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# MCTC Bulletin

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## President's Communiqué



Dear Members,

*"Do not reveal what you have thought upon doing, but by wise council keep it secret, being determined to carry it into execution"-Chanakya*

As the entire nation recovers from the grief and anger of the attacks in Uri, it also brings to light that in times of need, the entire nation stands united to fight against the wrong. The Government of the day and the Indian Army has once again reiterated and proved that our nation would not tolerate any act of terrorism on the Indian soil.

We had been invited by The Chamber of Tax Consultants (CTC) on their 90th year Celebration on 7th October, 2016. We congratulate the President, Shri Hitesh Shah, the Chairman, Shri Kishor Vanjara, the office bearers and the entire family of CTC. It is a moment of pride for our fraternity that our industry has grown manifold over the years.

We are very pleased to announce the Two full day Seminar on GST, theme - One Nation One Tax on 25th and 26th November, 2016 at Sheetal Banquets (Landmark Group), Opp Hotel Homtel, Off Link Road, Chincholi Bunder Road, Malad West, Mumbai 400064. We have carefully planned the Seminar, keeping in line with the government deadline to announce the Final Draft of the GST Act, so that the participants are abreast with the final draft law that would be enacted.

We hope that the members take full advantage of this opportunity to update themselves on the latest developments on GST. As we are expecting a full house at the Seminars and considering that there are limited seats, we request the members to register themselves at the earliest to avoid disappointment at the last moment.

We request all the members to participate in Diwali Get together & Saraswati Sanman Samarbh to be held on 13th November, 2016 at SNTD College, in which we will be awarding the Eleventh Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC members for outstanding performance in passing exams.

**WISH YOU ALL A VERY HAPPY DIWALI AND A PROSPEROUS NEW YEAR!**

Best Regards,

**Adarsh S. Parekh**

President

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## DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- ❑ **TRANSFER PRICING – Notified Tolerance Limit U/s 92C(2) of Income Tax Act [240 Taxman (st.) 58]**

The Central Government vide Notification no. SO2425(E) (No.57/2016-F.No.500/1/2014-APA-II) dated 14/07/2016 notified that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent of the latter in respect of wholesale trading and three per cent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2016-17.

Explanation – For the purpose of this notification, “wholesale trading” means as international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-

  - i) Purchase cost of finished goods is eighty per cent or more of the total cost pertaining to such trading activities; and
  - ii) Average monthly closing inventory of such goods is ten per cent or less of sales pertaining to such trading activities.
- ❑ **ASSESSMENT U/S 143 – General – Compulsory Manual Selection of Cases for Scrutiny During Financial Year 2016-17 [240 Taxman (st.) 59]**

The CBDT vide notification no. 4/2016 (F No.225/176/2016/ITA-II) dated 13/07/2016, hereby lays down the following procedure and criteria for manual selection of returns/cases for compulsory scrutiny during the financial year 2016-17. This instruction is in supersession to the earlier instruction on the above subject. The detailed procedure and criteria are available at the above citation of the magazine.
- ❑ **INCOME DECLARATION SCHEME (AMENDMENT) RULES, 2016 – Amendment in Form -1 [240 Taxman (st.) 68]**

The CBDT vide notification no. 2477(E) (No.60/2016-F No.142/8/2016-TPL) dated 20/07/2016, in exercise of its powers u/s 199(1) and (2) of Finance Act, 2016 makes further amendments to the Income Declaration Scheme Rules, 2016. These rules may be called The Income Declaration Scheme (Amendment) Rules, 2016. It also amended the Form -1, wherein it substitutes serial number 1 and 2 of the form.
- ❑ **DEPRICIATION ALLOWANCE –Notified Backward Areas U/s 32(1) (iia) and Section 32AD (1) First Proviso of Income Tax Act [240 Taxman (st.) 69]**

The Central Government vide notification no. 2478(E) [No.61/2016 (F. No. 142/13/2015-TPL)] dated 20/07/2016, hereby notifies backward areas under the first proviso to clause (iia) of sub-section (1) of section 32 and sub-section (1) of section 32AD of the said Act. The Notified Backward Areas in the States of Telangana, West Bengal and Bihar have been stated in detail in the above citation.
- ❑ **SECTION 119 OF THE INCOME TAX ACT, 1961 –Income Tax Authorities –Instructions to Subordinate Authorities – Extension of Due Date for Filing Returns of Income From 31/07/2016 to 31/08/2016 In Case of Assesseees In State of Jammu and Kashmir.**

Order [F.NO.225/195/2016/ITA.II], Dated 29/07/2016.

