The Malad Chamber of Tax Consultants

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38 Years

# MCTC Bulletin

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## President's Communiqué

Dear Members,

Peak period of our Professional work season and festival season is started. The best way to balance both work and enjoy festival is only through planning. It is said that

**"Well begun is half done"**

Planning is the best methodology to begin well. It is not always necessary that whatever is planned, all things happen as per our plan. But it surely helps us in prioritising our work. It helps us in identifying urgent vs. important.

Without planning, we tend to cater to work which is urgent or which comes to our desk rather than catering to work which is important.

Planning will also help us to balance our work and social life. With proper planning and its implementation, we can enjoy family time and social life as well.

Yeah, then let's all meet together for our Diwali-Get-together. This time let's all meet with our family and make our Diwali-Get-together special occasion.

We are planning to organise our Diwali-Get-together and Saraswati Sanman Samarambh somewhere in mid of November, 2017. We will come out with formal announcement very soon. I request all of you to make it convenient to attend with family members.

I also request members to share the mark-sheet of their children who have cleared SSC, HSC, with 75% or more marks or any of Post-Graduation Examinations like CA, CS, ICWA, Engineering, MBBS, MBA.

Further, we started a campaign whereby we are updating our members' database online. Almost 150 members have already updated their database online. I personally thank all these 150 members and request all others to do the same to support your committee in updating members' database.

We are also organising our Second Study Circle on Amendments in Tax Audit Report and ICDS on Sunday, 24th Sept, 2017.

Looking forward to meet you all in Second Study Circle and thereafter in Diwali-Get-together with family.

Thanks,

**CA Vipul M. Somaiya**
President

## Happy Navratri

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

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| FORTHCOMING PROGRAMMES | | | |
|---|---|---|---|
| **Date** | **Particulars** | **Venue** | **Time** |
| 24th Sep., 2017 | 2nd Study Circle – Amendments in Tax Audit Report along with ICDS Disclosure | SNDT College, Malad (West) | 10.30 am to 1.30 pm |
| Tentative - 11th Nov., 2017 | Diwali-Get-together and Dr. Bharat D. Vasani Saraswati Sanman Samarambh | Please share mark sheet of your Children with any of office bearers. Form will be shared on e-mail. Request all to attend Diwali-Get-together with family members. Details Will be announced shortly. | |

# DIRECT TAXES – LAW UPDATE

***Compiled by CA. Haresh P. Kenia***

❑ **SECTION 143 OF THE INCOME-TAX ACT, 1961 – ASSESSMENT – GENERAL – GUIDELINES FOR SELECTION OF CASES FOR SCRUTINY DURING FINANCIAL YEAR 2017-18**

**INSTRUCTION NO. 5/2017 [F.NO.225/180/2017/ITA.II], DATED 7-7-2017**

In supersession of earlier Instructions on the above subject, the Board hereby lays down the following procedure and criteria for compulsory manual selection of returns/cases requiring scrutiny during the financial-year 2017-18:–

(i) Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact of following amounts:

- In excess of ₹ 25 lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune, while at other charges, quantum of such addition should exceed ₹ 10 lakhs;
- For transfer pricing cases, quantum of such addition should exceed ₹ 10 crore and where:
  - (a) Such an addition in assessment has become final as no further appeal was/has been filed; or
  - (b) Such an addition has been confirmed at any stage of appellate process in favour of revenue and assessee has not filed further appeal; or
  - (c) Such an addition has been confirmed at 1st appeal stage in favour of revenue or subsequently and further appeal of assessee is pending.

(ii) All assessments pertaining to Survey under Section 133A of the Income-tax Act, 1961 ('Act') excluding those cases where books of account, documents etc. were not impounded and returned income (excluding any disclosure made during the Survey) is not less than returned income of preceding assessment year. However, where the assessee retracts from disclosure made during the Survey, such cases will not be covered by this exclusion.

