The Malad Chamber of Tax Consultants

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39 Years

MCTC Bulletin

Duty • Determination • Dedication.....leads to Success

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President's Communiqué

Dear Members,

Business is small or big, problems are same. Only difference is the difference in its gravity. Whether it is a small tax consultant's or a chartered accountant's practice or it is a big 4 firm's practice. Challenges are similar. Manpower issues, knowledge building issues, ethical issues, infrastructure issues, constant updating requirements. If problems are similar and the difference is only in its magnitude, why one should not think big?

The fundamental problem is with our education system. Our today's education system needs the changes from base level. Today's system is capable of producing any number of clerks and job seekers. Where are those industrialists? In last 20 to 50 years, how many new industrialists came into existence? It's very rare. The reason, we learned Maths but ignored history. We learned English but ignored our mother tongue. We learned State language but ignored Sanskrit and even our national language. We learned to copy and to imitate but failed to originate. We learned to follow but failed to lead. We learned to criticise but failed to create. We learned to tolerate but failed to oppose the injustice. We learned to get the things done through corrupt way but failed to have patience and wait for the right turn.

Our education system at all levels has not taught a person to dream, to dream big. Our history has been made biased and boring. Where we have inheritance of 5,000 years history we learn not more than of 200 years. We learned that India was a rich country and had been looted by various sultanates. And today India is a developing country.

I would term today also India is a rich country but with poor people. Our belief system has been attacked through our education system. Our culture, our origin, our history are not revealed to us by our education system. But today, no one stops us. We cannot continue to keep on blaming the systems. Today, the information and knowledge is available on finger tips.

As I started my first stanza, if problems are similar whether at a big level or small level the desired solutions at both the levels must be similar. Only thing we need to think differently, apply differently. It is truly said that successful people do not do the different things but do the same things in a different way. They are successful because they have learned and succeeded in generating right habits and culture in the business. That's what is needed. We do one of things a great way but do not create the systems and processes to continuously create the same things every time in the same great way. We do not give importance to standardisation, we ignore the systems and processes, we ignore the importance of laws as well. Whereas in many countries people start the smallest business with best of information technology and infrastructure, they think of standardisation, they think of copyright and trade mark generation.

Small things done with perseverance, with repetitions, with standardisation can create habits and build culture of the organisation. And these small habits have a capability to generate big rather great results.

Coming to recent events, a seminar under Shri Rajubhai Chokshi Oration Fund is awaiting for all of you on 24th Feb, 2018. The topics chosen is also of day-to-day relevance capable of giving a push to professionals in their professional life. The details are mentioned overleaf in the bulletin. We have successfully done our Public Meeting on Union Budget, 2018 which was attended by more than 450 participants. This year also we brought in our flagship publication of Union Budget within 48 hours of Union Budget announcement. In case you need this publication, please contact on Chamber's telephone.

Thanks,
CA Vipul M. Somaiya
President

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

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FORTHCOMING PROGRAMMES		
24th February, 2018, Saturday 9:30 a.m. to 1:00 p.m.	Half Day Seminar under the auspices of Shri Rajubhai J. Chokshi Oration Fund: Leveraging Information Technology by Professionals Works Contract under GST along with Pradhan Mantri Avas Yojana	Speakers : CA Abhishek Barari Founder of my Cute Office CA Umang Talati Contribution ₹ 400/- for Member and ₹ 750/- for Non Member
10th March, 2018, Saturday	Box Cricket Tournament with Sister Associations	Contribution ₹ 750/- per participant For Registration Contact Ravindra Sud - 7039006655
Publication on Union Budget 2018 book containing 81 Pages available	Title of book "Direct – Indirect Tax Proposals – An Analytical Study of the Finance Bill 2018"	Contribution ₹ 75/- (postage etc.) for book delivery, kindly approach on 7039006655 or e-mail on maladchamber@gmail.com

DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **SECTION 139AA, READ WITH SECTION 139A OF THE INCOME-TAX ACT, 1961 - AADHAAR NUMBER - QUOTING OF - EXTENSION OF DEADLINE TILL 31-3-2018 FOR SUBMISSION OF AADHAAR NUMBER, AND PERMANENT ACCOUNT NUMBER OR FORM 60 BY CLIENT TO REPORTING ENTITY**

  PIB PRESS RELEASE, DATED 13-12-2017

  After considering various representations received and inputs received from Banks, it has been decided to notify 31st March, 2018 or six months from the date of commencement of account based relationship by the client, whichever is later, as the date of submission of the Aadhaar number, and Permanent Account Number or Form 60 by the clients to the reporting entity. Necessary notification in this regard has been issued.

- **SECTION 115JB OF THE INCOME-TAX ACT, 1961 - MINIMUM ALTERNATE TAX (MAT) - RELAXATION IN PROVISIONS RELATING TO LEVY OF MINIMUM ALTERNATE TAX (MAT) IN CASE OF COMPANIES AGAINST WHOM AN APPLICATION FOR CORPORATE INSOLVENCY RESOLUTION PROCESS HAS BEEN ADMITTED UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016**

  CBDT PRESS RELEASE, DATED 6-1-2018

  The existing provisions of section 115JB of the Income-tax Act, 1961 ('the Act'), *inter alia*, provides, that, for the purposes of levy of Minimum Alternate Tax (MAT) in case of a company, the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account shall be reduced from the book profit.

  In this regard, representations have been received from various stakeholders that the companies against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 ('the IBC'), are facing hardship due to restriction in allowance of brought forward loss for computation of book profit under section 115JB of the Act.

  With a view to minimise the genuine hardship faced by such companies, it has been decided, that, with effect from Assessment Year 2018-19 (i.e., Financial Year 2017-18), in case of a company, against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the IBC, the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB of the Act.

  Appropriate legislative amendment in this regard will be made in due course.

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GOODS AND SERVICES TAX

Compiled by CA. Bhavin Mehta

In this article I have attempted to examine the taxability of High Seas Sales and Bond to Bond Sale under GST.

Proposition-1

Article 286(2) authorises Parliament to formulate principles for determining when the supply of goods is in the course of the import of the goods into the territory of India. Article 286 enables Central Government to levy IGST on import of goods. Section 7 of IGST Act, 2017 has been enacted pursuant to the powers granted by Article 286(2).

Levy and collection is provided under section 5 of the IGST Act. Section 5(1) is reproduced below:

"5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent. as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act ***at the point when duties of customs are levied on the said goods*** *under section 12 of the Customs Act, 1962."* {*emphasis supplied*}*.*

The above proviso explicitly states that on import of goods IGST shall be levied at the point when duties of customs are levied on the said goods. In plain language IGST would be payable when goods are cleared from the customs.

Now coming to section 7 of the IGST Act, it determines inter-State supply. Supply of goods imported into the territory of India, till they cross the customs frontiers of India shall be treated as supply of goods in the course of inter-State trade or commerce. Section 7 (2) of IGST Act, being not charging section cannot provide the levy of tax on sale of goods in the course of inter-State trade or commerce.

Section 5(1) creates charge on goods imported into India, whereas section 7 determines Inter-State Supply. Tax is on goods imported into India.

Section 2(10) of IGST Act defines "import of goods" means bringing goods into India from a place outside India. Whereas section 2(25) of the Customs Act, 1962 defines "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

In the context of "Import" the Hon'ble Supreme Court in the case of *Kiran Spinning Mills vs. Collector of Customs, 1999 (113) E.L.T. 753 (S.C.)* held that taxable event occurs when the customs barrier is crossed and not on the date when the goods had landed in India or had entered the territorial waters. Relevant observation of Supreme Court is reproduced below:

"6. Attractive, as the argument is, we are afraid that we do not find any merit in the same. It has now been held by this Court in Hyderabad Industries Ltd. and Anr. vs. Union of India and Others [1999 (108) E.L.T. 321 (S.C.) = JT 1999 (4) SC 95] that for the purpose of levy of additional duty Section 3 of the Tariff Act is a charging section. Section 3 sub-section (6) makes the provisions of the Customs Act applicable. This would bring into play the provisions of Section 15 of the Customs Act which, inter alia, provides that the rate of duty which will be payable would be on the day when the goods are removed from the bonded warehouse. That apart, this Court has held in Sea Customs Act - 1964 (3) SCR 787 at page 803 that in the case of duty of customs the taxable event is the import of goods within the customs barriers. In other words, the taxable event occurs when the customs barrier is crossed. In the case of goods which are in the warehouse the customs barriers would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country. Admittedly this was done after 4th October, 1978. As on that day when the goods were so removed additional duty of excise under the said Ordinance was payable on goods manufactured after 4th October, 1978. We are unable to accept the contention of Mr. Ramachandran that what has to be seen is whether additional duty of excise was payable at the time when the goods landed in India or, as he strenuously contended, they had crossed into the territorial waters. Import being complete, when the goods entered the territorial waters is the contention which has already been rejected by this court in C.A. Nos. 1257-58 of 1987 [Union of India and Others vs. Apar Private Ltd. and Others] decided on 22nd July, 1999 [1999 (112) E.L.T. 3 (S.C.)]. The import would be completed only when the goods are to cross the customs barriers and that is the time when the import duty has to be paid and that is what has been termed by this Court in IN RE : The Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excise Act, 1944 [(1964) 3 SCR 787 at page 823] Sea Customs Case as being the taxable event. The taxable event, therefore, being the day of crossing of customs barrier, and not on the date when the goods had landed in India or had entered the territorial waters. We find that on the date of the taxable event the additional duty of excise was leviable under the said Ordinance and, therefore, additional duty under Section 3 of the Tariff Act was rightly demanded from the appellants".

In the premises of above, it becomes clear that imported into India means crossing the Customs barrier (frontier) of India.

Section 2(4) of IGST Act states that 'Customs Frontiers of India' means the limits of a 'customs area' as defined in section 2 of Customs Act, 1962.

Customs area means all area of Customs Station or a *warehouse and includes any area where imported goods or export goods are ordinarily kept pending clearance by Customs authorities [section 2(11)] of Customs Act. (*warehouse is inserted w.e.f. 1-7-2017).

Customs Station means (a) customs port (b) **international courier terminal* (c) **foreign post office* (d) customs airport and (e) land customs station [section 2(13) of Customs Act] [*inserted w.e.f. 31-3-2017]

Thus it can be concluded that when the duty on import goods is paid, it can be treated as imported into India.

Proposition-2

Actual import of goods is covered under Customs legislation for levy of custom duty. Therefore, customs legislation cannot create a charge to levy IGST. Levy of IGST is governed by the provision contained in IGST Act, 2017.

If we agree to the view that high seas sales would be liable to IGST than in terms of Article 286 and explanation to Article 269A it would imply that only custom duty would be leviable on direct imports and IGST would not be leviable at the clearance of goods from customs.

If the term "in the course of imports" is construed to encompass all integrated activities, than actual imports of goods would not be taxed under IGST Act but only transactions that occur in the course of import or export would be taxed under IGST Act.

In this regard observation of Supreme Court in the case of *State of Travancore-Cochin vs. Bombay Co. Ltd 1952 AIR 366* is reproduced as under:

"We are clearly of opinion that the sales here in question, which occasioned the export in each case, fall within the scope of the exemption under Article 286(1)(b). Such sales must of necessity be put through by transporting the goods by rail or ship or both out of the territory of India, that is to say, by employing the machinery of export. A sale by export thus involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction of these two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other. Assuming without deciding that the property in 'the goods in the present cases passed to the foreign buyers and the sales were thus completed within the State before the goods commenced their journey as found by the Sales Tax Authorities, the sales must, nevertheless, be regarded as having taken place in the course of the export and are, therefore, exempt under Article 286(1)(b). That clause, indeed, assumes that the sale had taken place within the limits of the State and exempts it if it took place in the course of the export of the goods concerned".

