



WIRC BULLETIN

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For Members only

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From the Desk of Chairman



Dear all Professional Colleagues and Seniors of Profession,

Indian economy is undergoing an important phase. Every day comes with some changes and some prediction of future. RBI in its monetary policy estimated growth rate to remain between 5.0 to 5.5 %. Even planning commission has also revised its own prediction of growth originally predicted. Forex reserves also came down by \$ 1.12 bn to \$ 276.26 bn. While you read this communication your pockets will be charged by increase in fares by biggest organization of country Indian Railways. On the positive note Rupee has gained strength from its all time low of 68.80 on 27th August 2013 to a level of 61.44 at the end of September 2013. Ministry of Corporate affairs has already given 2 sets of draft rules for comments one ending on 8th October and other one ending on 18th October. Members can send individual comments to MCA on their website. New Companies Act has now come into the force by notifying 98 sections of the same.

Students

I had an opportunity to meet final pass students at Mumbai and Pune. It is always an enriching occasion for me as it reminds me my students days and passing moments. How happy those were! Congratulations once again to all of them. With a view to improve results, we are successfully organizing orientation programs for Intermediate and Final students. This program is focused towards academic knowledge of subjects. Along with this, we also conducted ICMAT programs for students falling short of requisite number of years of experience for appearing December 2013 examinations. I request practicing members and companies to complete all formalities of their trainees so that they can appear hassle free for future examinations.

Members

At WIRC we all are gearing up for flagship program on 25th October 2013 Cost Audit for Inclusive Growth. As a prelude to this mega event we organized Members Meet in Mumbai on 5th October 2013. I am happy that more than 60 members from practice and service attended the same. I request all of you to book your day for 25th Program and keep on visiting WIRC website for further details of this program. I must put on record the efforts taken by members of Council and our Past Presidents CMA V Kalyanraman, CMA J K Puri, CMA Dhananjay Joshi and CMA Chandra Wadhwa. I am astonished to see the energy these people put in for any program. This gives lot of enthusiasm for younger generation like us. I am also thankful to all those contributors in this edition on the topic of Cost Audit and Cost Compliance for Inclusive Growth.

I myself attended full day program organized by WIRC on new Companies' Act 2013. I request all members to get them acquainted with new companies Act. WIRC will keep on organizing programs on latest changes. WIRC had also arranged 2 CEP on draft rules published by MCA. Suggestions of members are sent to Institute HQ for their consideration. Individual members can also

send the comments to MCA in their individual capacity.

I was also invited by Navi Mumbai chapter for their program on Company's Act 2013. It was really a 'thinking beyond horizon' to organize this program jointly with their counter-part Navi Mumbai Chapter of Institute of Companies Secretary of India. I was also privileged to meet Chief guest of this program Mr. C. Sanjeevan Deputy Director ROC Mumbai. I must extend congratulation to CMA Vivek Bhalerao, Chairman Navi Mumbai Chapter, and his team for their efforts.

Apart from our commitment towards Cost Audit, we are organizing full day seminar on Service Tax by speakers like CMA V S Dadey, CMA Sanjay Bhargave, CMA Ashok Nawal and CMA Narhar Nimkar. I request all members to take advantage of this program. We also conducted CEP on Costing and Free Trade Agreement at Borivli on 28th September 2013.

Other Institutions

I was fortunate once again to listen to Shri Sachin Pilot ji, Hon. Minister of Corporate Affairs (I/C). This program was organized by CII in Mumbai. Shri Pilot ji explained the importance of this new law in present and future scenario. Shri M J Joseph, Additional Secretary and Ms. Renuka Kumar, Joint Secretary from MCA were also present on the occasion. We were invited by Raigad Commissionrate to for training program at Panvel. Myself, CMA Ashok Nawal and CMA Narhar Nimkar were faculties for the same. I request all Chapters to organize such programs in their range.

New Initiatives

This month was marked by 2 important new initiatives by WIRC. We are proud to announce our initiative for students in the form of Students E bulletin. We have named it CMA Vidyarthi. Since it is E bulletin it will be available on our website. It will be monthly featuring of WIRC every month end. I must put on record support given by members of council in this regard specially by CMA Shrenik Shah. There are ideas which are generated and go out without any efforts. But many of them also take shape and makes milestone in future. I request all of you to send articles, suggestions, tip etc for our ultimate beneficiaries i.e. students.

We also went to students in their own Chapter premises for Pre-Campus Communication Skill Programs. We conducted 2 programs at Nagpur and Pune for the benefit of students. I remember those days when this seed was bowed by CMA P V Wandrekar, CMA Aruna Soman and CMA S G Narsimhan along with myself somewhere in 2007. That was the first year when we took full day campus interviews first time in the country with Pre-campus Skill improvement seminars. I must also put on record the support given by CMA Viswanathan Chairman of Nagpur Chapter and CMA Harshad Deshpande Hon. Secretary of Pune chapter to extend this idea in 2013.

I wish all members on the occasion of Navratri, Durga Pooja, Gandhi Jayanti, Dussehra, Id-ul-Fitr and Deepawali. Let these festivals bring lot of smiles on your face.

"Live as if you were to die tomorrow. Learn as if you were to live forever."

-Mahatma Gandhi

With Warm Regards

CMA Ashish Thatte



**WIRC wishes all its Members & Students
Happy Diwali & a Prosperous New Year**





CMA Ashish Thatte, Chairman WIRC interacting with members during Professional Meet organized by WIRC on 5th October 2013 at Kohinoor Hall, Mumbai. Also seen CMAs Harshad Deshpande, Dhananjay V Joshi, V.V. Deodhar and V.C. Kothari



View of Members during Professional Meet organized by WIRC on 5th October 2013 at Kohinoor Hall, Mumbai.



CMA Ashish Thatte, Chairman WIRC interacting with members during Full day seminar on Companies Bill held on 14th September 2013



View of Participants during Full day seminar on Companies Bill held on 14th September 2013 at PTVAs Management Institute.



Mr. C. Sanjeevan, Dy. Director, ROC Mumbai addressing the participants during Seminar on "Companies Act" organized jointly by Navi Mumbai Chapter of ICAI and ICSI ON 21st September 2013.



View of Participants during Seminar on "Companies Act" organized jointly by Navi Mumbai Chapter of ICAI and ICSI ON 21st September 2013.



CMAs Dr. Niranjn Shastri, Pankaj Raizada, Vijay P. Joshi, Sunil Singh, V. S Datey, Shailendra Jain and CS Dr. D. K. Jain during Seminar on Companies Act organised jointly by WIRC & Indore Dewas Chapter



View of ICAI-IDCCA Students at Nehru Stadium, Indore participating in Bharat Jago Daud



CMA Aditya Umarji interacting with members during CEP on Draft Rules- Companies Act held on 17th September 2013 at Mulund College.



Mr. Sudhakar Kasture, interacting with members during CEP on "Costing & Free Trade Agreement" held on 28th September 2013 at Borivli SMFC.



**WESTERN INDIA REGIONAL COUNCIL OF
THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**
(Statutory body under an Act of Parliament)

Announces

Full Day Seminar on Service Taxes

Speakers: CMAs Sanjay Bhargave, V.S. Datey, Ashok Nawal, N.K. Nimkar

Date: Wednesday, 16th October 2013

Venue: Hotel Kohinoor Continental, Andheri-Kurla Road, Andheri (E), Mumbai 400 059.

**Delegate fees: Rs.845/- for students Rs.1,685/- for Practising Members
Rs. 2,810/- for Professionals & Company Sponsored (including 12.36% Service Tax)**
(Four CEP Credit Hours will be provided)

Need for the Seminar

Service Tax has gained lot of importance in last few years. It has become main source of revenue for the government. After July 2012 where government has issued negative list of services, Service tax has become applicable to most of the services. In such a scenario it is important for practitioners and corporates to keep themselves updated on Service Tax issues. This seminar will give insights on all matters related to service tax. This seminar will give insights on all matters related to Service Tax & important aspects of Service Tax.

PROGRAMME

09.30 to 10.00	Inauguration	
10.00 to 11.30	Constitutional Background Definition of Service, Negative List, Declared Service. Exempted Service	CMA V. S. Datey
11.30 to 11.45	Tea Break	
11.45 to 01.15	Point of Taxation, Place of Provision of service & Other important provisions of the Law	CMA Sanjay Bhargave
01.15 to 02.00	Lunch	
02.00 to 03.30	Cenvat credit, Valuation of Service	CMA N. K. Nimkar
03.30 to 03.45	Tea Break	
03.45 to 05.15	Person liable to pay tax, Important Accounting Controls For 100% Statutory Compliance an Voluntary Compliance Encouragement Scheme, 2013	CMA Ashok Nawal
05.15 to 05.30	Questions Answers	

For details & Registration Contact:

Mr. S. S. Deshpande, Asst. Director, Mob.: 97692 72233

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Bldg. No. 8, Ground Floor, Damani Hsg Soc Ltd,
Damani Estate, Naupada, Thane (W) 400 602.
Tel. 022-2545 0763

Borivali Students and Members Facilitation Centre,
C/o. St. Francis Institute of Management and Research,
Mt. Poincur, S. V. P. Road, Borivali (W), Mumbai 400 103
Tel. 022-2894 8302



COST AUDIT FOR INCLUSIVE GROWTH

CMA Neeraj D. Joshi

Vice Chairman, WIRC of ICAI,

Partner, Dhananjay V. Joshi & Associates

The Preamble to the Constitution sets the aims and aspirations of the people of India and these have been translated in to the various provisions of the Constitution. The objective was to constitute India into a sovereign Democratic Country and to secure its citizen Justice, Liberty, equality and fraternity. The ultimate aim of the makers of the Constitution was to have a "welfare state" and an egalitarian society projecting the aims and aspirations of the people of India who made the extreme sacrifice for attainment of the countries freedom.

The framers of the Constitution of India set out 3 broad purposes in the Preamble.

".....to secure to all its citizens :

JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity
 and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation"

They sought to constitute India into "A Sovereign Socialist Secular Democratic republic". The word socialist indicates the incorporation in the philosophy of "socialism" which aims at elimination of inequality in income and status of standard of life. Doubts have been raised whether the new economic policy adopted since 1991 which is oriented towards free market and privatization is consistent with socialism as envisaged in the Preamble. However, the Courts have also interpreted the word "socialist" in the Preamble for evolving a concept of social democracy which comes closer to the concept of "social welfare state" expressed as "social state".

Inclusive growth as the literal meaning of the two words refers to both the pace and the pattern of the economic growth Inclusive growth basically means, "Broad based growth, shared growth, and pro-poor growth". It decreases the rapid growth rate of poverty in a country and increases the involvement of people into the growth process of the country. Inclusive growth by its very definition implies an equitable allocation of resources with benefits incurred to every section of the society. But the allocation of resources must be focused on the intended short and long term benefits of the society such as availability of consumer goods, people access, employment, standard of living etc. It sets a direct relationship between macro and micro determinant of the economy and its growth. The micro dimension includes the structural transformation of the society and macro dimension includes the country's gross national product (GNP) and gross domestic product (GDP).

There is always a debate between growth and equality - A debate that is age-old. It has been there in India since

independence. For the first half century after independence India focused a lot on equality and not quite so much on growth and as a result the growth levels were also quite low. Then came an era of Liberalisation, Privatisation and Globalisation (LPG) where development and growth in particular, was focused upon. At that time pro-poor policies were sometimes dismissed as being populist policies. Now India is trying to find the correct balance - that it should continue to grow and grow at a higher pace but at the same time no one should be left out and the divide between rich and poor should be bridged. The question is how this can be achieved and the consequences, if it is not achieved. India achieved strong growth rates of 8% and 9% between 2005-06 to 2010-11 (excepting 2008-09) just few years back. However, it failed to manage the rate of inflation. Among other things, high cost economy was prominent cause for the inflation. The two main factors contributing for such high inflation are increasing food prices and also sharp increase in commodity prices. With such price inflation pressure, it is the poor people who get hurt the largest. To manage the inflation the only alternative is to have control over costs which can only be achieved with better utilization of resources and that is exactly the role for mechanism of Cost Accounting Records and Cost Audit. To manage inflation, the control over commodity prices, energy prices and food prices is absolutely necessary. The Government has to factor these trends into the fiscal policies.

In the process of inclusive growth the "financial inclusion" no doubt plays an important role. But at the same time health facilities, basic education, meeting the basic necessities and creating positive environment in the eco system is also equally important. Making people able and capable to participate in the growth process is essential for achieving inclusive growth.

There is a gap between policy and practice on the laws and on the Government side, as a society also we maintain gaps. What we talk about is inclusion, but we have very deeply exclusionary tendencies in our society. Certain quarters of the economy talk about "inclusion" but very heavily attack the tools, the systems and mechanism that should put in place for such inclusion and in fact they are the detractors of the inclusive growth. Time and again it has been proved that cost competitiveness of Indian industries is an essential feature for making the goods and services available to the masses at competitive and economic prices. **Cost Audit is an essential feature to bring in costing discipline and the Cost Audits will bring an independent appraisal of the cost competitiveness - possibly the only mechanism placed in the economic system to monitor the industry.**

Still, both Cost Records and Cost Audit is vehemently opposed with very short sighted and lop sided views and attitudes. Thus, these exclusionary factors and attitude is a big hurdle in the process of inclusive growth of the economy.

Wealth creation is more important than wealth re-distribution. We have to create the wealth, so how do we create the wealth? It has to come from within the state. In India, wealth we have is roughly about 20% in agriculture, 20% to 25% in manufacturing and 55% to 60% in service sector. It is amazing to note that, now only the Companies Act 2013 has mandated the Maintenance of Cost Records and Cost Audit for service sector in line with production sector. Thus, almost 60% of the economic activities of the country were left outside the purview of Cost Records and Cost Audit for almost half a century since the inception of cost audit. It is important to improve the productivity of the service sector, community services and so on. So it is the need of the hour that the provisions of Sec. 148 of the Companies Act, 2013 should immediately be enforced to cover Maintenance of Cost Records and Cost Audit for Service Sector contributing to more than 50% to 55% in the GDP. It is imperative that at this stage itself, a system of cost consciousness is created in this sector so as to maintain efficiency, performance and propriety in their operations to be competitive with larger players entering this sector from developed countries with greater resources and better efficiency of operations.