On consideration of reports of dislocation of general life in certain areas of the State of Jammu & Kashmir, the CBDT, in exercise of powers conferred under section 119 of the Income Tax Act, 1961 ('Act') hereby extends the due date for filing returns of income from 31st July, 2016 to 31st August, 2016, in case of Income Tax assesseees in the State of Jammu & Kashmir who are required to file their return under section 139(1) of the Act by the said due date.
- ❑ **INTEREST OTHER THAN INTEREST ON SECURITY –Section 194A-Deduction of Tax at Source - Notified Agency for Purposes of Section 194A (3) [241 Taxman (st.) 5]**

The Central Government vide notification no. SO2616 (E) (No.65/2016-(F No.275/28/2015 – IT (B))) dated 05/08/2016, in exercise of the powers conferred by section 194A (3) (iii) (f) of Income Tax Act, hereby notifies the Micro Units Development & Refinance Agency Limited (MUDRA) for the purpose of section 194A (3).

❑ **INCOME DECLARATION SCHEME, 2016 – Clarifications Issued to Further Queries Received From Public Relating to Said Scheme [241 Taxman (st.) 7]**

Circular No.29 dated 18/08/2016 have been issued to clarify on various issues on income declaration scheme.

❑ **TAX COLLECTION AT SOURCE – Insertion of Rules 37CB[241 Taxman (st.) 19]**

The CBDT vide notification no. 2747(E) (No.75/2016-F No.370142/19/2016-TPL) dated 19/08/2016, in exercise of the power conferred by section 206C (1E) read with section 295 of the Income Tax Act hereby further amends the rule called The Income Tax (21st Amendment) Rules, 2016. It insert new rule 37CB It prescribed class or classes of buyers to whom provisions of section 206C (1D) of Income Tax Act does not apply. One may refer to above citation for further details.

❑ **SECTION 119 OF THE INCOME TAX ACT,1961 – Income Tax Authorities – Instructions to Subordinate Authorities – Extension of Time for Issuance of Acknowledgment In Form-2 From 15 Days to 30 Days In Respect of Declaration Filed Under Income Declaration Scheme Rules, 2016 In Month of July, 2016.**

Order F. NO.142/8/2016-TPL, Dated 12/08/2016.

Sub-rule (3) of rule 4 of Income Declaration Scheme Rules, 2016 (the rules) provides that the acknowledgment in form-2 is to be issued by the principal commissioner / commissioner to the declarant within 15 days from the end of the month in which the declaration has been furnished. Hence, the acknowledgment in form-2 for the declaration filed in the month of July, 2016 is required to be issued by 15th August, 2016.

Time schedule for payment of tax, surcharge and penalty payable under the income declaration scheme, 2016 has been extended vide notification No.SO2476 (E), dated 20/07/2016 in the manner specified therein. Accordingly, necessary amendments to form-2 as prescribed in the rules are in the process of being made.

In view of the above, in exercise of the powers conferred by section 195 of the Finance Act, 2016 read with section 119 of the Income Tax Act, 1961 the CBDT hereby extends the time for issuance of acknowledgment in form-2 as prescribed in sub-rule (3) of rule 4 of the rules from 15 days to 30 days in respect of the declarations filed under scheme in the month of July, 2016.

## JUDICIAL JUDGMENTS

*Compiled by CA Dharmen Shah and CA Rupal Shah*

**Rajashekhhar Swaminathan Iyer vs. DCIT (ITAT Mumbai), I.T.A. No. 5450/Mum/2014, 27 July 2016**

**Interest on tax refund under Section 244A should be granted to the assessee even if refund is less than 10% of gross tax.**

***Facts of the case:***

The assessee had claimed Interest u/s 244A on the tax refund claimed as per returns. In the present case, AO passed an order u/s 154 of the I.T. Act rejecting the claim of the assessee relating to interest u/s 244A, wherein the AO held that on verification of records the contention of the assessee was found to be incorrect, since the refund amount determined u/s 143(1) was less than 10% of gross tax.

Being aggrieved, the assessee filed an appeal before the Ld. CIT(A). CIT(A) also upheld the order passed by the A.O. against which the assessee filed an appeal before ITAT.

***ITAT held in favor of assessee observing that:***

There was no proper justification on the part of the revenue to withhold the amount of refund beyond the date of issuance of intimation/order u/s 143(1). In view of clear provisions of law, no interest shall be payable up to the date of passing order/intimation u/s 143(1), but for the period of delay in issuing the refund after the date of passing of the order u/s 143(1), the assessee is entitled for interest.

Haryana State Road & Bridges Development Corporation Ltd vs. CIT (P&H High Court), ITA-85-2016 (O&M) 29 September 2016

Expenditure for purchase of a capital asset is capital expenditure; however guarantee commission to acquire the asset on installment terms is revenue expenditure

Facts of the case

The assessee claimed an amount of Rs. 96 Lakhs as a deduction under Section 37 of the Act being the commission paid by it to the State of Haryana in respect of a guarantee issued by the State of Haryana at the appellant's request in favour of the Housing Urban Development Corporation Limited (HUDCO).

The Assessing Officer disallowed the expenditure treating the same as capital expenditure. On further appeals, ITAT and Tribunal also upheld the view of the assessing officer.