(iii) Assessments in search and seizure cases to be made under Section(s) 158B, 158BC, 158BD, 153A & 153C read with Section 143(3) of the Act and also for the returns filed for the assessment year relevant to the previous year in which authorisation for search and seizure was executed u/s. 132 or 132A of the Act.

(iv) Return filed in response to notice u/s. 148 of the Act.

(v) Cases where registration/approval under various sections of the Act such as 12A, 35(1)(ii)/(iii), 10(23C) etc. of the Act have not been granted or have been cancelled/withdrawn by the competent authority, yet the assessee has been claiming tax-exemption/deduction in the return. However, where such order of withdrawal of registration/approval has been reversed/set-aside in appellate proceedings, those cases will not be selected under this clause.

(vi) Cases in respect of which specific and verifiable information pointing out tax-evasion is given by any Government Department/Authority. However, before selecting a case for scrutiny under this criterion, Assessing Officer shall take prior administrative approval from the concerned jurisdictional Pr. CIT / Pr. DIT / CIT / DIT.

2. Computer Aided Scrutiny Selection (CASS): Cases are also being selected under CASS-2017 on the basis of broad-based selection filters and in a non-discretionary manner in two categories viz. Limited Scrutiny & Complete Scrutiny. List of such cases is being separately intimated by Pr. DGIT (Systems) to the concerned jurisdictional authorities for further action in these cases.

❑ **SECTION 194J OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - FEES FOR PROFESSIONAL OR TECHNICAL SERVICES - CLARIFICATION REGARDING TDS UNDER CHAPTER XVII-B ON SERVICE TAX COMPONENT COMPRISED OF PAYMENTS MADE TO RESIDENTS - AMENDMENT IN CIRCULAR NO. 1/2014 [F.NO.275/59/2012-IT(B)], DATED 13-1-2014 IN VIEW OF SUBSTITUTION OF SERVICE TAX BY GOODS AND SERVICES TAX (GST)**

**CIRCULAR NO. 23/2017 [F.NO.275/59/2012-IT(B)], DATED 19-7-2017**

The Central Board of Direct Taxes (the Board) had earlier issued Circular No. 1/2014 dated 13-1-2014 clarifying that wherever in terms of the agreement or contract between the payer and the payee, the Service Tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVI1-B of the Income-

tax Act, 1961 (the Act) on the amount paid or payable without including such Service-tax component. References have been received in the Board seeking clarification as to what treatment would be required to be given to the component of Goods and Services Tax (GST) on services, which has been introduced by the Government with effect from 1st of July, 2017 and into which the erstwhile Service-tax has been subsumed. The matter has been examined. It is noted that the Government has brought in force a new Goods and Services Tax regime with effect from 1-7-2017 replacing, amongst others, the Service Tax which was being charged prior to this date as per the provisions of Finance Act, 1994. Therefore, there is a need to harmonise the contents of Circular No.1/2014 of the Board with the new system for taxation of services under the GST regime. In the light of the fact that even under the new GST regime, the rationale of excluding the tax component from the purview of TDS remains valid, the Board hereby clarifies that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid or payable without including such 'GST on services' component. GST for these purposes shall include Integrated Goods and Services Tax. Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax. For the purposes of this Circular, any reference to 'Service tax' in an existing agreement or contract which was entered prior to 1-7-2017 shall he treated as 'GST on services' with respect to the period from 1-7-2017 onward till the expiry of such agreement or contract..