Today there is a national consensus that the growth is the prerequisite of any economic policy but that growth must be inclusive growth, which will create wealth and also distribute wealth. It is only the inclusive growth which will bring in revenues for the Government which are very essential for ambitious schemes for providing food, shelter, employment, education and so on to the citizens of this country. The regulatory mechanisms like **Cost Audit have also a strength in protecting the Government revenues** whether it be from direct taxes or indirect taxes. **Infact, the Maintenance of Cost Records and the audit thereof has the very strong linkage with indirect taxation say Central Excise.** The Cost Audit mechanism ensures proper payment of liability towards excise revenue of the government and also protects the government from leakages in the system or unjustifiable claims for refunds. The justification, reasonableness, appropriateness and entitlement of various concessions or exemptions from direct tax payments can be linked up to the Cost Records and Cost Audit mechanism. Profitability of new industrial undertakings, undertakings in backwards areas, profits on exports, and so on can directly be linked up with data and **information contained in Cost Records which facilitates the tax assessments for the revenue authorities. The input output norms getting established in the cost accounting records also acts as a check and balance system on the utilisation of resources and establishes relationships between utilisation of resources and production achieved.**

The cost audit mechanism is a barometer which computes the wealth created by an enterprise in the form of "value addition" and its distribution amongst

the various factors of production which have created this value. It highlights the share distributed to human resources, finance contributors, the owners of the company and revenue to the government in the form of taxes. This concept of value addition is the unique concept in the cost audit which really speaks of Distribution of created wealth amongst the various stakeholders. This data from the cost audit reports can very well be used by the Policy makers of the National Economy.

The process of redistribution of wealth involves giving grants and subsidies. **The Cost Records is the only mechanism to develop the scientific basis for such subsidies. It is important to provide incentives for not just setting up capacities, but also operating them and encouraging cost reduction and technology development.** The Cost Audit mechanism can be of great help in such policy making.

While discussing the inclusive growth, we can always compare our growth with that of China. India has a tough time given a situation that, the average growth in service sector or industry can be maintained / achieved between 10% to 15% but the agriculture cannot grow or has not grown beyond 4% average so far. At the same time India has the largest population, around 65% to 70% engaged in the agriculture sector, and therefore, the challenging task is that, growth has to grow supported by the majority population, sharing the fruits of the growth. In case of China, the whole growth is involving and revolving around the most of its resource, that is its labour force. Knowing peculiar features of our economy we have to give impetus to the industry and the service sector to increase the size of our cake i.e. creating the wealth for the inclusive growth. India needs to develop tertiary industries and agro based industries so that more and more people in the rural area can participate in the growth process. Another important point in comparison of India and China is in terms of participation of women in the process of economic activities. Today China has a better percentage of literate, numerate young women. The Chinese women are working parallel in the economic development of the country, which is a distinct dream for India. The overall work force consists of a small fraction of women as compared to their male counterparts. India must consider this balancing of women and men and equal participation to achieve the inclusive growth.

In summary **"Inclusive Growth" is the destination** which we have to reach by the road leading thereto. We have to travel together, men and women, haves and have nots, all segments of the economy, all sections of the economy. Every able and willing citizen of this great country must get his share in the growth and prosperity of this nation. **In this mission we have to take recourse and make use of the vehicles which will provide us a safe journey towards the destination and one such proven vehicle is Cost Audit Mechanism which has contributed towards healthy, effective, sustainable growth of production and service segments of the economy.**

In this borderless world one has to venture out not only for survival but also for life supporting growth and prosperity. ■



XBRL Filing - Benefits to Stakeholders

by CMA Ashwin Dalwadi

BSc, FCMA & CMA Malav Dalwadi (BCA, MSc(IT), ACMA,
XBRL International Certified Professional)

1 Introduction

eXtensible Business Reporting Language- XBRL is most extensively used tool among developed countries for business reporting. MCA has also mandated for filing of Annual returns of Companies falling within certain threshold limits, all Cost Compliance Reports and cost audit reports in XBRL Formats only.

Reports submitted in XBRL formats are Machine Readable without intervention of Human being. This is extremely helpful for various authorities in comparing and analyzing large volume of data across the industrial sectors, between companies with speed and accuracy in effectively monitoring and implementing various government initiatives.

This is likely to help different other stakeholders immensely in the era of high profile and large frauds.

In this article, we have tried to bring out the benefits of XBRL filing of Cost Compliance Report and cost Audit Reports in XBRL format to following different stakeholders:

- a. Ministry of Corporate Affairs;
- b. Income Tax Department;
- c. Excise, Service Tax and VAT Authorities;
- d. Banks & Financial Institutions; and
- e. Share Holders

2. Importance of XBRL Reports

The importance of XBRL filing comes from following reasons:

- i. High level of accuracy: XBRL reports are passing through various checks and validations before being accepted by Authority.
- ii. Uniform Reporting: Linked with specific and uniform terminology across the filing fraternities.
- iii. Based on Third party experts Reports: All such filings are based on independent expert's [Independent Auditor's] reports

- iv. Submissions are also certified: Submissions by few selected authorized persons (MD, Directors, Managers, Company Secretary and auditors) is allowed in form of certification.

3. Formats of Cost Compliance Report & Cost Audit Report

Before discussing about the benefits of XBRL filing of Cost Compliance / Cost Audit Report, brief understanding of report formats is must.

Cost Compliance Report:

The cost compliance report contains following para containing specific information:

- i. General Information : This refers to name of the company, Financial Year, Currency, Rounding off, Name & other details of Reporter etc.
- ii. Cost Compliance Report : This refers to various points about information and his comments on the records of certificate issuer
- iii. Quantitative Information – refers to Product Group, Details of Product /Activity Groups, Quantity produced and Sold along with Sale/ Income Realized
- iv. Reconciliation Statement – This statement provides reasons for variation between margin reported Financial Accounts and Cost Accounts of the Company

Cost Audit Report:

The cost compliance report contains following para - specific information:

- i. General Information: refers to name of the company, Financial Year, Currency, Rounding off, Name & other details of Reporter etc.
- ii. Cost Audit Report From : refers to details about the Cost Auditor(s) along various points about information and his comments on the records of certificate issuer
- iii. Cost Accounting Policy : This crystallizes the Cost Accounting Policy of the Company and

- deviations, if any, with respect to PY
- iv. Product Group Details– refers to Product Group, Details of Product /Activity Groups, Quantity produced and Sold along with Sale/Income Realized
 - v. Quantity Information : Refers to Installed Capacity, Capacity Utilization, Stocks, products, Purchases, Sales & adjustment, if any, made in stocks of a given product group under cost audit
 - vi. Abridge Cost Statement : Gives picture of comparative details of various cost elements for the current year and Previous Year for a given product group under Cost Audit
 - vii. Operating Ratios : This depicts relationship (ratios) of different cost elements of a given product group along with comparison of the same with PY ratios
 - viii. Profit Reconciliation Statement – This statement provides reasons for variation between margin reported Financial Accounts and Cost Accounts of the Company
 - ix. Value Addition: Provides the picture of value added by the company through its activities.
 - x. Financial Position & Ratio Analysis : This statement provides a set of various ratios depicting the health of the company at macro level
 - xi. Related Party Transactions : This section provides information about related party for Sale/ Purchase and/or Provision/receipt of services along with CIN, PAN, 8 digit HSN/Service Codes, aggregate value of transaction, its normal price and method adopted for such transaction.
 - xii. Indirect Tax Reconciliation : The section depicts a bird eye-view of indirect taxes viz. Excise, Service Tax & Vat payable, Credit Utilized and Payments made through PLA, Duty recovered from customers, Cost, if any, born by company etc.

4. Potential Usage and Benefits Accruing to Different Stake Holder

Ministry of Corporate Affairs

MCA is Regulating, Integrating and Facilitating agency for empowering business and protecting investors in India.

XBRL reporting is going to be a very useful tool for

MCA. Monitoring of non-receipt of reports with appropriate quality checks will become easier.

MCA and all investigating agencies including courts will be able to get authentic database in a collectable and comparable form very quickly which will help in expeditious adjudications of culprits and reduce the costs also.

Income Tax Department

Income tax department is concerned with collecting Direct taxes.

It is known secret that often profits are manipulated through stock valuations, other Incomes & other Expenses etc. Both Cost Compliance Report and Cost Audit Report provide instant and reasonable pointers about this in the form of Reconciliation between Margin as per Cost Accounts and Financial Accounts.

Abridge cost statements, operating cost ratios, Value added by the company and related party transactions are also likely to be immensely help the department in monitoring and identifying malpractices, if any by matching the same with their own database.

Excise, Service Tax and VAT Authorities

In addition to potential areas of benefits narrated for the IT department, Excise, service Tax & VAT Authorities are getting a bird eye view of respective taxes penalty and other charges payable, how they are being paid and how much taxes are being recovered from ultimate consumers etc at company level.

Banks & Financial Institutions

Though at this juncture, Cost Audit Reports are not made available to Banks and Financial Institutions, Quantities Information, corresponding abridged Cost Statements and Operating Ratios are likely to become interesting data for such organizations.

Further, details of Financial Position & Ratio Analysis are also likely to help financial Institutions in lending and monitoring funds.

Share Holders

Though at this juncture, Cost Audit Reports are not made available to share holders, MCA has powers to ask the company to share a specific part of the cost audit Report to Share holders. Once such powers are exercised, share holders will also be able to taste the fruits of Cost Audit mechanism in India.



Cost Audit and Tax Authorities

CMA Narhar K. Nimkar.

The Ministry of Corporate Affairs has issued various notifications on the subject of Cost Audit and Compliance Certificate to be filed by the Companies covered under the criteria specified in these notifications. Cost Audit Report is prepared through different 11 paras. These paras contain various types of data and information which is compiled through various records maintained by the Company. The Cost Audit Report and Compliance Report are required to be prepared with reference to the product groups which are based on the Central Excise Tariff Classification of the manufactured products.

The Maintenance of Cost Accounting Records and Cost Audit have been prescribed in respect of companies engaged in Manufacture, Production, Processing, and Mining activities vide the Various Cost Accounting Records Rules 2011 and Cost Audit Report Rules 2011. The activities covered under Cost Accounting Records Rules and Cost Audit Report Rules are either covered under Central Excise or Service Tax. The entire mechanism of Cost Accounting Records and Cost Audit is based on the concept of Product Groupwise reporting.

The manufactured goods are classified as per 8 digit tariff classification. For the purpose of reporting in the Cost Audit Report and Compliance Certificate first 4 digits are referred as Product Group. For Service activities, the nomenclature as used in Finance Act / service tax rules, as applicable is referred to. Thus, it can be seen that the reporting format for Cost Audit and Cost compliance is closely linked with the Central Excise and Service Tax classification.

An attempt is being made to co-relate the various provisions contained in Central Excise Act and Rules thereunder and in the Finance Act with reference to Service tax provisions which have relevance in the Cost Audit Report. For the same reason, the importance of the Cost Audit Report to the Government authorities, particularly, the Central Excise and Service tax authorities is tremendous. Hence, the compilation of information in the Cost Audit Report must be done with due precaution and various other legal aspects must be looked into.

As per Rule 22(3) of the Central Excise Rules, 2002, every assessee shall, on demand, make available Cost Audit Reports to the officer empowered under sub rule (1) or the audit party deputed by the Commissioner. The Cost Audit Report contains vital quantitative and financial information relating to production, clearance, capacity utilization, related party transaction, reconciliation of taxes paid etc. This information is also demanded by the

Excise Audit Party for their EA2000 audit.

In the revised Schedule 6 to the Annual Report, the provisions relating to reporting various quantitative details viz. production, sale, installed capacity, quantitative consumption of major raw materials etc. are dispensed with. Therefore Cost Audit Report is the only authentic document which provides quantitative as well as financial details regarding production, clearance, stock etc.

The Annexures (Paras) to the Cost Audit Report help the excise auditors in comparing various information submitted by the assessee in various Excise Returns with the audited quantitative and financial details. On this background, the various paras which have relevance for tax authorities are explained below -

Para 1 - General Information

The general information disclosed in Para 1 relating name and address of the Company, address of Head Office, factory etc. is also called for by Excise auditors during their Desk Review process before actually commencing the audit.

Para 2 - Cost Accounting Policies

This Para contains information about cost accounting policy adopted by the Company particularly with reference to identification of Cost Centers, Cost Drivers, Material accounting, Allocation and Absorption of overheads, identification of Repairs and Maintenance Cost, Research and Development Cost, treatment for abnormal expenses etc. This para also explains the basis of inventory valuation, valuation of inter unit clearances, Accounting of by products, waste etc.

The Excise auditors can analyse this information and use the same for the purpose of their audit particularly disclosure relating to -

- a. Treatment for abnormal expenses given in Cost Accounts. Details of such abnormal expenses could be in the nature of theft of material, under utilization of capacity, services which are received by the Company which are not related to the existing business etc.
- b. Write off of Inventory. Abnormal Wastages in the manufacturing process, if any.
- c. Shortages reported in physical verification of Inventory.
- d. Whether valuation for Inter unit clearances has been done as per CAS-4 guidelines or not. Rule 8 of The Valuation Rules have specific provisions for

determining the assessable value for inter unit clearances on Cost + 10% basis. The CBEC has issued guidelines that such valuation has to be done as per CAS-4 issued by the Institute. Hence, the information relating to such inter unit clearances is readily available for analysis to the tax authorities.

- e. Treatment on non moving, obsolete parts - Rule 3(5B) of the Cenvat Credit Rules, 2004, provides that if inputs or capital goods, before being put to use, are written off fully or partly or any provision is made in books of account to write off fully or partially, the manufacturer or service provider is required to pay an "amount" equal to cenvat credit taken in respect of such inputs or capital goods. In case, the company has a policy to write off the value of inputs periodically on account of non moving nature of goods, the corresponding reversal cenvat credit should be confirmed.
- f. R&D Expenses - The disclosure relating to R&D expenses is analysed by the excise auditors, particularly, with reference to availment of Cenvat Credit on Inputs used in the R&D Activity. Since, the inputs used in R&D are not qualified for input credit, any such credit, if availed by the company, needs to be reversed.

All the above details are required to be dealt with by the Cost Auditor in details and the same are very much required by the Excise Auditors also.

Para 3 - Details of product groups and turnover

The information in this annexure is required to be submitted for the Company as a whole. Still the unitwise information can be compiled by the Excise Auditors for the purpose of their audit. This Annexure contains following information.