High Court held in favour of the assessee observing that

Quoting Sivakami Mills Ltd. Vs Commissioner of Income Tax, [1979] 120 ITR 211, Madras High Court, the Punjab & Haryana High court concluded that the expenditure incurred for the purchase of the machinery was undoubtedly capital expenditure; for it brought in an asset of enduring advantage. But the guarantee commission itself, did not bring into existence any asset of an enduring nature; nor did it bring in any other advantage of an enduring benefit.

The acquisition of the machinery on installment terms was only a business exigency. If interest paid on a credit purchase of machinery could be held to be revenue expenditure on a similar line guarantee commission paid to a bank for obtaining easy terms for acquisition of the machinery should also be regarded as revenue expenditure.

## UPDATES ON SERVICE TAX

Compiled by CA Bhavin S. Mehta

**1. Notification No.41/2016 - Service Tax dated 22nd September, 2016**

The notification grants exemption from levy of service tax with respect to one time upfront premium (called as premium, salami, cost, price, development charges or by any other name) payable for such lease by State Government Industrial Development Corporations/Undertakings to industrial units by way of granting long term (30 years, or more) lease of industrial plots.

**2. Notification No.42/2016 - Service Tax dated 26th September, 2016**

During the period from 01/07/2012 to 20/10/2015, services provided by way of advancement of yoga by entities registered under section 12AA of Income-tax Act, 1961 (43 of 1961) was liable to levy of service tax, although service tax was not levied on such services according to practice generally prevalent. Department has issued clarification vide this notification that no service tax shall be required to be paid on such services for the period from 01/07/2012 to 20/10/2015.

**3. Notification No.43/2016 - Service Tax dated 28th September, 2016**

Form ST-3 (Service Tax half yearly return) has been amended so to include 'KrishiKalyanCess' and such other details including details with respect to exempted and non-taxable service or manufacturing of exempted excisable goods in CENVAT credit portion.

**4. Amendment to Notification No.30/2005 – Service Tax, dated 10th August 2005 [Notification No. 44/2016 - Service Tax dated 28th September, 2016] and [Circular No. 1049/37/2016 – CX dated 29th September, 2016]**

The powers of Central Excise Officer to adjudicate show cause notice has amended according to their rank as per the table given below:

Sr. No.	Rank of the Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice issued under the Finance Act
(1)	(2)	(3)
1.	Superintendent	Not exceeding rupees ten lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation)

Sr. No.	Rank of the Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice issued under the Finance Act
2.	Assistant Commissioner or Deputy Commissioner	Not exceeding rupees fifty lakh (except cases where Superintendents are empowered to adjudicate).
3.	Joint Commissioner or Additional Commissioner	Rupees fifty lakh and above but not exceeding rupees two crore.
4.	Commissioner	Without limit.

**5. Notification No.45/2016 - Service Tax dated 30th September, 2016**

During the period from 01/04/2013 to 10/07/2014, services of transportation by educational institutions to students, faculty and staff of such institutions as defined in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994) was liable to levy of service tax, although service tax was not levied on such services according to practice generally prevalent. Department has issued clarification vide this notification that no service tax shall be required to be paid on such services for the period from 01/04/2013 to 10/07/2014.

**6. Guidelines for arrest in relation to offences punishable under the Finance Act, 1994 and Central Excise Act, 1944 [ Circular No. 201/11/2016–Service Tax dated 30th September, 2016 ]**

The aforesaid circular emphasizes on factors which must invariably be considered before arresting a person relation to offences punishable under the Finance Act, 1994 and Central Excise Act, 1944 so that uniformity is maintained while approaching alleged offences and evidence relating to the alleged offence is readily available for perusal by a judicial body, when necessitated. The circular stress for careful exercise of power since arrest impinges on the personal liberty of an individual. The relevant factors mentioned in the guidelines are reproduced below:

**4.0 Conditions precedent – Legal**

4.1 At the outset there must be clear and unambiguous notings in the file, bringing out how all the ingredients of the offence have been established. The notings must specifically refer to evidence relating to –

4.1.1 Amount collected as Service tax: Collection of an amount as service tax should be clear and self-evident from the invoices, bills, contracts, etc. An amount should be clearly indicated as service tax. The copies of sample invoices/ bills, contract, etc. which would cover the period being investigated should be in the file.

4.1.2 Amount should exceed Rs.2 crore.

4.1.3 Failure to pay the amount so collected to the credit of the Central Government: The ST3 return filed by the assessee for the relevant period, showing the self-assessed value of taxable services and service tax paid should be available in file. Where no such return has been filed an observation to this effect should be made since this will make the departmental case stronger.

4.1.4 Such a failure should be beyond the period of six months from the date on which such payment become due: Fulfillment of the condition relating to the time period must be verified carefully, and a month wise abstract of the invoice numbers, due date of payment of service tax and date when the six month period was completed must be kept ready.

4.2 The suggestions in the preceding paragraph are intended at bringing uniformity in the approach to such matters and ensuring that evidence relating to the alleged offence is readily available for perusal by a judicial body, when necessitated.