The Hon'ble Apex Court finally observed and upheld that

"It was said that, on the construction we have indicated above, a "sale in the course of export" would become practically synonymous with "export", and would reduce clause (b) to a mere redundancy, because Article 246 (1), read with entry 83 of List I of the Seventh Schedule, vests legislative power with respect to "duties of customs including export duties" exclusively in Parliament, and that would be sufficient to preclude State taxation of such transactions. We see no force in this suggestion. It might well be argued, in the absence of a provision like clause (b) prohibiting in terms the levy of tax on the sale or purchase of goods where such sales and purchases are effected through the machinery of export and import, that both the powers of taxation, though exclusively vested in the Union and the States respectively, could be exercised in respect of the same sale by export or purchase by import, the sales tax and the export duty being regarded as essentially of a different character. A similar argument induced the Federal Court to hold in Province of Madras vs. Boddu Paidanna and Sons [(1942) F.C.R. 90] that both central excise duty and provincial sales tax could be validly imposed on the first sale of groundnut oil and cake by the manufacturer or producer as "the two taxes are economically two separate and distinct imposts". Lest similar reasoning should lead to the imposition of such cumulative burden on the export-import trade of this country which is of great importance to the nation's economy, the Constituent Assembly may well have thought it necessary to exempt in terms sales by export and purchases by import from sales tax by inserting article 286 (1)(b)in the Constitution.

We are not much impressed with the contention that no sale or purchase can be said to take place "in the course of" export or import unless the property in the goods is transferred to the buyer during their actual movement, as for instance, where the shipping documents are endorsed and delivered within the State by the seller to a local agent of the foreign buyer after the goods have been actually shipped, or where such documents are cleared on payment, or on acceptance, by the Indian buyer before the arrival of the goods within the State. This view, which lays undue stress on the etymology of the word "course" and formulates a mechanical test for the application of clause (b), places, in our opinion, too narrow a construction upon that clause, in so far as it seeks to limit its operation only to sales and purchases effected during the transit of the goods, and would, if accepted, rob the exemption of much of its usefulness.

We accordingly hold that whatever else may or may not fall within Article 286(1)(b), sales and purchases which themselves occasion the export or the import of the goods, as the case may be, out of or into the territory of India come within the exemption and that is enough to dispose of these appeals".

Thus it can be concluded in terms of Article 286, even prior to its amendment, did not empower levy of CST on supply of goods in the course of imports.

Conclusion: Sale from bonded warehouse would not attract levy of IGST.

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JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Sreedhar Asok Kumar vs. CIT (Appeals) Kochi, High Court, Kerala, ITA No. 251 of 2015, 11th December 2017

Mere categorisation of land as agricultural in revenue records does not suffice for capital gains exemption. Whether a land is agricultural or not is a question of fact

Facts of the case

During the relevant assessment year, the assessee had sold land and claimed the exemption on capital gains derived from the sale stating that the land was situated in a village which was a rural area.

The assessee relied on Section 2(14) of the Income-tax Act, 1961 (the Act) which defines "capital assets". It also provides for exceptions not considered as capital assets. As per clause (iii), "agricultural land" is one of such exceptions if the land situated within the limits of a municipality, corporation, cantonment board etc.

The assessee also relied on the Notifications issued by the CBDT under section 2(14) of the Income-tax Act (the 'Act') which had not included the said area in the list of notified areas. However, his claim for exemption was denied by the Assessing Officer (AO) and the appellant was assessed to income tax including long term capital gains. CIT(A) allowed the contention of the assessee and thus exempted the capital gains.

On further appeal the Tribunal upheld the view of Revenue that the assessee was not an agriculturist and was the Proprietor of a Management Institute, and there was no evidence to indicate that the land has been put to any agricultural use.