- Manufactured product group. The product group is linked with the nomenclature as per Central Excise Tariff Act 1985.
- Service Groups - for Service group, nomenclature as per Finance Act / Service Tax Rules is being used.
- Product group wise details of Trading Activities.
- Details of other Income.
- Net Sales (net of taxes and duties).
- The Total Income shown in this annexure should match with the income shown in the Profit & Loss A/

The information in this annexure is useful in Excise Audit as per the following-

1. Value reported in this Annexure may be compared with value disclosed in ER-1. This may not match with ER-1 always because of different methods of valuations adopted by the assessee, such as duty is paid on MRP, duty paid under specific duty rate method, invoices raised for retrospective price increase, rejections received back from customers, amortization of Tools, dies etc. received free of cost from customers etc. However, such reconciliation

between the two valuations has to be done to determine that there are no mistakes in disclosing the correct assessable value.

2. Amount shown in this Annexure in respect of service income should match with the value of taxable services shown in ST-3 Returns submitted by the assessee. Analysis and reasons for difference may help in finding non payment, short payment of service tax.
3. Details of trading activities are useful in verifying whether Cenvat credit is availed on traded goods if the traded goods are similar to inputs. Details of traded goods are also useful in verifying ratio used for reversal of Cenvat credit under Rule 6(3) of the Cenvat Credit Rules, 2004 since trading is considered as exempted service.
4. Details of other income may help in verifying the applicability of excise duty, service tax on it.

Para 4 - Capacity Utilisation

This annexure provides following Information, separately for each product group

- Capacity - installed, enhanced during the year, available through leasing arrangement, loan licenses, third parties.
- Actual Production under each category.
- Details of stock purchased for trading from indigenous sources and imports.
- Production as per excise records and observations on reconciliation with the production quantity shown in the Audit Report.

The information in this annexure is useful in comparing-

1. The assessee is required to file information in respect of Installed capacity in Form ER-7 annually. The auditors can compare the information disclosed in Para 4 and ER-7. Any reduction in Installed capacity due to sale of machinery can be cross verified with reversal of Cenvat Credit.
2. The quantitative information of production and sales as disclosed in Para 4 is very sensitive. Similar information is also disclosed in the monthly Returns ER-1. Any variation in these figures can be seriously viewed by the Excise Auditors as clandestine removal of finished goods without payment of excise duty.

Para 5 - Profitability of the product groups

Para 5 contains details of cost of production, cost of sales, profit/loss on goods sold. This Annexure is to be submitted separately for each product / activity group. This information is of utmost importance to the Excise auditors.

Usefulness in Excise Audit -

1. In case of goods captively consumed, Cost of Production can be compared with the same given in CAS-4 certificate by the assessee from time to time. The cost of production reported in CAS-4 certificate and in the Cost Audit report should match. If these

are different, the Excise auditors will proceed to recover the differential duty on the basis of difference in cost of production.

2. The comparison of cost details with the previous year may help in understanding the changes in cost composition and analyzing the reasons thereof.
3. When the product group is showing a loss, the excise auditor will definitely go into the micro level details and analyse the reasons for such loss. If the goods are consistently sold at loss, the authorities will try to fit the case in the logic of Market Penetration Theory as per the decision of the Supreme Court in the case of CCE vs Fiat India Pvt. Ltd.

Para 6 - Operating Ratios

This annexure contains operating ratio analysis in Tabular Format for each product group separately. The Ratios relating to Material Cost, Consumables, Repairs Cost are very critical. Any wide fluctuations in these ratios as compared to previous year, the excise auditors will call for explanation from the assessee. The detailed scrutiny of records based on such ratios may reveal abnormal wastages of inputs, booking of fake purchases, clandestine removal, if any etc. inviting penal proceedings.

Para 7 - Reconciliation of Profit / Loss

The information in this Annexure is to be reported for company as a whole. The annexure contains information about profit as per cost accounts, various incomes and expenses not considered for costing and reconciliation of profit as per cost accounts with profit before tax shown in the annual accounts of the company.

The detailed scrutiny of Other Income will determine the applicability of excise duty / service tax, if any, on these different heads. Information of Profit / Loss on sale of assets, expenses not considered in Costing Profit etc. can be cross verified by the excise auditors with appropriate reversal of cenvat credit.

Para 8 - Value Addition

The information in this annexure contains statement of value addition and distribution of earning for company as a whole. Value addition is to be computed based on audited financial data and not based on cost data. The information in this annexure is useful in comparing the ratio of payment of excise duty from Cenvat credit and PLA payment.

Para 9 - Financial Ratio Analysis

This Annexure contains information in respect of financial position and ratio analysis for the company as a whole. This information is referred to by the excise auditors for understanding the financial strengths and weaknesses of the business.

Para 10 - Related Party Transactions

This Annexure contains details of transactions with related party and is to be reported for the company as a whole. The information given in this Annexure is in line

with Accounting Standard AS-18 issued by the Institute of Chartered Accountants of India.

This information is very useful for the Excise auditors. They can verify the assessable value on which duty is paid in respect of clearances to related parties. If the assessable value is not appropriate with reference to Valuation Rules, there can be a case of short payment of duty. Also, in case of services received / provided to related parties, whether appropriate Service tax has been paid or not will be verified by the Excise Auditors.

Para 11 -Reconciliation of Indirect Taxes

This para is of utmost importance to the excise auditors. The information for the said Para is required to be given for company as a whole. Nevertheless, the same is useful for the excise auditor as the compilation of information has to be done Unit wise first and then consolidated. This Annexure contains information with respect to duties and taxes payable, duties and tax paid and recovered and also interest, penalties paid by the assessee.

The information in this annexure contains details of Assessable Value, Excise Duty payable, Service Tax payable, Cess payable and VAT and CST payable. The information about taxes and duties paid through Cenvat Input Account, Capital goods Account, Input Services Account and PLA is also shown in this Para along with Duties and Taxes recovered from customers and through Cenvat Credit. Recovery through Cenvat Credit represents Cenvat Credit availed under Inter unit clearances, refund sanctioned through Cenvat Credit, Service tax credit under Reverse Charge Mechanism etc. If the taxes/ duty paid are less than payable amount, it clearly shows short payment of duties and vice versa. Similarly, if the Taxes and duties recovered are less than taxes paid, the difference represents Taxes borne by the Company. However, if the taxes recovered are more than taxes paid, the excess amount will call for recovery under section 11D of the Central Excise Act. Hence, all these differences must be analysed in detail and the assessee must ensure that the taxes are not short paid and not recovered in excess.

The above information is being called for by the Excise Auditors in the past period also prior to the introduction of this para in Cost Audit Report. The assessee used to compile the same and reconcile it with financial records. However, this was a very critical and time consuming exercise for the assessee. The same information is now compiled for the purpose of Cost Audit and is readily available for the Excise Auditors.

Every figure shown in the Para 11 format can be cross verified with financial records and excise returns. Hence the assessee must ensure that these are properly reconciled and analysed. This analysis is beneficial to the assessee also as it will reveal cases of short and excess payment of duty, non recovery of taxes which could have been recovered etc. Analysis of difference between Assessable Value as per ER-1, as shown in Para 11 and as per financial records is very important and this must be done by the assessee to ensure that there is no short

payment of duty.

Cenvat credit cannot be utilized for payment of interest, penalty and fines. This aspect may be verified.

As regards service tax, the turnover of taxable services as per annual accounts and as per ST-3 Returns may be compared. This may be useful in finding short payment, non payment of service tax. The information with respect to service tax paid as a receiver of services may be used for ascertaining the tax liability under reverse charge mechanism. Cenvat credit cannot be utilized for payment of service tax under reverse charge mechanism. This aspect is verified by the Excise auditors.

To Conclude :

The Cost Audit Report and Financial statements contain very useful information to the tax authorities. As per the provisions of Rule 22(3), it is mandatory for the assessee to produce these records before the tax authorities on demand. Hence, the assessee must prepare all the information in the Cost Audit Report in due care. The Cost Auditor must also exercise sufficient checks and cross verify all the information with other records

maintained by the assessee. Since the Cost Audit Report is also signed by the Directors of the Company, any variation in the figures will call for penal action / explanations to the Tax Authorities and unwarranted litigations.

Even the other auditors / Investigating authorities under Income-tax and State VAT Act can use the Cost Audit report for their verification and audit.

Hence, it is advisable to do the Desk Review from the professionals / experts in the subject, before the same is compiled. This will be in the interest of the assessee only to ensure that the Compliance of various legal provisions has been done meticulously.

About the Author -

CMA N.K.Nimkar is a practicing Cost Accountant mainly working in the area of Indirect Taxes. He has industrial experience of more than 25 years. He is a regular faculty on the subject for various educational institutions. He has presented papers on various topics in seminars conducted by Pune Chapter of Cost Accountants, WIRC of ICAI and other institutes.



Cost Records - Need for Compliance Report

By **CMA Harshad S Deshpande,**

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The Companies Act, 1956 contains provision as regards to the maintenance of cost records as under Sec 209 (1) prescribes every company shall keep at its registered office proper books of account with respect to –

(d) in the case of a company pertaining to any class of companies **engaged in production, Processing, manufacturing or mining activities, such particulars relating to utilization of material or labour or to other items of cost as may be prescribed**, if such class of companies is required by the Central Government to include such particular in the books of account.

This definition specify that

1. It is applicable to class of companies who are engaged in Production, Processing, Manufacturing or Mining activities
2. Particulars as regards to utilisation of material or labour or other items of cost need to maintained which we commonly call as Cost Records
3. Records need to be maintained as may be prescribed. The Cost Accounting Record Rules specifies the records and format thereof.

Government used to specify the Cost Records to be maintained in the form of Cost Accounting Records Rules.

These Cost Accounting Records Rules were Industry specific and were designed considering the cost structure of the Industry. In the year 1965 first Cost Accounting Records Rules were introduced for Cement Industry. Thereon till 2002 around 42 Industries were added, the latest addition being Telecommunication in the 2002.

Hence those companies whose products were covered by these Cost Accounting Records Rules have to maintain the records as prescribed by the Industry specific Cost Accounting Records Rules of the respective Industry.

The CARO report issued by the Financial Auditor of the company contained the clause as regards whether the company has maintained the records or not.

It was being observed in many cases the companies were actually not maintaining the records as intended by the law. There was no check point as to whether the company has maintained the cost records as required by Companies Act as the financial auditors used make suitable disclaimer. It was observed that many times records were not complete and not in the formats prescribed by the Rules. Since the records were not validated, the question of ownership and authentication were also raised.

Subsequently Government of India appointed Expert Group to review the mechanism of Cost Records and Cost Audit. It recommended structural reforms in the mechanism as under.

The Expert Group recommended that

- that individual Cost Accounting Records Rules (CARR) prescribing product wise formats for maintenance of cost records are not required. As such, necessary cost data should logically emanate from the same set of primary books of account and other accounting data/ records.
- that in order to enhance the competitiveness of the company, the term “class of companies” under the existing section 209(1)(d) of the Companies Act, 1956, should be considered at the company level rather than at the product level. This will facilitate focus shift to the enterprise governance. This would also remove the present anomaly of maintaining a separate set of cost records only for a particular “product” (as prescribed under the extant rules) of a multi-product company and not doing so for the rest of the products/ activities.
- that all companies (excluding the exempted categories), should maintain cost accounting records in respect of utilisation of materials, labour or other items of cost, as an integral part of books of account. However, in order to promote uniformity and consistency in the preparation and presentation of cost statements under different statutes and under WTO, it is also recommended that such cost accounting records should adhere to the cost accounting standards issued by ICWAI that have integrated, harmonized and standardized the generally accepted cost accounting principles and practices.
- that it should be the management’s prerogative to choose appropriate cost management framework. The Group also recommends that the Government, professional bodies and industry associations should play a pro-active role in promoting such competitiveness of India Inc. by undertaking sector-based competitiveness and benchmarking studies. The Group further recommends that ICWAI should undertake an exercise to suggest sector specific standard costs on priority basis.
- Based on the wide-spread opinion expressed by all categories of stakeholders to provide due flexibility to the companies to have a sound cost accounting framework, as also to reduce their compliance cost, the Expert Group recommended as under:

a. Maintenance of cost accounting records by the corporate sector should be shifted from the existing rule/format-based mechanism to a principle-based mechanism

having universal application.

b. Maintenance of cost accounting records by the corporate sector should be based on generally accepted cost accounting principles that have to be integrated, harmonized and standardized in the Cost Accounting Standards (CAS) to be issued by ICWAI in consultation with all stakeholders and in harmony with the Indian GAAP and Accounting Standards. The

Group has already made detailed recommendations in the relevant chapter on CAS.

c. As recommended by the Working Group, this may be done in a phased manner as under:

Phase-I:

No change in the existing provisions under section 209(1)(d) of the Companies Act, 1956 required.

In place of all the existing CARRs, single combined CARR should be notified.

Scope of CARR should cover all companies (except the micro & small companies) engaged in the production, processing, manufacturing or mining activities.

Phase-II:

No change in the existing provisions under section 209(1)(d) of the Companies Act, 1956 required.

All the Cost Accounting Standards issued by ICWAI should be adopted under the Companies Act, 1956 based on the recommendations of either the existing NACAS or a similar body to be set-up.

Single combined CARR as notified in Phase-I should be replaced with modified CARR containing adherence to the Cost Accounting Standards issued by ICWAI.

Phase-III:

The existing provisions under section 209(1)(d) of the Companies Act, 1956 should be amended as under:

Section 209(1)(d): Every company shall keep at its registered office proper books of account with respect to utilization of material or labour or to other items of cost as may be prescribed by the Central Government. The Central Government may, by notification in the

Official Gazette, exempt any company or class of companies from compliance with any of the requirements of section 209(1)(d), if in its opinion, it is necessary to grant the exemption in the public interest. Scope of CARR as notified in Phase-II above should cover all companies.

d. ICWAI should issue simplified format/proformae for preparation and presentation of requisite cost data/information for the benefit of industry & professional fraternity.

- that the existing provision of exemption to small scale

industrial undertakings, as defined in the Industries (Development and Regulation) Act, 1951 from the requirement of maintaining cost accounting records should be continued.

Considering the recommendations of the Expert Group, Ministry of Corporate Affairs (MCA) revised the Cost Accounting Records Rules. On 3rd June 2011 MCA notified The Companies (Cost Accounting Records) Rules 2011. These rules superseded the 36 Industry specific Cost Accounting Records Rules (CARRs) and only for 6 Industries Industry specific CARRs were prescribed.

New CARR also introduced concept of compliance Report so as to ensure the cost records intended by the Companies Act are maintained and available with the company. The limited portion of the Cost records is included in the format of the Compliance Report so as to ensure the completeness and accuracy of the cost records. Considering the confidentiality and sensitivity of the information, the submission of the records is required Product Group wise which is based on the excise chapter heading. This was really welcome move by MCA and Industry appreciated the same.

