation of Federation / Apex body of Societies etc. within a period of three months from the date of the receipt of the occupancy certificate of the last of the building which was to be constructed in the Layout. Regulation 4 : Annual Report by Statutory Auditors in Form 5 will have to be uploaded on Webpage of the Promoter on RERA Website. Regulation 5 : The sanctioned plans, layout plans, along with specifications, approved by the Competent Authority shall be prominently displayed by the promoter at the project land site."

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Promoter Obligations - Adverti-sements	Obligations and Functions of Promoters - Advertisements	12				Compensation for loss due to false information in Advertisements / show flat, to person paying advance / deposits and also to REFUND entire money with interest and compensation if so opted by payer
Promoter Obligations - Agreement	Agreement for Sale	13	Main / 10		Annex - A - Model form of Agreement for Sale	"Maxmimum Booking Amount can be 10% of the Cost of Apartment. Further payment only after Agreement for Sale is made and registered. Agreement for Sale shall be in specified format and shall contain all sepeicified details. Maha Rule 10 : 10(1) Agreement for Sale should be as per model form as per Annex - A. Nothing in this sub-rule shall be deemed to prevent the promoter to modify the model form of Agreement for Sale at Annexure 'A' provided that such agreement is in conformity with the provisions of sub-section (2) of section 13 of the Act and the rules and regulations made there under. 10(2) Any application letter, allotment letter etc. ... shall not be construed to limit the rights and interests of the allottee under the agreement for sale under the Act or the rules or the regulations made there under. Model Agreement for Sale : EXPLANATORY NOTE : This is a model form of Agreement, which may be modified and adapted in each case having regard to the facts and circumstances of respective case but in any event, matter and substance mentioned in those clauses, which are in accordance with the statute and mandatory according to the provisions of the Act shall be retained in each and every Agreement executed between the Promoter and Allottee. Any clause in this agreement found contrary to or inconsistent with any provisions of the Act, Rules and Regulations would be void ab-initio. 1(a) The price of the Apartment including the proportionate price of the common areas and facilities and parking spaces should be shown separately. 1(e) The Total Price is escalation-free, save and except escalations/increases, due to increase on account of development charges payable to the competent authority and/or any other increase in charges which may be levied or imposed by the competent authority Local Bodies/ Government from time to time."

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						"1(g) The Promoter shall confirm the final carpet area that has been allotted to the Allottee after the construction of the Building is complete and the occupancy certificate is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area, subject to a variation cap of three percent. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is any reduction in the carpet area within the defined limit then Promoter shall refund the excess money paid by Allottee within forty-five days with annual interest at the rate specified in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase in the carpet area allotted to Allottee, the Promoter shall demand additional amount from the Allottee as per the next milestone of the Payment Plan. All these monetary adjustments shall be made at the same rate per square meter as agreed in Clause 1(a) of this Agreement. 15. The Promoter shall maintain a separate account in respect of sums received by the Promoter from the Allottee as advance or deposit, sums received on account of the share capital for the promotion of the Co-operative Society or association or Company or towards the out goings, legal charges and shall utilize the amounts only for the purposes for which they have been received. 25. PLACE OF EXECUTION - The execution of this Agreement shall be complete only upon its execution by the Promoter through its authorized signatory at the Promoter's Office, or at some other place, which may be mutually agreed between the Promoter and the Allottee, in after the Agreement is duly executed by the Allottee and the Promoter or simultaneously with the execution the said Agreement shall be registered at the office of the Sub-Registrar. Hence this Agreement shall be deemed to have been executed at _____. 30. Dispute Resolution :- Any dispute between parties shall be settled amicably. In case of failure to settled the dispute amicably, which shall be referred to the _____ Authority as per the provisions of the Real Estate (Regulation and Development) Act, 2016, Rules and Regulations, thereunder."
Promoter Obligations - Sanctioned Plans Alterations	Alterations Additions to Sanctioned Plans	14				"The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. Any alterations to an Apartment plan / amenities shall be done only after consent of the Allottee of that apartment. Minor modifications (as defined) can be made after proper intimation to Allottee. Any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project shall not be made without the previous written consent of at least two-thirds of the allottees, other than the promoter. In case any structural defect or any other defect in workmanship, quality or provision of services or any other bligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."
Transfer of RE Project	Transfer of RE Project to Third Party	15				"The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority. Intending Promoter to comply with all the pending obligations. No extension of time for project completion due to such transfer."

Continue on Next Issue of MCTC News Bulitine

TWO FULL DAT GST SEMINAR PHOTOS HELD ON 2ND AND 3RD JUNE

Inauguration of the Seminar by Lighting of Lamp

L to R :- CA. Utpal Patel, CA Pranav Kapadia, CA. Deepak Thakkar, CA Vipul Somaiya, CA Harsh Shah, Shri Sachin Gandhi

Felicitation of CA Deepak Thakkar (Speaker) by CA Pranav Kapadia

Felicitation of CA Jinit Shah (Speaker) by CA Dhanesh Shah

Felicitation of CA Ankit Chande (Speaker) by CA Vipul Somaiya

Felicitation of CA Sheel Bhanushali(Speaker)by CA Brijesh Cholera

Felicitation of CA Rajat Talati (Speaker) by CA. Vipul Somaiya

Felicitation of Shri Purshottam Khetan Shri Sanjay Mehta

Felicitation of CA Hemang Shah(Speaker)by Adv. Dinesh Tambde

Felicitation of CA Pranav Mehta (Speaker) by CA. Adarsh Parekh

Felicitation of CA. Aditya Surte CA. Utpal Patel

Felicitation of Team NSDL by CA Yatin Rangwala

Full House at Two Full day GST Seminar

FORTHCOMING EVENTS

The Election of the President and Twelve Members of the Managing Committee for the ensuing year 2017-18 shall take place on Sunday, 2nd July, 2017 at 10.00 a.m. at SNDT Mahila College, Liberty Garden Road, Malad (West), Mumbai-400 064.

38th ANNUAL GENERAL MEETING

Venue	SNDT Mahila College, Liberty Garden Road, Malad (West), Mumbai-400 064	
Dates – TENTATIVE	**TIME**	**Particulars**
Sunday, 2nd July, 2017	10.00 AM	Annual General Meeting

Disclaimer : Though utmost care is taken about the accuracy of the matter contained herein, the Chamber and/or any of its functionaries are not liable for any inadvertent error. The views expressed herein are not necessarily of the Chamber. For full details the readers are advised to refer to the relevant Act, Rule and relevant Statutes.

Printed by Kishor Dwarkadas Vanjara published by Kishor Dwarkadas Vanjara, on behalf of The Malad Chamber of Tax Consultants, and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013. Tel. Nos.: 2496 1685/2496 1605 Fax No.: 24962297 and published at The Malad Chamber of Tax Consultants B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai-400 064. Adm. Off. Tel. 022-2889 5161

• **Editor : Shri Kishor Vanjara**

Posted at Malad ND (W) Post Office, Mumbai-400 064

Date of Publishing 3rd Week of Every Month
Date of Posting : 20th & 21st June, 2017

To

If undelivered, please return to :

The Malad Chamber of Tax Consultants,
B/6, Star Manor Apartment, 1st Floor,
Anand Road Extn., Malad (W),
Mumbai-400 064.