On appeal, High Court observed that

The question whether a particular piece of land is agricultural or not is essentially a question of fact, to be decided after a consideration of circumstances appearing for and against the assessee. The High Court noted that in an earlier decision it had held that a certificate of the Village Officer showing the land as paddy land alone was not sufficient for the crucial question is whether the land was actually used for agricultural purposes during the two years prior to the date of transfer.

Thus in the present case, the appeal of the assessee was dismissed due to absence of any question of law and the decision of the Tribunal was upheld.

Keshavji Bhuralal Gala vs. ACIT Mumbai, ITAT Mumbai, [2018] 89 taxmann.com 275, 8th January 2018

To treat a sum as a perquisite in lieu of salary as per section 17(2)(iii), AO should establish on record that a benefit in nature of salary was given by an employer to an employee

Facts of the case

Assessee and his wife as co-owners purchased certain immovable properties from a company in which assessee was also director.

Assessing Officer observed that company by selling properties to assessee at a price lower than market value had given a benefit to assessee which was in nature of perquisite as provided under section 17(2)(iii) and accordingly made addition to income of assessee.

Also in the case of assessee's wife, the Assessing Officer brought the difference between sales and stamp duty value to tax u/s. 56(2)(vii)(b) as Income from other sources.

On appeal, the Commissioner (Appeals) upheld order of Assessing Officer.

On further appeal, Tribunal observed the following:

a. The adoption of stamp duty valuation as the fair market value of an immovable property can be considered only for computation of capital gain arising in case of a seller of immovable property as per the deeming provisions of section 50C of the Act.

b. Assessee is neither a Managing Director or whole time Director nor is he paid any salary or remuneration as a Director. Assessee became the Director merely to ensure completion of the Company Project. Therefore, without factually establishing the existence of employer–employee relationship between the company and the assessee it cannot be assumed that the assessee has been given a benefit in lieu of salary.

c. Without making any enquiry or bringing material on record to demonstrate that stamp duty value is actual fair market value of property, Assessing Officer cannot make addition in case of a buyer of property by treating it as perquisite.

d. As regards applicability of section 56(2)(vii)(b) is concerned, on a careful reading of the said provision as effective in the relevant assessment year, only in a case where any immovable property is transferred without consideration, the Assessing Officer could have been able to consider the stamp duty value of the property as the deemed sale consideration.

Also relying on decision of *ACIT vs. Sandeep Srivastava, ITA no. 6409/Mum./2012 dated 8th July 2015* the contentions of the Assesses were upheld and the appeals were dismissed.

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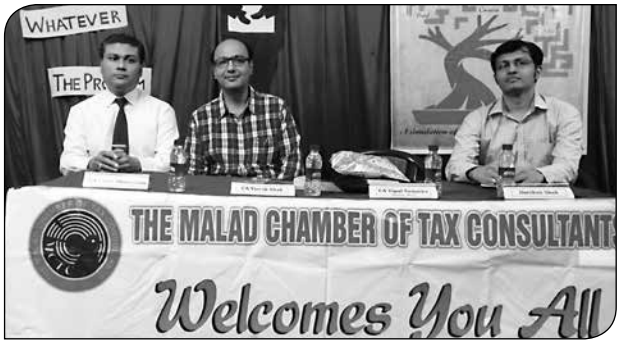
Fourth Study Circle Meeting on 21st January, 2018



Left to Right : CA Sheel Bhanushali (Speaker), CA Vipul M. Somaiya (President - MCTC) & Shri Darshan Shah (Joint Secretary – MCTC)

Attentive Audience at the 4th Study Circle at SNDT Mahila College, Malad (West)