The key difference between old CARR and New CARR is summarised below:

Sr	Particulars	Old Rules	New Rules
1	Applicability	44 Industries	All industries
2	Format	Industry specific	Not prescribed
3	Efilling	No	Yes
4	Compliance Report	No	Yes
5	Authentication by Cost Accountant	No	Yes
6	Adoption by Board of Directors	No	Yes
7	Time limit for Compliance Report	Not prescribed	180 days
8	Periodicity of records	Not prescribed	Monthly/ Quarterly

The new CARR prescribes that the cost records shall be maintained in such manner so as to enable the company to exercise, as far as possible, control over the various operations and costs with a view to achieve optimum economies in utilization of resources. Hence purpose of the introducing this systems into Indian Corporates is to inculcate the Cost Competitiveness. So this systems in not only to COMPLY but to PERFORM.

Benefit to the companies:-

1. Costing Records and Analysis increases optimisation of profitability
2. Correct Performance Appraisal and Evaluation
3. Efficiency Measurement

4. Cost Control / reduction and Profit Maximisation
5. Accurate Accounting for Inventory, Consumption etc.
6. Arriving at Stage / process / Product wise Costing & Profitability.
7. Information for Decision Making & MIS
8. Better Corporate Governance
9. Transfer Pricing

Myths for Cost Records

1. Company is having sophisticated ERP or comprehensive accounting package so cost records are automatically maintained.

Reality- Many sophisticated ERPs do not reach to the level of Cost of Sales, Sales and Margin product wise. The reconciliation of Profit as per costing & Profit as per Finance is requirement of cot records. Hence even though base data can be extracted from the systems of the company, these records need to be pulled in the Cost Sheets format and Costing profit need to be reconciled with Financial profit. In case of Industries for which Industry specific CARRs are in force, the records need to be prepared in the formats prescribed under the said rules.

2. Since Compliance Report is required product group wise, there is no need to maintain product/activity-wise cost statements

Reality – The Company and the Cost Accountant certifying the cost records specifically certify that “Detailed unit-wise and product/activity-wise cost statements and schedules thereto in respect of the product groups/ activities are/are not kept in the company.”

3. The cost records is confidential information and need not be shared with any other agency

Reality – The cost records are part of Books of accounts as required under Companies Act. The cost records are duly approved by Board of Directors before it is submitted to MCA. Hence it becomes authenticate document of the company and can be demanded by Governmental authorities like ROC, Excise Authorities, Income Tax authorities. Hence co relation of cost records with other external agencies especially governmental agencies is very much required.

Hence the system of maintenance of Cost Records will be providing benefits to the various stakeholders including the Company, Government, Consumers etc. In the pursuit of excellence and in endeavour of India becoming superpower, Cost competitiveness is going to be key weapon. Hence this system needs to be nourished and given TOP priority. The day when India will be number one nation is not so far.

“The End is always happy; if it is not happy then it is not the end.....”

Cost Audit Mechanism and Transfer Pricing

Contributed by CS A Sekar

1.0 PARA 10 OF COMPANIES COST AUDIT REPORT RULES, 2011

1.1 In Para 10 of the Cost Audit Report Rules, 2011, the cost auditor appointed under Section 233B is required to report the details of Related Party Transactions for the company as a whole for the financial year covered in the cost audit.

1.2 The following details are required to be furnished with respect to each and every transaction with related party :-

- a) Serial No.
- b) Name of the Product / Service Group
- c) Nature of Transaction (Sale / Purchase etc.)
- d) Quantity
- e) Transfer Price
- d) Amount
- f) Normal Price
- g) Basis adopted to determine the Normal Price

1.3 It has been mentioned that the information is required to be given for the company as a whole.

1.4 The term “Related Party” has not been defined in the Rules. But companies have been following the concept of “Related Party” in accordance with the definition provided in AS (Accounting Standard) 18 for related parties.

1.5 In the nature of transaction, it is mentioned (Sale / Purchase etc.). The presence of the word “etc.” in the rules indicates a feeling of uncertainty in the minds of the draftsman as to what all transactions are to be included under this head. It has however been interpreted that even transactions relating to services in the nature of job work / sub-contracting / loan licensing are also covered.

1.6 Further, the term used in the rules is “Normal Price”. The term “Normal Price” has not been defined anywhere in the Companies Act or the rules. But it appears that the concept of “Normal Price” as emanating from the Central Excise Act applicable till 1st July 2000 is required to be followed, although the concept of “Transaction Value” replaced it. The concept of normal price prevailing till then is understood as the price of the goods at the time and place of removal in the course of wholesale trade when the goods are sold to unrelated parties.

1.7 Attention is also drawn to the following which is mentioned in Para 10 of the rules

(1) Details should be furnished for each sale / purchase

separately.

(2) Details of Related Party transactions without indicating the Normal Price and the basis thereof shall be considered as incomplete information.

1.8 It is obvious that it is the duty of the cost auditor to mention the basis adopted for determining the Normal Price. It may also be added that the rules notified in 2001 (which have now been superseded by the 2011 rules) required the cost auditors to mention in their report where price charged for related party transactions as defined in the respective Cost Accounting Records Rules is different from normal price, impact of such lower/higher price on margin of the product under reference. This requirement is missing from the 2011 rules and it has been interpreted in some quarters that what is not asked need not be reported specifically.

1.9 The reporting of this “Normal Price” acquires greater relevance in view of the recent Supreme Court Ruling in the Premier Automobiles case in which pricing below cost was followed and the contention of the excise authorities to levy the excise duty on the basis of “Normal Price” ie. Including the “manufacturing profit” element has been upheld. It may be argued that for the purpose of excise duty, it is the transaction value and the Central Excise Valuation Rules that will be relevant and not the concept of Normal Price.

2.0 TRANSFER PRICING

2.1 Background

A new twist in the recent years has been seen however in the administration of the Transfer Pricing regulations through the Income Tax Act, 1961. In the case of international transactions and Specified Domestic Transactions between Associated Enterprises (AE’s), if the price charged is different from the Arms’ Length Price (ALP) and such transfer price results in lowering the tax liability of the assessee, the tax authorities treat the difference between the ALP and the transfer price as the income of the assessee and tax the assessee accordingly.

Here the concept of “Associated Enterprises” (AE’s) and “Arms Length Price” (ALP) are relevant

2.2 Associated Enterprises

Section 92A of the Income Tax Act, 1961 defines the term “Associated Enterprise” in two parts.

The first part is covered by sub section 1, which states “For the purposes of this section and sections 92, 92B, 92C, 92D, 92E and 92F, “associated enterprise”, in

relation to another enterprise, means an enterprise—

- (a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
- (b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

The second part of the definition lists out the enterprises which would for the purpose of sub section 1 be deemed to be “associated enterprises”

Accordingly sub section 2 states “For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,

- (a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or
- (b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or
- (c) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or
- (d) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or
- (e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or
- (f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or
- (g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or
- (h) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one

enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or

- (i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or
- (j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or
- (k) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or
- (l) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or
- (m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

2.3 Connection between Associated Enterprise (AE) under Income Tax Act and Related Party under AS 18

2.3.1 As pointed out earlier, for the purpose of cost audit reporting in Para 10, the definition under AS 18 for related parties is followed

2.3.2 The Institute of Chartered Accountants of India has issued Accounting Standard (AS) 18 which deals with related party disclosures.

2.3.3 The requirements of AS 18 applies basically to financial statements of the reporting enterprise (including consolidated financial statements presented by a holding company). For this purpose, parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and / or operating decisions.

2.3.4 Accordingly, the standard deals with related party relationships described below :-

- (a) enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries);
- (b) associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture;

(c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;

(d) key management personnel and relatives of such personnel; and

(e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise.

2.3.5 In the context of this Standard, the following are deemed not to be related parties :

(a) two companies simply because they have a director in common, notwithstanding paragraph 3(d) or (e) above (unless the director is able to affect the policies of both companies in their mutual dealings);

(b) a single customer, supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence; and

(c) the parties listed below, in the course of their normal dealings with an enterprise by virtue only of those dealings (although they may circumscribe the freedom of action of the enterprise or participate in its decision-making process):

- (i) providers of finance;
- (ii) trade unions;
- (iii) public utilities;
- (iv) government departments and government agencies including government sponsored bodies.

2.3.6 It is to be noted that the essence of related party relationships as per Accounting Standard (AS) 18 is the ability to control the other party or exercise significant influence over the other party in making financial and / or operating decisions, arising out of the relationship. Further certain parties though having capacity to influence financial and / or operational decision making would not be called “Related Parties” as clearly outlined in the AS 18.

2.3.7 In the case of Associated Enterprise (AE) on the other hand, it is the right of fixation of price or some other important conditions relating to pricing, which becomes critical in determining whether an Enterprise is AE where the case does not fit in the clearly demarcated definition clauses. Though there are some overlaps between the two concepts, it is always possible that an entity may be a related party, but not an Associated Enterprise (AE) and conversely an enterprise may be AE, but may not be a related party. Thus the challenge is to apply the respective tests strictly for each of these concepts.

2.4 Arms' Length Price (ALP)

2.4.1 Section 92F(ii) of the Income Act, defines the arm's length price as a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions.

2.4.2 The Indian transfer pricing regulations have prescribed various methods of determining ALP and also the manner of determining the ALP as also the factors to be considered in such determination in such an elaborate manner that it has become a code by itself.

2.4.2 If one analyses the various methods of transfer pricing prescribed for determination of ALP, three of the five methods are directly or indirectly based on costs of the enterprise.

This is explained as follows:-

a) Cost plus Method (CPM) is basically a mark- up over costs

b) Transactional Net Margin Method (TNMM) requires working out the net margin of the international transactions. Now Net Margin is nothing but revenue minus costs, thus Net Margin is in reality a function of costs.

c) Profit Split Method (PSM) requires working out either the combined profits of the associated enterprises or the residual profits of the associate enterprises. In either case, costs enter the calculation

As regards the Comparable Uncontrolled Price (CUP) method as well as the Resale Price Maintenance (RPM), the costs of the enterprise which is being assessed continues to be in question. It is only when comparison is made with external price, the non-cost factors require adjustment.

2.5 Connection between ALP and Normal Price

2.5.1 The question then arises whether there is any connection between ALP and Normal Price. As explained earlier the concept of normal price as upheld in the excise laws has been the price charged to unrelated parties in the course of wholesale trade at the time and place of removal.

2.5.2 Certain important aspects in the concept of normal price are :-

- a) it is the price in the course of wholesale trade (which means if retail price is considered, backward working has to be carried out to arrive at the wholesale price)
- b) The time of removal – The price prevailing at the time of removal at the factory gate is considered relevant for determination of wholesale price
- c) Place of removal : For the purpose of Excise, the place of removal is the factory gate at which point the goods are removed by paying the duty
- d) Price charged to unrelated parties is to be considered.

2.5.3 The only similarity between the concept of “ALP” and “Normal Price” is that the price to be considered is the price which is charged to “Associated Enterprise” or to “related parties” is not regarded as ALP or Normal Price

2.5.4 The significant difference in the ALP and the Normal Price is that while the ALP is a price charged in uncontrolled conditions by parties dealing in arms’ length ie. What a willing buyer will pay to a willing seller in any market, whether wholesale or retail. Normal Price on the other hand is the price at the factory gate in the course of wholesale trade.

2.5.5 Perhaps the term to be used in Cost Audit Reporting should be “ALP” and not “Normal Price”,

3.0 RELEVANCE OF CMA IN TRANSFER PRICING

3.1 It is said that the CMA profession has missed the bus in about 12 years of development of the Transfer Pricing regulations. With effect from AY 2013-14, even Specified Domestic Transactions of value of Rs. 5 Crores or more in a financial year are covered by the Transfer Pricing regulations. The net of SDT basically covers the payments to parties covered by Section 40A(2)(b) of the Income Tax Act and all cases of inter unit transfers and profit linked deductions claimed in the Income Tax Act. The new requirement provides opportunity to the CMA profession as the determination of profit linked deductions and consequently determination of ALP presupposes application of costing principles.

3.2 Most of the Multinational Enterprises (MNE’s) (about 60% of international trade) recognize the importance of Cost and Management Accounting (CMA) and it is a reality that the CMA reports, though generally used for internal

management, form the basis for the strategic decisions taken by them both at the group level as well as at the entity level.

3.3 Further, it is well known that in the first instance, the onus of proof regarding the ALP is on the assessee enterprise. If the CMA reports form part of the structured documentation, it would constitute a solid evidence to support the enterprise and may actually help the enterprises in shifting the burden of proof on to the Assessing Officer / Transfer Pricing Officer.

3.4 It is understood that of late, there have been quite a few instances of companies obtaining certificate from practicing cost accountants for certifying the cost of the international transactions with the Associated Enterprises in order to confirm / support the basis of calculation of costs of the product / service and this in turn is relied upon as a basis to arrive at / confirm the determination of the ALP (already declared in the report of the accountant in Form 3CEB filed with the tax authorities).

3.5 With the requirement to mandatorily maintain Cost Accounting Records (CAR) for companies to whom the CAR rules are applicable, these companies anyway do maintain the cost records and are required to obtain cost compliance certificate from a practicing cost accountant every year. Thus for the future years, since the validated cost data and information would be available with the company well before the due date for filing the Form 3CEB (November 30 at present), the cost data and information arising therefrom can be relied upon to establish the cost base of the calculation and proactively determine the ALP instead of obtaining a back-up at the time of Transfer Pricing assessment proceedings. ■

Members' Meet

WIRC had arranged Members' Meet on Saturday, 5th October 2013 at Kohinoor Hall, Dadar.

CMA Ashish Thatte, Chairman WIRC and Past Presidents CMA Dhananjay Joshi and CMA V. V. Deodhar and Past Chairmen CMA N.S. Acharya, CMA Y. R. Doshi and also past Central Council Member CMA V. C. Kothari attended the meeting.

CMA Harshad Deshpande, Secretary-Pune Chapter welcomed the members and invited CMAs Ashish Thatte, Chairman-WIRC, Dhananjay Joshi, V. V. Deodhar and V. C. Kothari on the dais to lead the discussion.

The main agenda for discussion was regarding the proposed seminar on 25th October 2013, Cost Audit for Inclusive Growth. CMA Dhananjay Joshi briefed the members about the importance of the meeting and requested the members to attend in large numbers.

More than 60 Practising Cost Accountants from all over Mumbai attended the meeting.