**5.0 Condition precedent – factual**

5.1 Even if all the legal conditions precedent mentioned in paragraph 4.1 to 4.2 are fulfilled, that will not ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner must then determine if the answer to the following questions is in affirmative

5.1.1 Is the alleged offender likely to hamper with the course of further investigation by his unrestricted movement?

5.1.2 Is the alleged offender likely to tamper with evidence or intimidate or influence witnesses?

5.2 If the answer to both the question is yes, then the decision to arrest can be made.

5.3 If the alleged offender is assisting in the investigation and has deposited at least half of the evaded tax, then the need to arrest may not arise”.

7. **Notification No.45/2016 – Central Excise (N.T.) dated 20th September, 2016 and Service Tax Certificate for Transportation of goods by Rail (STTG Certificate)[ Circular No. 1048/36/2016 – CX dated 20thSeptember, 2016 ]**

In order to claim the Cenvat credit of service tax, certificate for transportation of goods by rail issued by Indian Railway would be sufficient. Now photocopies of the railway receipts mentioned in such certificate will not be required. STTG certificate (Service Tax Certificate for Transportation of Goods by Rail) shall itself contain details of Railway Receipts (RRs) as a separate annexure.

## JUDGMENTS UNDER CENTRAL EXCISE & SERVICE TAX – AUGUST, 2016

*Compiled by CA Bhavin S. Mehta*

1. Judgment of Delhi High Court quashing rule 5A(2) of Service Tax Rules, 1994 and holding service tax audits as invalid, has been stayed by Supreme Court; hence, for the time being, service tax audits may continue. [Union of India vs. Mega Cabs (P.) Ltd. [2016] 73 taxmann.com 402 (SC)]
2. Subsequent notifications adding new services in parent notification for eligibility of export incentive are prospective and therefore Assessee cannot claim refund/exemption on new services for period prior to date of their addition.[Principal Commissioner of Service Tax vs. T. T. Ltd. (2016) 73 taxmann.com 283 Delhi HC]

### FACTS:

- The assessee is an exporter of manufactured cotton yarn. It sought refund on the strength of Notification No. 41 of 2007, as amended later by Notifications Nos.17/2008, 3/2008 and 33/2008. The adjudicating authority in the first instance rejected the claims; the matter was remitted by the appellate commissioner upon which the refund was partly granted. The assessee once again appealed. In the course of the appeal, the commissioner in the order-in-appeal held that substantial exports of the assessee were eligible for service tax refund.
- The commissioner, however, remitted the matter for working out the refund claims having regard to the document particulars. Specific directions were issued to the adjudicating authority to examine the documents and co-relate them as to whether the assessee could claim the amounts.
- The adjudicating authority by its order held that the assessee was ineligible for the refund claim. In doing so, the adjudicating authority reasoned that services in respect of which input duty refund claim was made were included not with effect from 06.10.2007 (when the base notification i.e. 41/2007 was issued) but from later dates - substantial amounts claimed were related to Notification No. 33/2008 dated 07.12.2008. The Assessee's appeal was rejected by the commissioner. In the circumstances, Assessee approached the tribunal which was of the opinion that the adjudicating authority could not adjudicate upon the refund claim afresh. The CESTAT also examined the correctness of the reasoning by the adjudicating authority and held that even otherwise since the base notification i.e. 41/2007 was amended and various services in respect of which refund was claimed by the assessee were in fact included, there was nothing expressly stated to prohibit their application for the periods in question.
- The revenue which is in appeal contends that the CESTAT's reasoning is untenable. It relies upon the text of the amending notifications, particularly the terms of Notification No. 17/2008 and Notification No. 33/2008 both of which clearly state that the amendment would come into force upon the date of publication in the Official Gazette. It is also contended that the base notification (No. 41/2007) itself superseded the earlier notification (i.e. No. 40/2007 dated 17.09.2007. That notification had listed only services. The subsequent base notification clearly saved only those actions which had actually been done or omitted to be done. Reliance is placed upon the term "except as respect things done or omitted to be done before such supersession". Thus, it was urged that the benefit of refund notifications, was only in respect of services made after their publication.

### HELD:

- The original notification i.e. 40/2007 which was revised by base notification specified only few amongst several as the services for which refund claim could be made. The list was augmented subsequently in 2008 by three separate notifications each of which were expressly prospective. The terms of

notification in this case are such that it would rule out their clarificatory nature as is contended on behalf of the assessee. To say that notification is clarificatory, there should be something enunciated in the original or base notification itself.