- **SECTION 139, READ WITH SECTION 237, OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - OPTIONAL REPORTING OF ONE FOREIGN BANK ACCOUNT BY NON-RESIDENTS IN REFUND CASES**

**PRESS RELEASE, DATED 24-7-2017**

Refund generated on processing of return of income is currently, credited directly to the bank accounts of the tax payers. Availability of the detail of bank accounts in which the refund is to be credited is a precondition for direct credit of refund in the bank accounts. Income-tax Return Forms for the Assessment Year 2017-18 were notified on 30th March, 2017. A number of representations were received from the non-residents that they are facing difficulties in getting refund as they do not have bank account in India and there is no column in the notified form of return of income for reporting details of foreign bank account by the non-residents for this purpose. In view of this, a facility has been provided in return utility for reporting of details of bank account by non-residents, who do not have bank account in India and who are claiming income-tax refund. Therefore, the non-residents who are not claiming refund or non-residents who are claiming refund but having a bank account in India are not required to furnish details of their foreign bank account in the return of income. However, the non-residents, who are claiming income-tax refund and not having bank account in India may, at their option, furnish the details of one foreign bank account in the return of income for issuance of refund.

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# GOODS AND SERVICES TAX

***Compiled by CA. Bhavin Mehta***

## TRANSITIONAL PROVISIONS UNDER GST
## Section 142 of CGST Act

One of the biggest reforms post-independence is introduction of dual Goods and Services Tax replacing multiple cascading taxes levied by Central and State Governments, with effect from 1st July, 2017. Presently, major worries are there for Trade and Industry with regard to transition process from VAT, Excise and Service Tax law to GST law. In this article I have tried to analyses some of the transitional provisions prescribed under Section 142 of CGST Act, 2017.

**Section 142(1) – Goods Return**

(i) Goods sold between 1-1-2017 and 30-6-2017 on which Central Excise Duty is collected from the buyer. Such goods are returned by the buyer who is not registered under GST before 31.12.2017, then in order to claim the refund of excise duty paid on such goods, seller have to file refund claim with Central Excise Authority within one year from the date of receipt of the goods into the premises of seller. Such returned goods should be identifiable to the satisfaction of the GST officer. In case where goods are returned after 31-12-2017, then seller (recipient of returned goods) would be required to pay GST under RCM.

(ii) However, where goods are sold to buyer who is registered under GST, on returned of goods, buyer has to collect applicable GST from the seller, who (seller) would be entitled to claim the credit.

**Section 142(12) – Goods sent on approval basis**

Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day (1-7-2017).

In case if goods are not returned after six months, person sending the goods shall pay the tax, if registered otherwise recipient would be liable to pay under RCM.

Issue: Rejection of Goods.

Comments: The Hon'ble Calcutta High Court in the case of *Metal Alloy Company Pvt Ltd. vs. Commercial Tax Officer* {*39-STC-404 (Cal.)*} held that the return of goods and rejection of the same admittedly stand on different footing. Return of goods is a bilateral

transaction brought about by the consent of the seller and the purchaser, which consent may have been effected either prior to the delivery of the goods or subsequent to such delivery. Rejection of the goods on the other hand is a unilateral transaction governed by the provisions of the Contract Act or the Sale of Goods Act, open only to the purchaser. The Hon'ble Calcutta High Court held that in the present case, since the goods were not in accordance with the stipulated specifications, there was no completed sale of the property as aforesaid and as such the rejected goods had not passed to the purchaser. In view of the fact that no property in the said goods was transferred or passed to the purchaser, there was no sale of goods within the meaning of the CGST Act or the Sale of Goods Act.

Therefore, rejection of goods may deem to be considered as goods sent on approval basis. Goods sent on approval basis are not considered as supply unless same are approved. With respect to transitional provision for rejection of goods, sub-section (12) of Section 142 would be applicable.

**Section 142(2) – Price Revision**

(i) In case of upward revision of price of goods or services or both after 1-7-2017 in pursuance of goods supplied under contract entered prior to 1-7-2017, supplier have to issue either supplementary invoice or debit note within 30 days of such price revision and collect and pay the tax under GST.

(ii) In case of downward revision of price of goods or services or both after 1-7-2017 in pursuance of contract entered prior to 1-7-2017, supplier have to issue credit note within 30 days of such price revision and shall be entitled to claim credit under GST provided buyer has reversed the credit to that extent.

In case of downward revision, if supply was made to unregistered person than proviso pertaining to reversal of input tax credit by the recipient would not arise.