Avoidance of Arrest & Provision of Bail in the Era of Indirect Taxation

by **CMA Ashok B. Nawal**

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Arrest & Bail in relation to offenses under Customs Act 1962, Central Excise Act 1944 and Finance Act 1994 (Service Tax) & Recovery Provisions were incorporated in this year's budget and in spite of protest from no. of sectors, Parliamentarian, without discussing any of the suggestion have passed the Finance Bill 2013 in the Lok Sabha and Rajya Sabha and Hon'ble President of India has also given the assent to the Finance Bill 2013 on 10.05.2013, thereby implementation of following proposals have become the law of the land through Finance Act 2013 and all amendments as suggested in Finance Bill 2013 have become effective from 10.05.2013.

• Who can be arrested?

If any information or suspicion w.r.t. violation of law is with the Proper Officer then following persons can be arrested:

Sr. no.	Type of persons	Who can be arrested
1	Proprietary Firm	Proprietor, any officer looking after customs, central excise, service tax.
2	Partnership Firm	Partners, any officer looking after customs, central excise, service tax.
3	HUF (Hindu Undivided Family)	Karta of the family, Members of the family, any officer looking after customs, central excise, service tax
4	LLP (Limited Liability Partnership)	Designated Partners, any officer irrespective of designation looking after customs, central excise, service tax.
5	Companies incorporated under Companies Act 1956 or Companies Act 2013	Chairman, Managing Director, Whole time Directors & any officer irrespective of designation looking after customs, central excise and service tax.
6	Trust	All trustees, any officer irrespective of designation looking after customs, central excise, service tax.
7	Co-operative Societies	Managing Committee members, any officer irrespective of designation looking after customs, central excise, service tax.

I will reproduce the related provisions of recovery through attachment or from third party and arrest & bail provisions as made effective from 10.05.2013:

1. Custom Act 1962

Section No./ Rule No.	Nature of Amendment	Amendment in Existing / New Provision	Author's Analysis
SEC 104 Arrest	Power to	Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under section 135 relating to- (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or (b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or	Alleged offences listed in a, b, c, d will be treated as cognizable offence and hence non-bailable though intension is good but considering existing bureaucracy it may be used as coercion, adverse collection drive and harassment.

Section No./ Rule No.	Nature of Amendment	Amendment in Existing / New Provision	Author's Analysis
		(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable. (7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable	
SEC 135	Monitory Limit for Duty evasion under Sec 135	When evasion or attempted evasion exceeding 50 Lakh or fraudulently availing drawback or exemption exceeding 50lakhs are liable for imprisonment upto 7 years with fine	Amount has been increased from 30 lakhs to 50 lakhs.

2. Central Excise Act 1944

Section No./ Rule No.	Nature of Amendment	Amendment in Existing / New Provision	Author's Analysis
Section 9	Offences and penalties.	Offences and penalties for contravention of Section 8, evasion of payment of duty, clandestine removal, possession of or dealing in transporting, depositing, skipping, concealing, selling etc. of the goods, which liable for confiscation, wrong availment & utilization of Cenvat credit, non-supply of information & documents or abetting for above, amounting to evasion more than 50 Lakhs imprisonment upto 7 years.	Earlier period of imprisonment has been extended from 3 years to 7 years.
Section 9A	Non-cognizable Offences	For the offences and penalties as mentioned above in Section 9, if the amount is upto 50 Lakhs, it is non-cognizable offence and if it exceeds 50 Lacs, it is cognizable offence & non-bailable.	Draconian provision, which will be used for undue collection of duty, coercion and harassment

3. Service Tax (Finance Act 1994)

Section No./ Rule No.	Nature of Amendment	Amendment in Existing / New Provision	Author's Analysis
78A	New Provision	"78A. Where a company has committed any of the following contraventions, namely:- (a) evasion of service tax; or (b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or (c) availment and utilization of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or (d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then any director, manager, secretary or other officer of such company, who at the time of such contravention was in	Director, manager, secretary or other officer of such company, who are looking after Service Tax function and conduct of the business will be held personally responsible for contravention and penalty upto one lakh rupees will be imposed on each of them.

		charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees."	
83	83. Application of certain provisions of Act 1 of 1944- The provisions of the following section of the 8 [Central Excise Act, 1944], as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise: - 9 [9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 10 (12E, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F)] 11 [35FF,] to 35O (both inclusive), 35Q, 12 [35R,] 36,36A,37A, 37B, 37C, 37D 13 [38A] and 40. 14 [83A Power of adjudication.	83. Application of certain provisions of Act 1 of 1944- The provisions of the following section of the 8 [Central Excise Act, 1944], as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:- 9 [9A (2), 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 10 (12E, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F)], 11 [35FF,] to 35O (both inclusive), 35Q, 12, [35R,] 36,36A,37A, 37B, 37C, 37D 13 [38A] and 40. 14 [83A Power of adjudication.	Offences under Section 9 will not be treated as Non-cognizable Offence for the purpose of taking the criminal action for violation of Service Tax. Section 9 covers offences and penalties for evasion of duty, wrong availment of Cenvat Credit, non-supply of information and attempting to commit the offences. These offences will be under Cognizable Offence, which is having prosecution provision.
89 (1)	89. Offences and Penalties.	"(i) in the case of an offence specified in clauses (a), (b) or (c) where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years: Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months; (ii) in the case of the offence specified in clause (d), where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to seven years: Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months; (iii) in the case of any other offences with imprisonment for a term, which may extend to one year."	For the offences covered under sub-section 89 (1) (a) knowingly evades the payment of service tax under this Chapter (b) avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or (c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; where amount exceeds fifty lakhs rupees, imprisonment for a term

			which may extend to three years For the offence covered under sec 89 (1) (d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to seven years. Department made stringent punishment for the offence covered under Sec 89 (1)(d).
89 (2)	(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to three years: Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than six months.	"(2) If any person is convicted of an offence punishable under- (a) clause (i) or clause (iii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to three years; (b) clause (ii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to seven years."	If evasion of duty is more than Rs. 50.00 Lacs when collected from the Recipient of the Service but not deposited, then imprisonment can be upto 7 years instead of 3 years for each subsequent offence
90	New Provision	"90. (1) An offence under clause (ii) of sub-section (1) of section 89 shall be cognizable. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences, except the offences specified in sub-section(1), shall be non-cognizable and bailable.	Offence under Section 89 (1) (i) is non-cognizable whereas offence under Section 89 (1) (ii) is cognizable and non-bailable, it means if amount is collected but not deposited and amount exceeds Rs. 50.00 Lacs, it is a cognizable non-bailable.
91	New Provision	91. (1) If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorize any officer of Central Excise, not below the rank of Superintendent of Central	Power to Arrest has been given to the Officers of Central Excise subject to authorization from the Commissioner of Central Excise. In case of non-cognizable offence, AC / DC have got powers of

		Excise, to arrest such person. (2) Where a person is arrested for any cognizable offence, every officer magistrate within twenty-four hours. (3) In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973. (4) All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests."	the Police Officer as well as granting Bail.
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Now, Department of Revenue have started implemented this provision and issued the following circulars :

1. Circular No. 38/2013-Customs dated 17.09.2013
2. Circular No. 974/08/2013-CX dated 17.09.2013
3. Circular 171/6/2013-Service Tax dated 17.09.2013

The above Board Circulars clarifies the instances when arrest to be made, how to grant the bail for non- cognizable offence, what should be done in case of cognizable offence, procedure for arrest post arrest formalities and reporting system thereafter.

I give below the analysis thereon :

Sr. no.	Particulars	Custom Act 1962	Central Excise Act 1944	Finance Act 1994 (Service Tax)
1	When arrest can be made and bail can be granted? (non - cognizable offence)	(a) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds Rs. 20 lakh. (b) In a case related to importation of trade goods (i.e. appraising cases) involving willful mis-declaration in description of goods/concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds Rs. 50 lakh. (c) import or export of any goods which have not been declared in accordance with the provisions of this	Offences and penalties for contravention of Section 8, evasion of payment of duty, clandestine removal, possession of or dealing in transporting, depositing, skipping, concealing, selling etc. of the goods, which liable for confiscation, wrong availment & utilization of Cenvat credit, non-supply of information & documents or abetting for above, amounting to evasion less than 50 lakhs.	For the offences covered under sub-section 89 (1) (a) knowingly evades the payment of service tax under this Chapter (b) avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or (c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information

		Act and the market price of which exceeds one crore rupees; or (d) Fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees.		supplied by him is true) supplies false information; For the offence covered under sec 89 (1) (d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to seven years. Department made stringent punishment for the offence covered under Sec 89 (1)(d).
2	When arrest can be made which is non- bailable and therefore handed over to nearest police station within 24 hrs? (cognizable offence)	(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or (b) prohibited goods notified under section 11 of the Customs Act, 1962 (as amended) which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135 of the Customs Act, 1962 (as amended); or (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees.	(i) evasion of the payment of any duty payable under this Act; (ii) Contravention of any of the provisions of this Act or the rules made there under in relation to credit of any duty allowed to be utilized towards payment of excise duty on final product. (iii) When amount exceeds to more than 50 lacs in (i) & (ii) above. Evasion of duty can be through (a) clandestine removal of manufactured goods; (b) removal of goods without declaring the correct assessable value and receiving a portion of sale price in cash which is in excess of invoice price and not accounted for in the books of account; (c) taking Cenvat Credit without the receiving the goods specified in the invoice; (d) taking Cenvat Credit on fake invoices; (e) Issuing Cenvatable invoices without delivering the goods specified in the said invoice.	If evasion of duty is more than Rs. 50.00 Lacs when collected from the Recipient of the Service but not deposited, then imprisonment can be upto 7 years instead of 3 years for each subsequent offence. where amount exceeds fifty lakhs rupees, imprisonment for a term which may extend to three years

3	When immediate arrest provision to be resorted?	(i) to ensure proper investigation of the offence; (ii) to prevent such person from absconding; (iii) cases involving organized smuggling of goods or evasion of customs duty by way of concealment; (iv) masterminds or key operators effecting proxy/benami imports/exports in the name of dummy or non-existent persons/ IECs, etc.	There is no provision of immediate arrest without permission of Commissioner in writing.	There is no provision of immediate arrest without permission of Commissioner in writing.
4	Whose permission should be taken for arrest?	Commissioner of Customs or Additional Director General	Commissioner	Commissioner / Assistant Commissioner
5	When permission of arrest can be granted?	After ensuring utmost care & caution and there is reason to believe based on information and suspicion that such person has committed an offence under the Act punishable under the sections 132 or 133 or 135 or 135A or 136 of the Customs Act, 1962.	After ensuring utmost care & caution and there is reason to believe based on information and suspicion that such person has committed an offence under the Act.	After ensuring utmost care & caution and there is reason to believe based on information and suspicion that such person has committed an offence under the Act.
6	Whether arrest memo to be given?	In accordance with Hon'ble Supreme Court India decision in the case of "D.K Basu vs. State of W.B." reported as 1997 (1) SCC 416, it has been held that:Quote 35. In addition to the statutory and constitutional requirements to which we have made a reference, we are of the view that it would be useful and effective to structure appropriate machinery for contemporaneous Recording and notification of all cases of arrest and detention to bring in. transparency and accountability. It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of at least one witness who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date and time of arrest shall be recorded in the memo which must also be counter signed by the arrestee. Unquote And therefore, it is the right of the arrestee to demand for the arrest memo before the arrest is made.		
7	What arrest memo should contain?	(a)brief facts of the case; (b)details of the person arrested; (c)list of evidence against the person; (d)relevant Section (s) of the Act or other laws attracted to the case and to the arrestee (e)the grounds of arrest must be explained to arrestee and this fact noted in the arrest memo; (f)a nominated person (as per details provided by arrestee) of the arrestee should be informed immediately and this fact also may be mentioned in the arrest memo; (g)the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to person arrested under proper acknowledgement; (h)a separate arrest memo has to be made and provided to each individual/ arrestee.		

8	What care should be taken after arrest?	<p>(i) Female offender should be arrested by or in the presence of woman Customs officers.</p> <p>(ii) Medical examination of an arrestee should be conducted by a medical officer in the service of Central or State Government and in case such medical officer is not available, by a registered medical practitioner soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case such female medical officer is not available, by a female registered medical practitioner.</p> <p>(iii) It shall be the duty of the person having the custody of an arrestee to take reasonable care of the health and safety of the arrestee.</p>		
9	What should be the post action of arrest?	<p>a) If arrest is made which is bailable, then bail bond to be taken from the arrestee. Amount of bail bond and surety for bailable offence should not be excessive. Conditions of the bail should be informed in writing to the arrestee and nominated person on telephone. Arrestee should be allowed to talk to the nominated person after fulfilling all the conditions, arrestee can be released immediately. If conditions are not fulfilled then, he should be produced before appropriate Magistrate, without unnecessary delay but within 24 hrs. or to the nearest police station for safe custody during night under proper challan and nominated person of the arrestee may be informed and to be produced before Magistrate on the next day,</p> <p>b) If the arrest is made for non bailable offence, then he should be handed over to the nearest police station with arrest memo with proper challan and after information to be given for the nominated person of the arrestee.</p>		
10	Where reporting of the arrest to be made?	<p>Arrest information to be sent by Chief Commissioner / DGRI to concerned member of CBEC within 24 hrs. of the arrest and monthly report of all person arrested in the zone should be sent by Chief Commissioner to DRI (HQ) in the prescribed format within 5th of subsequent month and to Anti-Smuggling Unit of CBEC by 10th of every month.</p>	<p>Arrest information to be sent by Chief Commissioner to Zonal Member in the prescribed report and monthly report of all persons arrested in the zone to be sent by Chief Commissioner to DGCEI (HQ) in prescribed format by 5th of subsequent month.</p>	<p>Commissioner / Assistant Commissioner should send the information of persons arrested to Chief Commissioner with copy of DGCEI (HQ) on the same day or next day.</p> <p>Chief Commissioner should send the report of each arrest to Zonal member within 24 hrs. of the arrest and also report monthly in the prescribed format to DGCEI (HQ) New Delhi, by 5th of subsequent month.</p>

It can be noted from the above information that arrest in the case of service tax cannot be made if amount involved is less than 50 lakhs whereas, in case of Central Excise and Customs, arrest can be made irrespective of amount involved in offences.

- How to avoid arrest? - Be Statutory Complaint through taking appropriate steps . Some of the steps has been given below :

I. Service Tax

Recently, Voluntary Compliance Encouragement Scheme is operative and therefore in the interest of self, one should introspect and check all the records from 01.10.2007 till 31.12.2012 and find out any errors & omissions and avail the benefit of the scheme and also implement for future.