- Specific services relatable to export were included but not all. Others were included and notified on separate specific dates. In the circumstances, the assessee's contention that the subsequent notifications were merely clarificatory and must be held to relate back or apply from the date the base notification came into force, cannot be accepted. The CESTAT reasoning is therefore incorrect. The CESTAT order cannot be sustained. It is accordingly set aside.
3. If protest is lodged within reasonable time (before expiry of one year) of assessee becoming aware that amounts were not recoverable as tax/duty, then, as per proviso to section 11B(1), time-limit of 1 year for filing refund claim would not apply [Mera Baba Realty Associate (P.) Ltd. vs. Commissioner of Service Tax , Delhi [2016] 73 taxmann.com 366 (Delhi HC)]

#### **FACTS:**

- The appellant is a builder engaged in construction activity. The levy of Service Tax was imposed by an amendment in the Finance Act, 1994 with effect from 01.07.2010. However, prior to that, apparently, the Service Tax Department had issued a Circular dated 16.02.2006, the effect of which was to advise all construction companies to pay Service Tax. The appellant complied and started depositing amounts for the periods in question, i.e. from 2006 onwards.
- On 24.04.2007, the appellant protested, contending that the amounts paid by them were not covered by the levy and that they had to be refunded the said amounts.
- The revenue appealed to the CESTAT which was of the opinion that since the appellant continued to deposit the amounts with the Service Tax Department after lodging protest, per se no question of refund of amounts for the prior period, i.e. payments made before 24.04.2007 arose. CESTAT, remitted the matter for calculation of amounts, and refund in respect of the period after the refund particulars had been made over in Form-R, i.e. after 24.04.2007. Assessee filed appeal before High Court.

#### **APPELLANTS' ARGUMENTS:**

- The amounts deposited prior to 24.04.2007 were covered by the refund claim and the appellant made it clear that the amounts deposited in the past and payable thereafter were also under protest. It was submitted that since there is no denial of the fact that the levy was imposed for the first time by the amendment to the Finance Act, 1994 with effect from 01.07.2010, the amounts collected under the colour of a lawful expression could not be retained by the Service Tax authorities on the ground that the time for claiming the refund had expired. Learned counsel relied upon the second proviso to Section 11B and stated that if a protest is lodged, then the time period of one year provided for by Section 11 would be inapplicable.

#### **HELD:**

- The Hon'ble High Court opined that the CESTAT clearly fell into error of law. The proviso to Section 11B clearly indicates that if the amounts are paid under protest - (in this case, the protest was filed before the expiry of one year) - the limitation prescribed by the main portion, i.e. Section 11B(1) would not apply. Even otherwise, once it is admitted that the levy itself came into force with effect from 01.07.2010 per se, amounts collected without authority of law fall beyond the imprint of expression or expropriation under pretence of authority of law.
- In these circumstances, the fundamental question of the appellant or any other assessee seeking recourse being restricted by the period of limitation under the statute authorising levy and its recovery should not arise. Furthermore, even if that reasoning were to be perused, the fact remains that the protest was lodged within reasonable time of the appellant becoming aware that the amounts were not recoverable as Service Tax. That is sufficient to attract proviso to Section 11B(1).
- In the circumstances, Hon'ble High Court held that the order of the CESTAT to the extent that it remitted the matter for calculation of only part of the amounts to be paid, is accordingly set aside.

4. Condition that 'details of exporters invoice should be specifically mentioned in lorry receipt and shipping bill' is a mandatory condition, which acts as an evidence of actual export and therefore, non-compliance with said condition would lead to denial of refund/exemption of service tax paid on transport of export goods [Principal Commissioner of Service tax, Customs & Central excise, Hyderabad Service Tax Commissionerate vs. R.R. Global Enterprises (P.) Ltd. [2016] 73 taxmann.com 263 (Andhra Pradesh)]

**FACTS:**

- For period from January, 2008 to March, 2008, assessee claimed exemption/refund under Notification No. 41/2007-ST for service tax paid on transport of export goods (iron ore) by road (GTA) from inland container depot to port of export.
- Notification No. 3/2008-ST added condition that 'details of exporters invoice should be specifically mentioned in lorry receipt and shipping bill'.
- Department rejected refund claim on ground that said condition was not fulfilled.
- As per the Notification No. 3/2008, dated 19.02.2008, the services would be entitled to exemption only if following four conditions are satisfied:
  - 1) that the export goods should be transported directly from the place of removal to the inland container depot or port or airport from where the goods are exported;
  - 2) that the invoice issued by the exporter should include the name of the inland container depot or port or airport from where the goods are exported;
  - 3) that the details of the exporters invoice relating to export goods are specifically mentioned in the lorry receipt and corresponding shipping bill; and
  - 4) that the exporter should also make a declaration in the refund claim, indicating whether such service has been received from the service provider for purposes other than for export.
- All the four conditions would show that at least 3 out of those 4, are evidentiary in nature. While the 2nd condition relates to what should be found in the invoice, the 3rd condition relates to what should be found in the lorry receipt and the 4th condition relates to a declaration to be made by the exporter in the refund claim.