**Example for clause (i) above:** MMRDA awards the contract to M/s. Trustworthy contractor for construction of cement road say on 1-7-2016 (one year prior to appointed day). As usual the contract contains escalation clause that price can be increased from retrospective effect in case there is an increase in the price of cement/steel. M/s Trustworthy regularly raised running bills for work executed upto 30-6-2017. In terms of the escalation clause a supplementary invoice on 15-8-2017 was raised on MMRDA effective from 1-10-2016 for upward price revision due to increase in price of cement and steel. In terms of sub-section (2) of Section 142 M/s. Trustworthy have to collect GST on such supplementary invoice raised for price escalation.

**Section 142(3) – Refund**

Every claim for refund filed by any person (registered or unregistered person) under Section 11B of Central Excise Act (which includes refund under service tax) or under CGST Act, for refund of CENVAT credit, excise duty or service tax, interest or any other amount under the existing laws (Central Excise or Service Tax laws), shall be paid in cash in accordance with existing law, notwithstanding anything to the contrary contained under the provisions of existing law other time limit stipulated under section 11B of Central Excise Act. However, if claim of refund is rejected fully or partially, the amount rejected shall lapse.

**Issue**: Whether manufacturer and service provider would be entitled to claim the refund of CENVAT Credit balance as on 30-6-2017.

**Comments**: Section 37 of Central Excise Act, 1944 and Section 94 of Chapter V of Finance Act, 1994 (Governs Service Tax), Central Government may make rules for granting the credit of duty paid on goods or services tax paid on services consumed in or in relation to the manufacture of excisable goods or used for provision of taxable service. CENVAT Credit Rules, 2004 are made by the Central Government granting the CENVAT Credit. Rule 2(k) pertaining to 'Inputs' and Rule 2(l) pertaining to 'Input Service' entitled assessee (manufacturer and service provider) to avail the duty paid on inputs and service tax paid on input service. Rules 5, 5A and 5B of CCR, 2004 grants refund to exporter, units in specified areas and service providers providing services taxed on reverse charge basis respectively. However for Rule 5B, Board has not specified the notification, whereby service providers providing services taxed on reverse charge basis can claim the refund of CENVAT Credit balance. Similarly, for manufacturers and service providers other than covered under Rule 5B there is no mechanism to claim the CENVAT Credit balance and only option is to carry forward the balance under the CCR, 2004. In case of close down of the business CENVAT credit balance would lapse.

However, due to enactment of sub-section (3) of Section 142 of CGST Act, manufacturer and service provider including service provider covered under Rule 5B of CCR will be entitled to claim the refund of CENVAT credit balance as on 30-6-2017. Sub-section (2) clearly states that refund shall be paid by cash notwithstanding anything to the contrary contained under the provisions of existing law (Central Excise and Service Tax) other than time limit stipulated under Section 11B of Central Excise Act. Refund application will be required to made on before 30-6-2018.

Therefore, it would be advisable to those manufacturers or service providers who are having CENVAT Credit balance as on 30-6-2017, but will not be able utilise the same in near future under GST, may opt for refund of CENVAT credit.

**Section 142(9)**

(a) In case where revised return filed for the under Central Excise or Service Tax after 1-7-2017 resulting in additional liability, same shall be recovered under the existing law (Central Excise or Service Tax) and in case not recovered under existing law, same shall be recovered under GST. Such payment of tax shall not be entitled as input tax credit under GST.

(b) In case where revised return (any period) filed under Central Excise or Service Tax after 1-7-2017 within the time limit, resulted in refund or CENVAT credit found to be admissible, same shall be refundable under existing law, subject to time limit prescribed in Section 11B of Central Excise Act.

**Issue:** Revised service tax return filed by the taxable person for June, 2017 quarter resulted in increase in closing balance of CENVAT credit as on 30-6-2017, whether taxable person can carried forward such increased CENVAT Credit balance to GST.