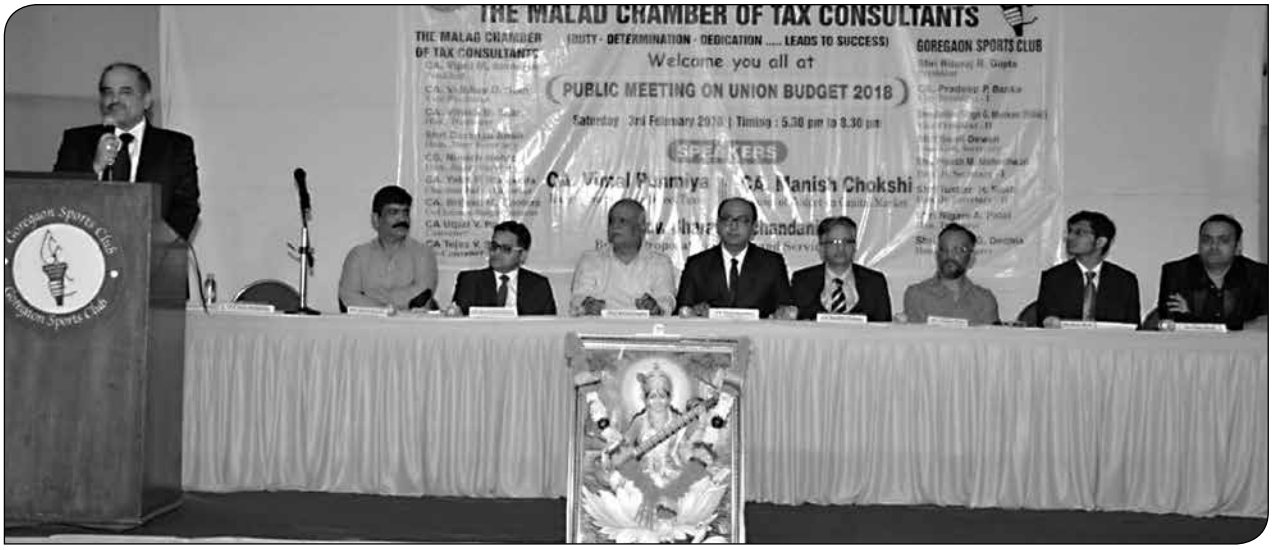
CA Vipul M. Somaiya (President - MCTC)
Welcome Speech

Shri Avinash Acharya (Past President)
presenting memento to CA Sheel Bhanushali (Speaker)

CA Sheel Bhanushali (Speaker)
addressing the audience

Shri Darshan Shah (Joint Secretary – MCTC) –
giving Vote of Thanks to Speaker

Public Meeting on Union Budget 2018



Left to Right : CA. Yatin Rangwala (Chairman - Budget Committee), Shri Sunil Dewali (Secretary – GSC), Adv. Bharat Raichandani (Speaker), Shri Rituraj Gupta (President – GSC), CA Vipul Somaiya (President - MCTC), CA. Manish Chokshi (Speaker), Shri Nigam Patel (Treasurer), Shri Darshan Shah (Joint Secretary – MCTC) & CA. Tejas Shah (Co-Convenor Budget Committee)

CA Vipul Somaiya (President - MCTC) Welcoming audience at Public Meeting on Union Budget

CA. Utpal Patel (Convenor - Budget Committee) addressing the audience

CA. Viresh Shah (Hon. Joint Secretary - MCTC) addressing the audience

CA. Tejas Shah (Co-Convenor Budget Committee) addressing the audience

Adv. Bharat Raichandani (Speaker) addressing the audience

CA. Manish Chokshi (Speaker) addressing the audience

CA. Vimal Punmiya (Speaker) addressing the audience

CA Vipul Somaiya (President - MCTC) Felicitating to Shri Rituraj Gupta (President – GSC)

Public Meeting on Union Budget 2018

Left to Right : CA. Viresh Shah (Hon. Joint Secretary - MCTC), CA. Vimal Punmiya (Speaker), CA Vipul Somaiya (President - MCTC) & CA. Vaibhav Seth (Vice President - MCTC)

Attentive audience at the Public Meeting on Union Budget at Goregaon Sports Club, Malad (West)

Attentive audience at the Public Meeting on Union Budget at Goregaon Sports Club, Malad (West)

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