**APPELLANTS' ARGUMENTS:**

- Assessee claimed that it is a common practice for exporters of iron ore that:
  - a. since huge quantity cannot be transported by a single lorry, quantities are aggregated at port; and
  - b. export invoice/shipping documents are prepared later; therefore, strict compliance of condition cannot be made.
  - c. Since there was no discrepancy noted in the total quantity of material exported and the extent of transport services utilized, that there was substantial compliance with the exemption notification and thus
  - d. The main contention of the respondent/Assessee is that condition No. 3 in the amended exemption notification is a mere matter of procedure and that therefore some amount of laxity can be given with regard to its compliance. According to the respondent/Assessee, they have satisfied the substantial requirements of export of iron ore; of payment of service tax on the service of transportation of material from the place of removal to the port; and (3) of actual export of the material. Therefore, the failure to have the details of the exporters invoice mentioned in the lorry receipt and corresponding shipping bill, on account of the peculiar nature of the trade, cannot be a ground for denying the benefit of the exemption notification.

**HELD:**

- Condition No. (iii) of Notification No. 3/2008, dated 19.02.2008 cannot be construed as a mere matter of procedure. It is a matter of evidence. The grant of exemption was made conditional. Therefore,



the object of the amendment is very clear to the effect that proof of eligibility to claim exemption was made equivalent to the eligibility for exemption.

- The Courts always tell statutory authorities that if something is required to be done by law in a particular manner, it shall be done only in that manner and not otherwise. After repeatedly advising statutory authorities to the above effect, it would be awkward for a Court to say that even if something is not done in accordance with the procedure prescribed by law, the same can be condoned specially when the very availability of the benefit of exemption is made contingent upon the fulfilment of certain conditions, those conditions cannot be dismissed as matters of procedure.
  - The object of requiring the details of exporters invoice to be mentioned in the lorry receipt and the corresponding shipping bill is to ensure that what had reached the port was actually the consignment of that exporter and that there was no duplication of the claim. Therefore, the relaxation of such a condition would tantamount to the removal of the very life breath of the notification.
  - Thus, it was held in the favour of the Revenue and against the Assessee.
5. Time-limit to file appeal begins from 'date of receipt of decision/order'; hence, appellate authority must verify record of acknowledgement received or any other material for ascertaining such date and limitation cannot begin, unless date of receipt is so verified and considered[Eblitz Inc. v. Additional Commissioner of Service Tax, Service Tax Commissionerate[2016] 73 taxmann.com 181 ( Karnataka)]

#### **FACTS:**

- The appellant is an assessee proprietary firm engaged in the Event Management. As per the appellant, it is paying service tax and filing return for the period under argument. However, audit wing of the first respondent visited the premises and the record was collected from the appellant.
- A show cause notice dated 09.03.2011 came to be issued calling upon the appellant to show cause as to why the service tax should not be demanded coupled with the interest and penalty for the period under argument.
- The appellant replied to show cause notice on 23.12.2011.
- The order was passed on 31.01.2012 by AO. The appellant received the copy on 11.09.2012.
- The appellant preferred the appeal before the second respondent together with the application of condonation of delay contending inter alia that the order was not received and it has been received only on 11.09.2012 and therefore the appeal could not be filed within prescribed period due to non-receipt of the order in original and the delay be condoned.
- The Commissioner (Appeals) as well as Single Judge of the High Court dismissed the petition of the assessee.

#### **HELD:**

- The limitation would begin from the date of receipt of decision of the order and though normal period of limitation of three months to prefer appeal from the date of receipt of the order, there is power with the appellate authority to condone the delay for further period of three months if he is satisfied that the appellant was prevented by sufficient cause for non-preferring the appeal within the period of three months.
- In order to find out that the limitation would begin from which date, it was obligatory for the revenue to verify the record of the acknowledgement received, if any, or any other material for ascertaining the date on which the order was received by the appellant.
- In absence of any material considered the date from which the limitation period ought to have been taken, it was a fit case to condone the delay and to examine the matter on merits.
- The impugned order passed by the learned Single Judge as well as by the second respondent was set aside with the direction that the delay in preferring the appeal is condoned.

■■■

**FORTHCOMING EVENTS**

**SARASWATI SANMAN & DIWALI GET TOGETHER**

<b>Venue</b>	SNDT, MD Shah Mahila College, Malad (West), Mumbai-400 064		
<b>Dates</b>	<b>Time</b>	<b>Subject</b>	<b>Speaker</b>
Sunday 13th November, 2016	10 am to 1 pm	Presentation by Brainbow about D&MIT	Shri Bhavesh Manek (Life Coach)
We will award 11th Dr.Bhart D.Vasani Saraswati Sanman Trophies to the children of MCTC member for outstanding performance in passing exams of SSC/HSC with 75% marks & above , to the students who have cleared post graduation professional exams like CA., C.S., C.W.A., MBBS, MBA, Engineers.			
All members are requested to send attached form along with the certified marks sheets to Brijesh M.Cholera at Following address along with following details OR Scan copy of marks sheet & form mail to maladchamber@gmail.com on or before 15th October, 2016.			