**Comments:** Section 140 (1) of the CGST Act specifically allows registered person to claim in his electronic credit ledger (under GST), the CENVAT credit carried forward in the return filed for the period immediately preceding the appointed day (i.e. prior to 1-7-2017) under the existing law. Return includes revised return.

Under clause (b) of sub-section (8) of Section 142 revised return filed even for the period half year ending 31-3-2017 resulting into increasing CENVAT Credit claim, registered person mandatorily have to go for refund procedure rather than carried forward in his electronic credit ledger.

Both the Section 140(1) and Section 142(8) are specific provisions, where one section provides return for specific period and other section provides for specific return.

The present facts has both specific period as well as specific return. As discussed above return would include revised return and therefore the word 'return' may be replaced with the word 'revised return' in Section 140 (1). In that case it is possible to derive that CENVAT credit closing balance as on 30-6-2017 as per original or revised return filed by the registered person for the June, 2017 quarter in terms of section 140(1) shall be credited to his electronic credit ledger. Further one may also argue in case of tie breaker, registered person may have an option to opt for the rule which is more beneficial him.

**Section 142(10):** Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

**Section 142(11)**

(a) Notwithstanding anything contained in Section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) Notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 (32 of 1994);

(c) Where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994 (32 of 1994), tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Before analysing the above provision it is important to keep in mind the provision contained in Sections 142(10), 173 and 174 of the CGST Act.

Sub-section (10) of section 142 starts with the words "Save as otherwise". Section 174 of the CGST Act, provides for saving clause, wherein repeal of Service Tax (Chapter V of Finance Act, 1994) shall not, affect the previous operation of the Amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts.

**Issue 1:** Advance received in the month of June, 2017 against services to be provided in July, 2017. Service tax on such advance amount was deposited on 6th July, 2017. Whether on such services, registered person is required to pay GST?

**Comments:** As discussed above amendment of the Chapter V of the Finance Act, 1994 shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under service tax. Section 66B of the Act (Service Tax law) provided for levy of service tax on value of all services (other than those listed in negative list) provided or agreed to be provided in the taxable territory. In the present facts of the case, advance was received against services to be provided and thus such advance amount was liable to levy of service tax. Once advance became liable to levy of service tax, in terms of Section 142(10) read with Section 174, corresponding services to the extent of advance amount would not be liable to levy to GST.

**Issue 2:** Builder has sold 10 under-construction flats to buyers prior to 1-7-2017. He has collected and paid VAT under composition scheme @ 1% on the total flat value. Builder has obtained Architect certificate in terms of RERA as on 30-6-2017, which shows 50% building was completed. Builder has collected and paid service tax up to 50% of the agreement value. What would be value on which GST would attract?

**Comments:** For practical purpose it would be easy to determine the tax liability under GST by considering 50% of the agreement value towards incomplete work and taking credit of 0.50% of VAT paid under composition scheme.

However, in my opinion such composite supply cannot be divisible periodically by change in law. It may be argued that unless specifically provided for, the change in law should not affect any right, privilege, obligation or liability acquired, accrued or incurred. The activity takes place over a period that culminates in a single supply and the periodic or annuity payments are only on-account payments. It is possible to argue that law prevailing at the beginning of contract shall prevail on the whole supply.

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# JUDICIAL JUDGMENTS

*Compiled by CA Rupal Shah*

**Ballarpur Industries Ltd. vs. CIT, Bombay High Court, [2017] 84 taxmann.com 61 (Mumbai), 1st August 2017**

**Where income on accrual basis was claimed as exempt as per DTAA, forex fluctuation gain arising on receipt of such income should be taxed**

*Facts of the case*

In earlier years assessee company had declared income by way of royalty and interest from the Malaysian company on accrual basis. The same was exempt from tax in view of Double Taxation Avoidance Agreement with Malaysia. In subsequent years, when the income was remitted the assessee company received more than what was earlier accounted in terms of Indian rupees due to foreign exchange fluctuation. The Assessee Company claimed this foreign exchange gain as also exempt from tax since it was for remittance of exempt income.