Similarly, such exercise can be taken for finding any errors & omissions till date and pay voluntarily duty along with interest for the period 01.01.2013 onwards.

It is important to avail the benefit from this scheme and take the following steps:

1. Get all transactions scrutinized so as to ascertain correct service tax liability as a service provider and recipient of service where liability to pay service tax is on recipient of the service under reverse charge mechanism.
2. Scrutinize all the correspondence with Service Tax / Central Excise Department to ensure eligibility criteria.

3. Analyze all the SHOW CAUSE NOTICE received by such persons and ORDER - IN - ORIGINAL received by such person.
4. Arrange for the funds to the extent of 50% of the service tax liability stated in the declaration and pay the same before 31.12.2013 balance 50% to be paid on or before 30.06.2014. Otherwise it needs to be paid along with interest from 01.07.2014 till the date of payment. Needless to say, all payments to be made on or before 31.12.2014.
5. Submit the true declaration in the form VCES 1 along with detailed calculation in the form Part B of ST 3 return on or before 31.12.2013.
6. Obtain the acknowledgement in the form VCES 2 on submission of declaration.
7. Obtain discharge certificate from designated authority only after 100% payment of service tax liability and interest if applicable, i.e. if paid after 01.07.2014 but prior to 31.12.2014.
8. Avail cenvat credit on service tax liability if it is covered under definition of input services in case of service tax payment under reverse charge mechanism.
9. Issue subsidiary invoices under Rule 4 A for the payment of service tax on service recipient if possible, to minimize the loss.

It is important to note that, in the Era of Negative List of Services, all activities other than Negative List and goods & services, almost all activities are covered and hence it is mandatory to have built systems as well as periodical internal controls and checks.

There is a need to analyze the transaction with respect to:

- Purchase
- Sales
- Expenses
- Income
- Capital Expenditure and also analyze all expenditures and income from Source - Invoice / Debit Notes, Service Provider, Nature of Contract, Account Head.

Moreover, it is necessary to take the following actions:

- Creation of Matrix - Service Provider, Nature of Expense and A/c Head.
- Creation of New accounting codes.
- Standard Accounting Entries.
- Inter Group / Inter Unit Transaction Analysis.
- Identification of Transactions between Taxable Territory and Non Taxable Territory.
- Analysis of Transactions for Import of services and taxability in view of Place of Provision of Service Rules, 2012.
- Analysis of Transactions for Export of Service and taxability in view of Rule 6A of Service Tax Rules, 1994.
- Analysis of Ageing of Service Creditors and entitlement

of Cenvat Credit thereto.

- Aging Analysis of Service Debtors and decision of credit notes and adjustment of the service tax payment.
- Rebate of Service and Linkage with Input Services / Inputs].

It should be ongoing process and system to :

- Review of the Trial Balance and identification of the Accounts for further review and analysis of each transactions reflecting in Books of Accounts.
- Review of Contracts with various Service Providers including job-workers, WCT, transportation, etc.
- Review of each of the identified Accounts and the transactions there under.
- Review of the mechanism for availment of Service Tax Credit.
- Impart Continuous Training to the Accounts team and Indirect Tax team for implementation of the new system in the New Era of Negative List of Services.

II. Central Excise

It is observed that returns filed under Central Excise Law are hardly reconciled with Financial Accounts, Costing Records, MIS and ERP Systems.

Some of the key areas need reconciliation otherwise of issues may arise:

- Production
- Clearance vis-à-vis sales
- Stock
- Cenvat entitlement vis-à-vis availment
- Cenvat Utilization
- Cenvat Balance
- Duty payments
- Removal of inputs as such
- Removal of capital goods vis-à-vis Gross block
- ER-4/5/6/7 and quantitative details and disclosures to the notes to the Accounts, Cost Audit Report & Other Reports submitted to Other Statutory Authorities.

Similarly, following areas need constant review:

- Valuation of goods received from & sent to related party.
- Valuation of goods used for captive consumption or to related party, revision mechanism and reconciling with Cost Records.
- Stock transfer to & from units enjoying area based exemption.
- Applicability of exemption notifications & impact thereof on Cenvat under Rule 6 of Cenvat Credit Rules, 2004.
- Clearance under End Used based exemption notifications.
- Import / procurement under IGCRD.

It has been also observed lot of unnoticed irregularities like:

- Export Promotion Capital Goods Scheme - Unfulfilled Export Obligation
 - Installation Certificate and yearly report mandatory requirement.
 - Block wise export obligation to be fulfilled along with average export obligation.
 - On shortfall, demand of duty, interest and penalty.
 - Year wise export performance vis-à-vis export obligation get unnoticed and unreported and therefore liability is not provided.
- Export Promotion Scheme Like Focus Market Scheme, Focus Product Scheme, Market Linked Focus Product Scheme, Served From India Scheme, Vishesh Krishi And Gram Upay Yojana :
 - Entitlement vis-à-vis application and revenue recognition thereof
- Advance Authorization For Physical Exports And Deemed Exports
 - Adhoc Norms and ratification thereof, vis-à-vis actuals.
 - Quantity imported vis-à-vis quantity exported in a year / Excess imports or short exports and treatment in the books of accounts.
 - Violation of actual user condition.
 - Short consumption vis-à-vis SION and treatment thereof in the books of accounts.
 - Process of redemption and monitoring of open authorizations / licenses.
- Duty Free Import Authorization
 - Pre-export - same as Advance Authorization.
 - Post export - obtaining duty free scrip and realization thereof, vis-à-vis accounting treatment.
- EOU :
 - Conditions of notification for duty free import / indigenous procurement
 - Domestic Tariff Area Sale entitlement
 - Wastage Norms
 - Installation of capital goods
 - Non moving stock - more than 3 years
 - Subcontracting and fulfillments of its condition
 - NFE
 - Separate books of accounts including bank accounts vis-a-vis report in form 3CD for calculation of exempted profit.
 - Cenvat
 - ER-2 Returns reconciliation with books of account
- SEZ :
 - Authorized operations and procurement of goods and services
 - Returnable goods
 - Disposal to Domestic Tariff Area and rate of duties thereof
 - Service tax exemption vis-à-vis Exemption by way of refund

➤ GENERAL (FOR INTERNAL AUDIT AND CONTROL) :

- Export documentation, pre and post export formality.
- Proof of Export
- Bank Realization Certificate
- Recognition Status

III. Customs - Imports & Exports

Whenever importation or exportation is planned important factors like item description, conditions for imports or exports, tariff classification & description, description as per company master file as well as supplier's master file, relationship between importer & exporter, valuation and documentation, etc. are the key factors.

After November, 2011 Era of Self-Assessment started and accordingly, suitable changes to Section 17, 18, 46 & 50 of the Customs Act, 1962 has been made.

Key elements of Self-Assessment of imported / exported goods

- Description of goods
- Classification
- Levy of duty / Cess
- Nature of the goods
- Whether the notification benefit is conditional or other wise?
- Whether countervailing duty is applicable based on MRP?
- Whether anti-dumping duty or safeguard duty is applicable?
- Whether duty benefit is available under a Free Trade Agreement?
- Whether duty benefit is available as Project Import?
- Whether duty benefit is available under Export Promotion schemes?
- Valuation
- Import and export restrictions and licensing
- Compulsory Compliance Requirement (CCR)
- Selection of Export Promotion Schemes

It is important to understand the following information under the said regulation.

- a) 'audit' means examination of bills of entry, shipping bills, invoices, packing lists, import licences, books of account, and other records of transaction relating to imported and export goods, and may include inspection of goods at the premises, if available and where necessary, drawal of samples;
- b) 'books of account' includes ledgers, day-books, cash books, account-books and other accounts whether kept in the written or printed form and data stored on a floppy, disc, tape or any other form in electro-magnetic data storage device;
- c) 'premises' includes the place at which imported or export goods and connected books of account, records of transaction and other documents are ordinarily kept

by an importer or exporter, as the case may be, and his registered office or the premises indicated in his Importer Exporter Code (IEC) issued by the Ministry of Commerce and Industry and the places wherever the imported or export goods, as the case may be, are ordinarily kept;

Key Aspects	Check Points
Description of goods If (determination)	1) Check description of goods matches with ERP system / Store Accounting Systems, Purchase Orders, Brand, Grade, Specification. brand, grade and specifications are not properly declared value can be rejected under Rule 12 of Customs Valuation (determination of value of imported goods) Rules 2007. 2) The description should be generic based merely on description of the drawback schedule. It should provide descriptive and technical details of export / import goods.
Classification	1) General principle of classification is to match correct and complete description of goods with that of Custom Tariff Act. 2) Classification should be inconsonance with International Convention of Harmonized System of Nomenclature as made effective. 3) Product technical literature, application catalogues, certificate of analysis, in-house test report, sales invoices, composition of raw-material / intermediate goods, manufacturing of finished goods, using the raw-material / intermediate goods also will be subjected for audit for verifying import / export consignments.
Levy of duty/ Cess	Importer / Exporter are required to carefully verify whether their items of import / export is liable for any duties / cess and also ensure correct rate of duty considering the Notification issued under Section 25 of Customs Act, 1962.
Nature of the goods	While considering the Tariff Rate of Duty or Effective Rate of Duty, plain many of the language used in the Notification is to be taken to decide applicability of the Notification and should not be stretch to avail the benefit which is not intended in the Notification.
Quantity and Unit of Measurement	1) Quantity and unit of measurement as mentioned in the Bill of Entry or Shipping Bill at the time of import or export as the case may be should be the same and match with the books of accounts as mentioned above and all records manual or electronics, electronically maintained. 2) It has been observed that the quantity reported in system / books of accounts are different than that of reported in declaration made at the time of import /export and therefore such goods are liable for confiscation and there will be litigation and demands of duty, penalty and interest and fine in lieu of confiscation.
Whether the notification benefit is conditional or otherwise	Conditions applicable to the exemption of Notification to be fulfilled either Pre-Import Or Post-Import or Pre-Export Or Post-Export as the case may be. Since the audit will be conducted after one year it is easy to verify fulfillment of the conditions by the Customs Officers.
Whether countervailing duty is applicable base don MRP	1) Most of the times while clearing the goods the conditions of Notice No. 44 (RE 2000)/ 1997 -2002dt. 24/11/2000 not been strictly followed and the casual declarations are made. Since the goods will be available for inspection and audit proper declaration of MRP at the time of payment of CVD and affixing / printing of the label on the goods is the requirement under Legal Metrology Act and should be complied with. 2) Proper records to be kept for verification of MRP declared at the time of imports and the price list of such items otherwise unnecessary litigation will arise.
Whether anti-dumping duty or safeguard duty is applicable	1) Importer should closely examine the records like Bill of Lading / Air Way Bill, Country of Origin Certificate, Contract Copy, Sales Brochure and Catalogues, Invoices etc to ascertained manufacture - supplier or exporter, country of origin of imported goods, 2) Test Reports, Certificate of Analysis, Brochures and Catalogues, Sales Invoices will also be audited to ascertain the correctness of declaration and assessment of Anti-Dumping Duty and Safeguard Duty.
Whether duty benefit is available under a Free Trade Agreement	1) Importer needs to be confirming the Tariff Notification for the Rate of Duty applicable on specific goods imported under Free Trade Agreement with Japan, Korea, Singapore, Asian, Malaysia, Thailand, EU, Australia, New- Zealand, SAARC countries. 2) Importer needs to obtain necessary GSP as per countries specific Rules Of Origin and fulfill the conditions before claiming such benefits under the notification.
Whether duty benefit is available as Project Import:	If duty benefit under project import has been availed, then conditions of project import approvals needs to be fulfilled and proper documentation of installation and start-of commercial production needs to be complied with.
Whether duty benefit is available under Export Promotion schemes	1) If duty benefit is availed under various schemes under Chapter 3 of Foreign Trade Policy like SIS, FMS, FPS, MLFPS, Hi-Tech, SHIS, VKGUY etc. the script and utilization thereof needs to ensured even after imports. 2) Similarly if duty exemption benefit has been availed under Chapter 4 & 5 of Foreign Trade Policy then the records import / export and conditions of the authorization needs to be fulfilled and records should be available in the premises of importer / exporter and match with the requirement. 3) It has been observed that records of consumption either not maintained or do not match with Books of accounts / ERP system. Moreover the inputs mentioned in the SION are imported but not been utilized can be well verified from ERP system or Store Accounting Systems, Costing Systems, Bill of Material and Number of internal documents including designs and therefore proper care has to be taken to avoid litigations and allegations of mis-declaration or suppressions of facts which will result into confiscation of goods and such goods are not available during audit still it is liable for confiscation and redemption fine along with duty, interest and penalty will be applicable. 4) If goods are imported claiming exemption under Chapter 6 of Foreign Trade Policy i.e EOU / STPI / EHTP /BTP during audit fulfillment of conditions of the notification will be verified and therefore internal records should be in line with the conditions therein. 5) Product technical literature, application catalogues, certificate of analysis, in-house test report, sales invoices, composition of raw-material / intermediate goods, manufacturing of finished goods, using the raw-material / intermediate goods also will be subjected for audit for verifying import / export consignments and such consumptions also will be checked with declarations made at the time of making application with DGFT, declarations filed at the time import /export, and actual books of accounts including system reports / records.
Valuation	1) Importer / Exporter needs to declare the value in accordance with Section 14 of Customs Act, 1962 read with Customs Valuation (determination of valuation of imported goods) Rules 2007 /Customs Valuation (determination of value of export goods) Rules 2007.