**Form for 11th Dr. Bharat D. Vasani Saraswati Sanman Trophies**

Member's Name: \_\_\_\_\_

E-mail ID: \_\_\_\_\_

Mob. No.: \_\_\_\_\_

Details of Student \_\_\_\_\_

FIRST NAME MIDDLE NAME SURNAME                      Male/Female:

Male/Female:- \_\_\_\_\_

AGE:- \_\_\_\_\_

Name Of Exam Cleared:- \_\_\_\_\_

Year of Exam:- \_\_\_\_\_

Percentage:- \_\_\_\_\_

Name of School/College/Institution:- \_\_\_\_\_

Send it To Following address or else you can mail to maladchamber@gmail.com with scan copy of marksheet On or Before 15th October, 2016  
 BRIJESH M.CHOLERA, SHOP NO.4, 2ND FLOOR, THE MALL, STATION ROAD, MALAD-WEST, MUMBAI-400064. TEL : 022-28895161. Mobile 7039006655  
 NOTE :- Application should be complete in all respect and the Form with the marksheet should reach us before the due date.w

**TWO FULL DAY PAID SEMINAR ON GST - ONE NATION ONE TAX**

<b>Venue</b>	Sheetal Banquets, Aalind Fourchuna (Landmark Group), Opp Hotel Homtel, Off Link Road, Chincholi Bunder Road, Malad West, Mumbai 400064.		
<b>Delegates Fees</b>	₹ 2,500/- (for enrolment done on or before 31st October 2016) for members and ₹ 3,000/- (for enrolment done on or before 31st October 2016) for non-members (Additional ₹ 250/- for enrolment done post 31st October 2016)		
<b>Dates</b>	<b>Time</b>	<b>Subject</b>	<b>Speaker</b>
<b>Friday, 25th November 2016</b>	<b>9.00a.m. to 6.00p.m.</b>	<b>DAY ONE (1)</b>	
Fellowship	09.00 - 10.00	Registration Tea & Breakfast	
Session I	10.00 - 11.30	Taxable Transaction & Person	Adv. Bharat Raichandani
Session II	11.30 - 01.00	Valuation	CA. Udyan Chokshi
Break	01.00 - 02.30	LUNCH	
Session III	02.30 - 04.00	Cross Border and Inter State Transactions	CA. Jayraj Sheth
Break	04.00 - 04.30	TEA	
Session IV	04.30 - 06.00	Transitional Issues	Shri Dhawal Talati
<b>Saturday, 26th November 2016</b>	<b>8.30a.m. to 6.00p.m.</b>	<b>DAY TWO (2)</b>	
Fellowship	08.30 - 09.30	Tea & Breakfast	
Session I	09.30 - 11.00	Taxation of E-Commerce Transactions	Adv. Shailesh Sheth
Session II	11.00 - 12.30	ITC and Refund	CA. Ishan Patkar
Break	12.30 - 01.30	LUNCH	
Session III	01.30 - 03.00	Registration Returns Payment Audit Assessment	CA. Pranav Mehta
Break	03.00 - 03.30	TEA	
Session IV	03.30 - 05.00	Issues & Controversies	CA. Janak Vagahani
Session V	05.00 - 06.00	Brain Trust	Eminent Speaker Panel

Note:- Sessions are subject to changes , depending on the availability of the Speakers.

**4TH STUDY CIRCLE MEETING OF MCTC**

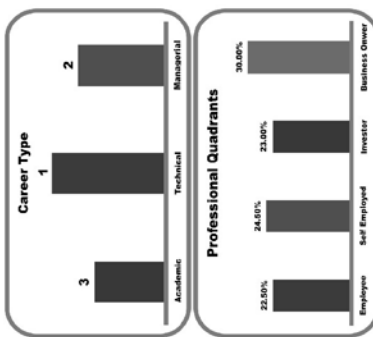
<b>Venue</b>	SNDT, MD Shah Mahila College, Malad West.		
<b>Dates-Tentative</b>	<b>TIME</b>	<b>SUBJECT</b>	<b>SPEAKER</b>
Sunday 11th December, 2016	10 am to 1 pm	New Vat Automation Returns and Vat Audit through Tally Software.	CA. Anand Paurana

**Note:-** Free for Members Staff and Students.

# What Is Innate Multiple Intelligence Evaluation?



## PROFESSIONAL SOLUTIONS



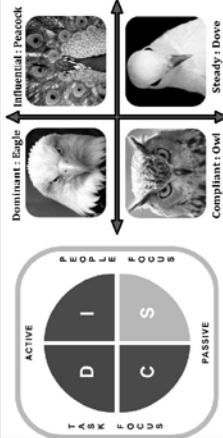
### Work Style Pref.