The AO did not agree to the contentions of the assessee. On further appeals to CIT(A) and thereafter ITAT, the same view was noted that the said income was treated as exempt only because it was covered by the Double Taxation Avoidance Agreement. The agreement, however, does not cover the amounts accrued to the assessee as a result of exchange rate fluctuations. Also, the amount had arisen in India as the conversion took place in India. The said amount was, therefore, held to be taxable in the hands of the assessee.

*On further appeal, High Court held that*

The income had been earned by assessee in Malaysia on account of royalty and interest but the same was retained there and not repatriated to India immediately on the same accruing to the assessee. This resulted in a gain on account of foreign exchange fluctuation. This gain would not bear the character of income on account of royalty and interest earned in Malaysia.

Reference was also drawn to the Accounting Standard AS-11 issued by the Institute of Chartered Accountants of India which indicates that any benefit derived on account of currency fluctuation after the year of accrual is to be considered as income/expense in the period in which they arise.

In view of the above the foreign exchange gain will be taxable at the hands of the assessee company.

**Rajesh Chander Seth vs. ACIT, ITAT (Kolkata), ITA No. 570/Kol/2017, 16th August 2017**

**Disallowance u/s. 14A read with Rule 8D beyond scope of rectification u/s. 154 as the issue relating to applicability of Section 14A is debatable**

*Facts of the case*

After the assessment was completed under section 143(3), it was noticed by the AO that the assessee had earned a substantial tax free income in the form of dividend and Long Term Capital Gain, but no disallowance under section 14A was made in the assessment completed under section 143(3) in respect of expenditure incurred in relation to the said exempt income.

According to the AO, there was thus a mistake in the assessment order passed under Section 143(3) and the same was rectified by him *vide* an order passed u/s. 154 making disallowance of ₹ 1,21,489/- u/s. 14A as worked out by applying rule 8D. CIT(A) also upheld the view of the Revenue

*On further appeal to the ITAT*

The main contention raised by the assessee was that for the issue relating to the disallowance u/s 14A r.w.r. 8D was a highly debatable issue and the same was beyond the scope of rectification permissible u/s 154. The revenue opposed this view contending that since the assessee had earned exempt income applicability of Section 14A r.w.r. 8D is not debatable.

The ITAT opined that the issue relates to two inseparable parts namely, applicability of said provisions and computation thereunder. Even if one of these two parts is debatable, the entire issue relating to the disallowance u/s 14A becomes debatable.

The Tribunal found merit in the contention of assessee that the issue relating to the disallowance u/s. 14A r.w.r. 8D in the facts and circumstances of the assessee's case was a debatable issue and the same was beyond the scope of section 154. Thus, ITAT deleted the disallowance.

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# MEMORIES OF DR. BHARAT D. VASANI INAUGURAL STUDY CIRCLE MEETING, HELD ON 16TH JULY, 2017

**Left to Right :** CA Mandar Telang (Speaker), CA Vipul Somaiya (President - MCTC) & CA Vaibhav Seth (Vice-President – MCTC)

CA Vipul Somaiya (President - MCTC) Lighting the Lamp


CA Vipul Somaiya (President - MCTC) Welcome Speech


CA Vaibhav Seth (Vice-President, MCTC) Introducing Speaker


CA Mandar Telang (Speaker) addressing the audience

**MEMORIES OF DR. BHARAT D. VASANI INAUGURAL STUDY CIRCLE MEETING, HELD ON 16TH JULY, 2017**

Shri Darshan Shah (Joint Secretary–MCTC) Introducing Speaker

CA Naresh Sheth (Speaker) addressing the audience

CA Avesh Patel (Vote of Thanks)

Attentive Audience at the seminar in Hall at SNDT Mahila College, Malad (West)



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