	<p>2) The transactions with related parties needs to be declared correctly and value to be assess in terms of (1) above. Most of the time it has been observed that declarations and facts made before adjudicating officer while fixation of value by SVB /GATT Cell are different and therefore the said order may not be valid and hence it has to be ensured if facts are different then it has to be brought to notice before SVB Cell otherwise value can be rejected at the time of audit also.</p> <p>3) Importer / Exporter has to be aware of the Data Bank of recent imports and the prices thereof so as to determine identical value / similar value / deductive value / computed value otherwise there may be possibility during audit to determine value based on the principles of residual method and differential duty interest penalty may be demanded. Under the self-assessment onus of determining the correct value in sequential method and providing evidence has been shifted on the importer from custom offices.</p> <p>4) When exports are made under various export promotion schemes or exemption schemes or remission schemes then it is utmost important to declare correct FOB value in accordance with Rule 3 of Export Valuation Rules 2007.</p> <p>5) If exports are made to the related party then onus will be on exporter that price will not influence due to relationship otherwise exporter has to provide the evidences of determining the value sequentially in terms of Rule 4, 5 / 6 of Export Valuation Rules, 2007</p> <p>6) The export value declared on excise return i.e ER- 1 / ER-2 should be matched with / reconcile with Shipping Bill, Bank Realization Certificate, Books of Accounts, Notes to Accounts.</p> <p>7) Exporter needs to take due care while filing the declaration which should be accurate, true and complete.</p> <p>8) In case of High Sea Sales transactions value as accounted and received from buyer will be also subject for audit.</p> <p>9) The cost of pre-goods and services in accordance with Rule 9 can be verified from the books of account, similarly treatment of royalty, technical know-how, discounts, payment / receipts in foreign exchange various agreements and contracts will be subjected to audit for verification of value declared at the time of self-assessment.</p>
Import and export restrictions and licensing	<p>1) Under Section 2 (33) of the Customs Act prohibited goods are defined and such goods either should not be imported or exported. In accordance with Section 111 (d) Section 113 (d) such goods are liable for confiscation and also the importer / exporter is liable for imprisonment.</p> <p>2) The goods covered under prohibited / restricted goods should be under licensing provisions and conditions to be strictly fulfilled.</p>
Compulsory Compliance Requirement (CCR)	<p>During audit Custom Officer can verify the Compulsory Compliance Requirement as applicable under various laws as give below:</p> <ul style="list-style-type: none"> • Explosives Act, 1884 and Explosive Rules, 1983. • Live Stock Importation Act, 1898. • Drugs and Cosmetics Act, 1940 and Drug and Cosmetics Rules, 1945 • Copyright Act, 1957 and Copyright Rules, 1958 • Arms Act, 1959. • Atomic Energy Act, 1962. • Insecticide Act, 1968. • Patents Act, 1970 and Patent Rules, 2003 • Wild Life Protection Act, 1972. • Gas Cylinder Rules, 1981 and S&MPV (Unfired) Rules, 1981. • Environment (Protection) Act, 1986 and Rules, 1986 • The Bureau of Indian Standards Act, 1986 and Rules, 1987 • Motor Vehicles Act, 1988 • Plants, Fruits and Seeds (Regulation of Import in to India) Order, 1989. • Trade Marks Act, 1999. • Hazardous Waste (Management and Handling) Rules, 2003. • Plant Quarantine (Regulation of Import Into India) Order, 2003. • Food Safety and Standards Act, 2006. • Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011

Importer /exporter needs to respond to the proactive system of building, trust and record base self-assessment system and audit thereof and therefore substantial change in operating procedures and practices of custom clearance of import /export consignments needs to be made and issues mentioned therein above needs to be addressed without any delay to avoid any litigation and payment of differential duty, interest, penalty and redemption fine in lieu confiscation

Most of time it is observed that, Custom House Agent (CHA) / Custom Broker signs on behalf of the importer / exporter with / without the authorization of importer / exporter and documents as mentioned above is either not available or available in the scattered form which will hamper the audit process and compliance

All such precautions as mentioned above are repeated in my earlier articles also but it was important to re-emphasize and ensure 100% statutory compliance through following actions :

- a) Study of existing system followed and take the corrective action to make full proof system
- b) Try to generate report through system (not excel, word, etc) and have the control checks
- c) Before payment of duty, ensuring concurrent audit and thereafter pay appropriate duty
- d) Preparation of monthly returns and reconcile the same with financial accounts before due date of submission
- e) Quarterly audit from independent person

If above actions are followed, then there is almost zero possibility of arrest and any person can avoid the arrest through ensuring the above steps.



SERVICE TAX: Take Benefit of VCES before 2013 ends

CMA Dr. Niranjana Shastri (Treasurer & Ex Chairman Indore-Dewas Chapter)

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1. INTRODUCTION:

According to Budget Speech of Hon. Finance Minister 60% of the registered service providers do not file their service tax returns. Looking into this scenario, it was very important to motivate those who could not pay proper service tax due to some or other reasons and became defaulters. Thus to encourage the regularization of persons who became defaulters of Service tax under chapter V of the Finance Act 1994, Voluntary Compliance Encouragement Scheme (VCES) has been made effective from 10th May 2013 Vide Section 106 under Chapter VI of the Finance Act 2013

2. PERSONS TO BE BENEFITED:-

Following service providers/ tax payers/ assesses can take advantage of VCES: -

- Who have not filled their service tax returns;
- Who have stopped their service tax returns;
- Who have not made truthful declaration in their service tax returns;
- Who have not done even registration formalities as required under Rule 4 of the Service Tax Rules, if they do it now.

3. PERSONS NOT TO BE BENEFITED:-

Following tax payers/ assesses are not allowed to take advantage of VCES: -

- Who have been served any notice or order of determination under section 72, 73 or 73A of the Finance Act 1994.
- Who have furnished return under section 70 of the Finance Act 1994 and disclosed true liability but could not dispose the same with respect to period covered under the said return.
- Who are subject to audit initiated against them but pending as on 1st day of March 2013.
- Who are required to produce books of accounts or other documents under any provision of the Finance Act 1994 or rules made thereunder and the enquiry/ investigation is pending as on 1st day of March 2013.
- Who are required to undergo search of premises under section 82 of the Finance Act 1994 and investigation is pending as on 1st day of March 2013.
- Who have been issued summons under section 14 of the Central Excise Act, 1944 and enquiry / investigation is pending as on 1st day of March 2013

4. BENEFITS & RELEVANT PERIOD:

The persons eligible to take benefit under VCES can do in respect of their tax dues pertaining to period starting from 1st October 2007 and ending on 31st

December 2012. The person making truthful declaration will be granted waiver of interest, penalty and other proceedings. This waiver is extended to even late fee/ penalty applicable in respect of no doing registration formalities in due course of time.

5. PROCEDURE TO AVAIL BENEFITS:-

Following procedure is to be adopted by eligible persons for taking advantage of VCES: -

- Make a truthful declaration under form number VCES-1 anytime on or before 31st December 2013 to the designated authority who should be an officer not below the rank of Assistant Commissioner of Central Excise.
- Get acknowledgement of declaration under form number VCES-2 within 7 days.
- Pay 50% dues before 31st December 2013.
- Pay remaining dues before 30th June 2014 without interest.
- Tax paid as above will not be refundable in any case.
- As per rule 6 of VCES no CENVAT credit shall be utilized for payment of these dues.
- Get acknowledgement of discharge of total dues under form number VCES-3 within 7 days from the date of furnishing information of payment of dues in full. After this declaration under VCES will attain finality and shall get conclusive status.

6. CONSEQUENCES OF NON-COMPLIANCE :-

Following are the consequences of non compliance under VCES: -

- Charge of Interest if payment of dues is not made within deadlines mentioned in point number 5 (c) & (d) supra but payment is made on or before 31st December 2014.
- Initiation of recovery process for dues as if dues of land revenue if payment of dues is not made till December 2014.
- Withdrawal of all the waivers if declaration is found untruthful or payment is not made till December 2014.
- Serving of notice to the concerned person if the Commissioner of Central Excise has reasons to believe that declaration made under VCES was substantially false. However no such action can be taken after the expiry of one year from the date of such declaration.

Disclaimer: This article is based on VCES 2013 as introduced by Finance Act 2013 and is written purely with knowledge dissemination purpose. The author does not own any responsibility for any error or omission which might have crept in inadvertently. ■



Balanced Score Card Over Tqm: Sme

by **Indraneel Sen Gupta**

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Master of Economics, MBA in International Management

In my research I find that there is a miss conception that management principles and policies can only be adopted by large organization since they are too big for failing. But I hold an opposite thought where SME who are the biggest future leaders should adopt the principles. These management principles would help the SME to grow his business. Bankers and stake holders always prefer companies with the highest principles and standards. In my research I find that most of the companies thrive to get ISO 9000 certification.

Well ISO 9000 is the family of standards is related to quality management systems and designed to help organizations ensure that they meet the needs of customers and other stakeholders, while meeting statutory and regulatory requirements related to the product. The standards are published by ISO, the International Organization for Standardization, and available through National standards bodies. ISO 9000 deals with the fundamentals of quality management systems, including the eight management principles on which the family of standards is based. ISO 9001 deals with the requirements that organizations wishing to meet the standard have to fulfill.

In my research I find that SME business segment needs to go for ISO 9000 certification levels. But I find very few companies are in the race for the same. I find the implementation of balance score card in SME business segment linking it through total quality management would leads to a stupendous growth in the long term. In my research I find that there are couples of similarities between TQM and Balance score card. TQM looks for growth opportunities which will provide an end result to stakeholders of the organization. This one perfectly matches with the 'Financial Perspective' of the balance score card. TQM focuses on customer satisfaction employee empowerment which reflects the management style. In Balance score card we find that customer and employee perspective deals with advanced level of expertise which is linked with the internal control process.

Overall TQM focuses to improve poor company performance if the company is not doing well. Balance score card designs a metric which would help to measure the same TQM principles but links them with advanced expertise of BS score board numbers. SME looks for better quality and better financial perspective which can be achieved if the SME adopts the balance score card metrics. TQM fails to identify the changing customer

expectations even for organizations seen to be doing well. Balanced score card works to be a genius in these terms.

It would help an SME to present his business and financial in a more constructive manner followed with better management principles. Bankers and stake holders would find more value based proposition of doing business when an SME adopts balanced score card strategies. Serious problems faced by the small business manager when trying to implement TQM 1) reduced training budget 2) owner/manager's lack of business experience and knowledge, and the shortage of financial and human resources required. Balanced score card helps to overcome both hindrances and design management road map followed with measurement metrics which would help the SME to grow his business in the initial days. SME should make a clear planning that at the least possible time they should go for the ISO 9000 certification. Since this hunger would lead them to focus more on sound business principles and practices which can be measured internationally by any one. Balanced score card is one of the such international standard which can be measured. ■

CEP & Seminar Report

WIRC organized Full day seminar on Companies Bill on Saturday, 14th September 2013 at PTVAs Institute of Management Studies, Vile Parle. CS Jagdish Ahuja, CS A. Sekar, CS Manoj Sonawala & Ms. Sweta Parwani were the speakers. CMA Ashish Thatte, Chairman WIRC was present on the occasion.

On 17th September & 19th September, WIRC organized CEP on Companies Act 2013 - Draft Rules at Mulund College & Borivli SMF Centers respectively. CMAs Aditya Umarji & Vaibhav Joshi lead the discussion.

On 28th September 2013, WIRC organized CEP on Costing & Free Trade Agreement at Borivli SMF Centre. Mr. Sudhakar S. Kasture, Director, Exim Institute was the speaker for the programme.



The Dilemma of Partly Notified Provisions of the New Company Legislation

CMA Jagdish Ahuja, ahuja.jag@gmail.com

The new Companies Act, 2013 (the new Act) which is expected to replace over 6 decade old existing legislation governing Indian companies, has become a buzz word today. The recent move on the part of Government notifying 98 sections of the new Act has created utter confusion amongst all concerned as there seems to be issue in the manner in which the part provisions of the new Act were notified. These notified sections seem to be pertaining to those provisions of the new Act which are not dependent on the Central Government rules in this regard. The new Act which received President Assent on 29th August 2013 comprise of 470 sections out of which 98 sections were notified on 12th September 2013. The provisions of the new Act are expected to be operational in a phased manner. Given below are my comments on the newly notified provisions.

Firstly, it is not clear what was the urgency in notifying these provisions at a time when only part of the draft rules issued by the Government was open for public comments. It would have been prudent on the part of the Government to notify once all the rules in this regard were finalised.

Secondly, Section 465 of the new Act which deals with repeal and savings was not notified due to which the whole of the Companies Act, 1956 is still in force and effect. This has resulted in utter confusion in corporate sector.

Thirdly, as a result of partial implementation of the new Act, one will need to comply with two sets of Companies Act for day to day compliance. Moreover, in some cases, the Government failed to notify sub-sections although main sections were notified which has resulted in additional confusion. For example, the provisions pertaining to public offer are notified with the exception of private placement provisions which are yet to be notified. The definition of Court under section 2(29) is notified with an exception of clause (iv) which deals with “special courts established under section 435” which is yet to be notified.

There is anomaly with respect to notified section 2(40) which deal with the definition of financial statement. It reads as follows: “financial statement in relation to company includes - (i) a balance sheet as at the end of financial year; (ii) a profit or loss account, or in case of a company carrying on any activity not for profit, an income and expenditure account for the financial year... and so on”. The readers are request to pay emphasis on the underlined words financial year which is defined under section 2(41) which is yet to be notified leading to utter confusion.

As per another notified Section 2(71), a public company is a company which is not a private company and which has a minimum paid up capital of RS 5 Lacs or such higher amount as may be prescribed. This definition also covers deemed public companies in as much as it includes private companies which are subsidiaries of public companies which part of the section is not notified for the reasons best know to the government.

Fourthly, as per the new definition of subsidiary company

u/s 2(87), even holding preference share capital in a company will now determine holding-sub subsidiary relationship giving rise to new breed of subsidiary companies overnight. *It may be note that under new definition of subsidiary company, where a holding company holds more than half of total share capital (as against total equity capital under the Companies Act 1956) of another company, such another company is treated as subsidiary of the former. This new category of holding companies will now be expected to take care of compliance such as consolidation of financial statements, etc. This is considered to be a direct hit for Private Equity investors whose preferred route of investment is preference share capital.*

Fifthly, the MCA has recently issued two separate clarifications one on 12th September and the other on 18th September announcing that the provisions of the old Act corresponding to the notified sections of the new Act have ceased to be effective (without formal repeal of the old provisions)

Since the definition of the term private company is already notified, it is clarified by MCA that “Registrar of Companies may register those Memorandum and Articles of Association received till 11.9.2013 as per the definition clause of the ‘private company’ under the Companies Act 1956 without referring to the definition of ‘private company’ under the “said Act”

It is not clear as to how far the above clarification of MCA is legally binding upon persons and entities covered under the new Act in the absence of any legal authority enjoyed by MCA in this regard.

Conclusion:

In my opinion, it would have been better on the part of the Government to notify the provisions of the Act once all the draft rules become final and are in place.

It is apprehended that the new Act has removed a number of privileges enjoyed by private companies under the 1956 Act. In practical terms, **private companies are now brought on par with public companies** and almost all exemptions given under the 1956 Act have been removed. For example, Section 180 of the new Act which deals with restrictions on the powers of the Board is now applicable to private and public companies alike whereas the corresponding section 293 of the 1956 Act was not applicable to private companies.

To conclude on the positive side, the new Act is characterized by measures such as corporate governance, investor protection, corporate social responsibility, curbing of frauds, etc. which is a pragmatic move and would help usher in a new era in line with the global standards on the matters such as disclosure requirements, increased democratic rights for shareholders, self regulations and accountability while also restraining management powers of promoters.