Development	22%
Decision	18%
Operation	23%
Communication	17%
Adaptation	20%

### Innate SPF Profile

ISTU	ISFU	INEU	INTU
ISTP	ISFP	INFP	INTP
ESTP	ESFP	ENFP	ENTP
ESTJ	ESFJ	ENFJ	ENTJ

## Complete Career Roadmap for Life



## ????... CONFUSIONS.....????

Mathematics Steady  
Writing Academic  
Reading Technical  
Influential Drawing  
Indoor Music  
Communication  
Compliant  
Cooking

Consistency Gardening  
Painting Business Outdoor  
Flexible Investor Guitar Hockey  
Opinion Education Extrovert Listening  
Engineering Singing Job Designs Arts

Liberal Studies Swimming Managerial  
Football Commerce Corporate Cricket  
Modern Art Government Tennis  
Fact Public Service Harmonium  
Dominant Subjective

ICSE  
Tata Law  
Case  
IB  
Mathematics Steady  
Writing Academic  
Reading Technical  
Influential Drawing  
Indoor Music  
Communication  
Compliant  
Cooking

Carom  
State Biology  
Flute  
Science

## ACADEMIC SOLUTIONS

Biography  
Commerce  
Maths  
Arts

Stream Selection after std.10th

Mathematical Science	77%
Biological Science	67%
Commerce	56%
Arts	63%

Career Stream Graduation & Post Graduation

Spoken	88%
Design	86%
Education	85%
Art	85%
Liberal	82%
Management	80%
Law	80%
Commerce	80%
Machine	80%
Engineering	77%
Science	75%
Public Service	74%

Scientific Study Methods

See it Visual  
Say it Auditory  
Do it Kinesthetic

Study Smart & Not Hard

World's first Solution based Scientific Intelligence Report

## !!! FREE DISC PROFILE TEST !!!

Know your Character Traits, Personality Strengths & Weaknesses (S.W.O.T.)

(100% SCIENTIFIC / 100% ACCURATE)

Coming on 13th November, 2016 to Answer All Your QUESTIONS

**FRANCHISE INQUIRY SOLICITED**

... @ FOR FURTHER DETAILS, KINDLY CONTACT @... url : [www.brainbow.in](http://www.brainbow.in)

**ACADEMY OF MULTIPLE INTELLIGENCE**

BHAVESH C. MANEK : 098338 90313 @ bhaveshmanek73@gmail.com

MANSI B. MANEK : 098205 54680 @ mansi.manek@hotmail.com



**The Malad Chamber of Tax Consultants**

**Regd. Off. :** B/6, Star Manor Apartment, 1st Floor, Anand Road Extn. Malad (W), Mumbai 400 064.

**Admn. Off.:** C/o. Brijesh Cholera : Shop No. 4, 2<sup>nd</sup> Floor, The Mall, Station Road, Malad (W), Mumbai '64.

**Website :-** www.mctc.in

Mobile. No. 07039006655

E-mail: maladchamber@gmail.com

**FORMAT OF ENROLLMENT FORM FOR GST SEMINAR.**

Dear Sir,

Please enroll me as a participant for the two full day Seminar on GST ( One Nation One Tax)

The Registration Fees of \*2500/- (for enrolment done on or before 31<sup>st</sup> Oct,16 ) for members / \* 3000/- (for enrolment done on or before 31<sup>st</sup> Oct,16 ) for non-members ( \*Additional ₹250/-for enrolment done post 31<sup>st</sup> Oct,2016) is remitted herewith by Cash/DD/Cheque Rs. \_\_\_\_\_ Ch. No. \_\_\_\_\_ Dated \_\_\_\_\_ Drawn on \_\_\_\_\_.

**Particulars of Member/Participant are as under:-**

Name :- \_\_\_\_\_

Edu. Qualification:- \_\_\_\_\_

Address of Communication: - \_\_\_\_\_

Telephone No. Office: - \_\_\_\_\_ Resi \_\_\_\_\_

Mobile:- \_\_\_\_\_ Email Add:- \_\_\_\_\_

Food Type \***JAIN / NON JAIN**

Member of MCTC \***YES / NO** Signature: - \_\_\_\_\_

**Note:**

- Cheques/D.D. should be drawn in favour of the "The Malad Chamber of Tax Consultants" payable at Mumbai.
- The Enrolment Form along with cheque/ DD/ Cash should be submitted at **Admn. Off.:** C/o. Brijesh Cholera : Shop No. 4, 2<sup>nd</sup> Floor, The Mall, Station Road, Malad (W), Mumbai 400064. Call: 07039006655. C/o. **Utpal Patel** 703/704 SHREE RAMDEV COMM COMPLEX, DR DALVI ROAD, NR BANK OF INDIA, KANDIVALI (WEST), MUMBAI - 400067, C/o. Adarsh Parekh S201, 2<sup>nd</sup> Floor, Raghuleela Mega Mall, Poisar Bus Depot, Kandivali West, Mumbai 400067.
- \* Strike of which is not applicable.

**RECEIPT**

The Malad Chamber of Tax Consultants



Received from Mr./Ms. \_\_\_\_\_

Rs. \_\_\_\_\_/- (Rs. in words \_\_\_\_\_)

By Cash /Cheque / D.D.No. Dated \_\_\_\_\_ Drawn on \_\_\_\_\_ Bank \_\_\_\_\_ Branch being enrolment fee for the seminar to be held on 25<sup>th</sup> & 26<sup>th</sup> November, 2016 organized by the MCTC.

Name & Signature of the person receiving payment

Name \_\_\_\_\_ Signature \_\_\_\_\_

**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.

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