*Jagdish is a Mumbai based Company Secretary in Practice.

CHAPTER NEWS

BARODA

Office Bearers for 2013-14

CMA M.B. Kaka	Chairman
CMA R.K. Patel	Vice Chairman
CMA Y.S. Thakar	Secretary
CMA Bhavin Patel	Treasurer

BHOPAL

Awareness Programme on CMA Course

An awareness programme on CMA course was held at Subhas School for excellence on 07.09.2013. CMA Ritesh Sharma, and CMA. Ajay Singh Tomar, the Faculties of the Chapter made a presentation on the course contents, examination pattern etc of CMA Course. They also narrated the Career opportunities available before a Cost Accountant. There was a Question & Answer session after the presentation. About two hundred students participated in the programme. Ms. Sunita Saxena, Principal of the school appreciated the course curriculum and thanked Bhopal Chapter for organizing such a programme.

Soft Skills training for Inter Students

Soft Skills training for Inter Students have taken place at Bhopal Chapter. The training included two days' soft skills training on 15.09.2013 and 22.09.2013 and one day's group discussion. Ms. Aruna Shrivastava from Image Institute of Training & Development was the trainer to impart training on soft skills.

For group discussion, the students were divided into three groups and the group discussions were held on 19.09.2013, 20.09.2013 and 23.09.2013 respectively. CMA B L Malaganya, CMA Ajay Singh Tomar, CMA Shamim Akhtar Khan, CA Ritu Joshi, CMA Rakesh Mallik, CMA Saranya Krishnan and CMA Biswabandhu Mohapatra were the members of the Jury Panel that evaluated the performance of the participants of the Group discussions.

Modular Training for Final Qualified Students

Modular training of the Final Qualified Students has begun on 17.09.2013. CMA S. M. Ramanathan, Chairman of the Chapter was present on the Inaugural day and he delivered a lecture on Professional ethics. CMA Biswabandhu Mohapatra, Secretary of the Chapter was also present on this occasion. CMA Ritesh Sharma, Senior Faculty of the Chapter also delivered a lecture on the career avenues available along with the pros and cons. The training sessions were highly interactive and the students were sharing their concerns. The training module also contains sessions on prospects and challenges before a Practicing Cost Accountant. The training will end with the felicitation of the Qualified students.

ICMAT Seminar at Bhopal Chapter

ICMAT Seminar for the Final students enrolled for ICMAT training scheme has commenced on 29.09.2013. There will be four such Seminars covering various topics on Accounts, Audit, Finance, Management etc. The Faculties for these Seminars have been chosen from the senior executives working in various companies and the Practicing Cost Accountants. These Seminars are aimed at giving a practical exposure on the aforesaid topics.

INDORE-DEWAS

"Seminar on New Companies Act 2013"

A Seminar was jointly organized by Western India Regional Council & Indore Dewas Chapter of ICAI on "New Companies Act 2013" on 14th September 2013 at Hotel Fortune Landmark Indore. CMA Vijay P Joshi, Chairman PD Committee & Hon. Secretary - WIRC expressed the theme of Seminar.

CMA V. S. Datey & CS Dr. D. K. Jain were the resource persons for the seminar. Topics for discussion were linked with New Companies Act 2013.

CMA Sunil Singh (Chairman IDCCA) welcomed the guests. CMA Dr. Niranjana Shastri (Treasurer & Ex. Chairman) Introduced the Resource Persons. CMA Pankaj Raizada (Vice Chairman IDCCA) delivered Vote of Thanks. CMA Shailendra Jain (Hon. Secretary IDCCA) coordinated students' felicitation ceremony. Seminar was well attended by Members of ICMAI & ICSI, Industry Delegates & Industry Delegates from reputed companies.

Seminar was approved for 2 CEP hours.

Participation in Bharat Jago Daud

Students of Indore- Dewas Chapter of Cost Accountants have participated in "Bharat Jago Daud on 22/09/2013 organized at Indore. The event was conducted on commemoration of the 150th birth anniversary of Swami Vivekanand and his historic speech in Chicago. In this rally ICAI-IDCCA students run together with representatives of prestigious educational, social, charitable and professional institutions. The rally started from SGSITS and ended at Nehru Stadium Indore. This was a RUN FOR NATION rally organized by Swami Vivekanand birth committee throughout the state in order to spread the message of Swami Vivekanand.

PIMPRI - CHINCHWAD-Akurdi

Pimpri-Chinchwad-Akurdi Chapter (PCA Chapter) of ICAI has purchased independent building (CMA Bhavan) at Pimpri for PCA Chapter of ICAI.

CMA Bhavan at Pimpri will help PCA Chapter of ICAI to serve members and students more efficiently.

CEP Seminar on "Companies Act 2013"

The Pimpri-Chinchwad-Akurdi Chapter of the ICAI organized a seminar on "Companies Act 2013" on Saturday, September 21st 2013, at Chapter Office, Akurdi.

CMA Laxman Pawar, Chairman of the Chapter presided over the function. The guest speaker was CS Makarand Lele, Practicing Company Secretary and Member, WIRC of ICSI. CMA Pawar gave a brief introduction of the speaker to the audience, and welcomed him by presenting him a bouquet and memento.

In the technical session, CS Makarand Lele gave a brief overview of the major changes brought about by the new Act. The rules regarding Cost Audit was also covered in detail. The session was very interactive. It was well attended by members in practice and from industry. After the technical session, CMA Pradeep Deshpande, Secretary - PCA Chapter gave vote of thanks.

PUNE**CEP PROGRAMME HELD ON 14.09.2013 on “Limited Liability Partnerships”**

First Time in the history of Pune in recent past three professional bodies Pune Chapter of ICSI (Institute of Company Secretaries of India), Pune Branch of ICAI (Institute of Chartered Accountants of India) and Pune Chapter of ICAI (Institute of Cost Accountants of India) announced a free program for all professionals in association with Ministry of Corporate Affairs on Limited Liability Partnerships formation and tax benefits.

The Basic Idea behind the program is to have an understanding about formation of Limited Liability Partnership Firms (LLPs), Advantages of LLPs, Taxation aspects of LLPs and views of the Regulators on the same.

Eminent Faculties addressed the gathering and which was followed by Open House Question answer session with Regional Director and Registrar of Companies, officials Pune.

24 CMAs took part in this programme. Relevant photographs are attached separately.

SURAT-SOUTH GUJARAT

A full day seminar was jointly organized by the Corporate and Allied Laws Committee of ICAI & Surat South Gujarat Chapter of Cost Accountants on “Companies Act 2013 And Draft Rules on Companies Act 2013”, on 22nd September at Commerce Bhavan Auditorium, Sir K P College of Commerce Campus, Athwalines, Surat.

The seminar was very well conducted by CCM CMA Dr. PVS Jagan Mohan Rao, Chairman of Corporate and Allied Laws Committee of ICAI. He was accompanied by CMA Arun Kumar, Secretary of the said Committee. In the inaugural function after lighting of the lamp Chairman of the Chapter CMA Biswadev Chanda welcomed the speaker, Members, Students and invitees. He also briefed about the progress of the Chapters activity. CMA Dr. Heena Oza, Immediate Past Chairperson of the Chapter discussed twin aims of organizing the seminar as to get familiar with the new Companies Act 2013 and to seek suggestions from members on Draft Rules of the said Act.

The Companies Act 2013 and Draft Rules for Accounts and Corporate Social Responsibility under Companies Act 2013 were very ably and comprehensively covered by CMA Dr. Rao in the four technical sessions. In a very interactive style he discussed the over view of Companies Act 2013 giving major highlights and changes in the Act and relevance to CMA and would be CMAs’. He covered almost 100 sections of the new Act in a lucid and interesting manner.

CMA Dr. Rao covered in detail the Draft Rules for Accounts and CSR in an interactive mode asking for constructive suggestions to be made by the Institute. Most of the members present and final students made suggestions in the said Draft Rules.

Secretary of the Corporate and Allied Laws Committee of ICAI made a detailed note on various suggestions to be discussed at the Institute level.

The seminar concluded with formal vote of thanks

proposed by the vice chairman of the chapter CMA J T Parmar. The program was compeered by the Secretary of the Chapter CMA Dr Leena Painter.

Report On Interactive Session in The Surat South Gujarat Chapter of ICAI

An Interactive Session was organized for the students of Surat South Gujarat Chapter which was addressed by CCM CMA Dr. PVS Jagan Mohan Rao, Chairman, The Corporate and Allied Laws Committee (ICAI), on 21st September 2013. CMA Biswadev Chanda, Chairman of the chapter, CMA Dr Leena Painter, Secretary of the chapter and CMA Rakesh Verma, Auditor and member of the chapter were present for the session. Around 185 students were gathered to meet and interact with one of the eminent and learned leading professional of the institute. CMA Dr. Rao began the session with a live interaction with the students briefing them on the basics of Companies Act 1956, followed by the major amendments in the act via Companies Bill 2013. He explained the newly introduced concept of ‘One Member Company’ to the students. CMA Dr. Rao explained to the students the right way to attempt the question and the logical way to answer them in the examination which proved to be the major benefit of the session to the students.

Looking at the enthusiastic participation of the students, CMA Rao had an idea of having an ex-tempo debate competition for the participants. In the second half of the session all the students were divided into 9 teams. The topic for the debate was “Climatic Change and Role of CMA”. The teams were given 10 minutes for preparation. Each team was given 5 minutes for presentation. All the members of the team were invited on the stage and present their arguments. CMA Biswadev Chanda and CMA Rakesh Verma judged the teams on various aspects. One team was declared winner and another as runner-up team. All the members of both the winning teams were given prizes in the seminar. Also certificates were given to all the participants. The whole program was handled by CMA Dr Leena Painter.

CEP Programme on 01.09.2013

Ankleshwar facility center organized CEP Programme on the topic "Provision of New company Act 2013 and Practical aspects of Service Tax" at Sarvoday High School, Nr Jaldhara Chokdi GIDC Ankleshwar Distt :- Bharuch. The Speaker was CMA. Shailendra Saxena, Vice -President of Gujarat Borosil Ltd, Bharuch.

CMA Rajendra Rathi, Vice Chairman of Surat South Gujarat Chapter of ICAI welcome all the guest and Faculty.

Eminent faculty CMA Shailendra Saxena (CA, CMA & CS) shared his views on Provision of New Company Act 2013 with Comparison of Old Company Act 1956.

CMA Shailendra Saxena has Explained Legal aspects of Service tax provisions and Recent legal Controversies of Service tax followed by Question Answer Session.

CMAS. N. Mundara, CMA RA Mehta, CMA D.C. Gupta, CMA Anand Cherry and large number of members and Students have attended this programme.

Mr Rajesh Makwana Proposed a Vote of Thanks.



CS Makarand Lele addressing the audience during the seminar on “Companies Act 2013” organized by Pimpri-Chinchwad-Akurdi Chapter on 21st September 2013



Pimpri-Chinchwad-Akurdi Chapter (PCA Chapter) of ICAI - independent building (CMA Bhavan) at Pimpri for PCA Chapter of ICAI.



CA Ritu Joshi & CMA Shamim Akhtar Khan evaluating the performance of participants of the Group Discussion held at Bhopal Chapter on 20th September 2013



Ms. Aruna Shrivastava imparting training on Soft skills to Inter Students at Bhopal Chapter on 15th September 2013



CMAs Dr. Leena Painter, Dr. Heena Oza, Biswadev Chanda, Dr. PVS Jagan Mohan Rao, CCM & M. K. Desai Past Chairman WIRC during inauguration of the seminar on Companies Act - 2013 organized by Surat South Gujarat Chapter



View of audience during seminar on Companies Act 2013 organized by Surat South Gujarat Chapter



Felicitation of Mr.M.A. Kuvadia, Regional Director, Western Region, MCA at the hands of CA S.B.Zaware, CCM, Institute of Chartered Accountants of India during CEP on “Limited Liability Partnerships” held on 14.09.2013 at Pune



CMA Mrs. Madhuvanti Sathe being felicitated by CA Yashwant Kasar, Secretary, Pune Branch of WIRC of Institute of Chartered Accountants of India during CEP on “Limited Liability Partnerships” held on 14.09.2013 at Pune



Audience during CEP on “Limited Liability Partnerships” held on 14.09.2013 at Pune



CMA Shailendra Saxena addressing participants during CEP on Provision of Company Act 2013 held at Ankleshwar facility Center on 1st September 2013



The Institute of Cost Accountants of India

(Statutory Body under an Act of Parliament)

Western India Regional Council

We cordially invite you for
Full Day Symposium on

COST AUDIT FOR INCLUSIVE GROWTH

Inauguration : Mr Pawan K Ruia, Chairman, Ruia Group

Theme :

Cost Audit Mechanism is for inculcating cost competitiveness and sustainability of the corporates. It provides authenticated data to the various beneficiaries of Cost Audit. How Cost Audit contributes or can contribute more for the benefit of various stakeholders for the inclusive growth of Indian Economy.

Speakers :

People who matter, from Ministry of Corporate Affairs, other Ministries, Ministers from Central Govt. and State Govt., Members of Parliament and State Legislatures, Industry, Industry Associations, Government Departments, Direct and Indirect Tax Authorities, Banks and Financial Institutions, Regulators, Stock Exchange Authorities, Professional Institutions, Social Economists, Social Thinkers, Investor's Forums, Consumer's Forums, Journalists, etc.

Date : Friday, 25th October 2013.
Timing : 10.00 am to 04.30 pm
**Venue : Y. B. Chavan Auditorium, Next to Sachivalaya Gymkhana,
Gen. Jagannath Bhosle Road, Nariman Point, Mumbai 400021.**

Request to register with WIRC of ICAI
Tel. : 022-2204 3406 • E-mail : wirc@icmai.in
RSVP : Mr. Deshpande Cell +91- 9769272233

Program	
09.00 am to 10.00 am	Registration & Fellowship with Tea & Coffee
10.00 am to 11.30 am	Inauguration
11.30 am to 01.00 pm	Technical Session 1
01.00 pm to 01.45 pm	Lunch
01.45 pm to 03.15 pm	Technical Session 2
03.15 pm to 03.30 pm	Tea & Coffee Break
03.30 pm onwards	CMA Fraternity - Colloquy

*Note : We appreciate that you register your participation at the earliest since the **seats are limited** and it will help the organizers to make suitable arrangements.*

(Four CEP Credit Hours will be provided for CMAs)



To

If undelivered please return to:

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