



WIRC BULLETIN

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CMA Shrenik S. Shah

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CMA L. D. Pawar

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For Members only

December 2014

From the Desk of Chairman



Winter session started. Certain members have started creating heat which will definitely make warm environment but WIRC assures all the members that WIRC will bring number of events in this winter session for sharing of knowledge and improving our image. WIRC is making sincere efforts in improving the quality in all the lectures and inviting real experts in the

relevant field.

All CMAs are eagerly waiting of recommendation of expert group and change in amendment in Companies (Cost Records & Cost Audit) Rules 2014 and enhancing the scope of maintenance of Cost Records as well as Cost Audit Mechanism. President of our Institute have emphasize the need and highlighted the issues not only to the expert group but also to the Hon. Minister Shri. Arun Jaitely. All professionals and corporate world is waiting for introduction of Goods & Service Tax (GST). Hon. Minister Shri Arun Jaitelyji have assured to introduce GST w.e.f. 1st April 2016. We hope, Bill for making amendments in Constitution for the purpose of introduction of GST will be introduced in this winter session. Institute of Chartered Accountant has already issued background material on GST. I hope our institute should also be geared up for making suggestions and presentations on GST & provide necessary platform for CMAs in the Era of GST. Undoubtedly, there was the audit provision under Central Excise, Service tax as well as VAT in certain stage and therefore attempt should be made that opportunities to the Cost Accountants needs to be provided in the proposed Act itself.

WIRC is focusing on capacity building and therefore striving to share the expertise in various field. Last month there were a CEP programs conducted on the subject of SAP & Costing, ISO Certification and Role of CMA, Advance Excel and Overview of Credit Rating. WIRC has also arranged various seminars and activities in coordination with various chapters.

Navi Mumbai: Full Day Seminar was arranged on Service Tax and faculties like CMA V. S. Datey, CMA Amit Sarkar and myself have made the deliberations on the subjects.

Surat: Seminar was arranged on Role of CMA in Nation Building Vis a Vis "Make in India". CMA Rammohan Bhavne has deliberated on IFRS and I have explained provisions of Companies Act and Role of CMA in Companies Act 2013.

Raipur: Seminar was arranged on "Credible & Transparent Indian Economy - Contribution of Cost Accounting Profession". Vice Chancellor Shri. S. K. Pandey, Ravishankar University & Shri Sachidanand Joshi, Kushabhai Thakare Patrakarita Vishwa Vidyalyal, Shri G. T. Sharma, Bilaspur Vishwavidyalay, Dr. N. D. R. Chandra Bastar University and Mr. Lalit Surjan

from Deshbandhu, CMA Pradeep Kumar, Commissioner, Central Excise, Customs of Raipur have graced the occasion, CMA Sandeep Modi & CMA. Chandrakar, Mr. Manoj Dey, Ex-chairman, Chhattisgarh State Electricity Regulatory Commission have presented the papers on power sector. CMA. V. S. Datey and I have talked on simplification of Indirect Tax System in view of forthcoming GST. Professor Satyashiva Das from IIM Raipur excellently deliberated on improving the bottom line.

I really appreciate the efforts taken by CMA B. N. Sapkal, CMA Vivek Bhalerao & CMA Narayan Swamy of Navi Mumbai Chapter, CMA S. N. Mundra, CMA Rajendra Rathi, and CMA Nanty Shah & entire team of Surat-South-Gujrat Chapter for their excellent team work. I also appreciate the efforts of inviting Hon. Minister Shri Moriji. I extend my sincere thanks and appreciate efforts of CMA Samir Rakshit, CMA Arindam Goswami and CMA Ratan Kumar Khatwani, Office Bearers of Raipur Chapter for their contribution and also high media coverage.

WIRC has conducted two days training program for Central Excise & Service Tax Officers of Pune Commissionerate, CMA Dr. Sanjay Bhargave, CMA Manoj Behede, CMA Manoj Malpani, CMA Nanda Barde, CMA Suresh Singh and myself have given the in-depth training on Interfacing with Accounts, Tax Audit Report, Financial Audit Reports & Cost Audit Reports with Central Excise & Service Tax provisions and ER-1/ER-2/ST-3 and ER-4, ER-5, ER-6 & ER-7 Statutory Returns. The training was highly appreciated by all Central Excise officials. Similar training program is arranged at Kolhapur & Goa Commissionerate on 5th & 6th December 2014, where CMA Dr. Sanjay Bhargave, CMA V. S. Datey, CMA Dr. Anil Anikhindi, CMA Manoj Malpani and myself will be the faculties.

Forthcoming Events: We are planning to have CEPs on the subject such as Transfer Pricing and External Commercial Borrowings. Similarly we are also planning to have full day seminar on 27th December 2014 on "Excise, Service Tax & Customs - Search, Seizure and Investigation by DRI & Appeal & Adjudication Procedures" and another full day seminar on "Business Valuations & Financial Derivatives"

Regional Cost Conference 2014-15: RCC 2014-15 will be held on 16th & 17th January 2015 at Imperial Banquets, Raghuleela Mega Mall, Opp. Vashi Station, Navi Mumbai - 400 703. Detailed program has been given in this Bulletin. I invite all the members to participate in the said conference.

We are waiting for amendment in The Companies (Cost Record & Cost Audit) Rules 2014 and we are very hopeful of very positive result meeting all expectations. We assure you we will be arranging number of programs immediately after announcement of amendment.

We are focusing on capacity building of CMAs in various areas over & above Cost Audit & Cost Records and all attempts are

(Contd. to Page No. 3)

Glimpses of Full Day Workshop on Service Tax held on 15th November 2014 at Vashi, Navi Mumbai



Inaugural session



Dr. Umair Mir, Asst. Commissioner of Customs, Mumbai Zone I, inaugurating the workshop



CMA B. N. Sapkal



Felicitation of CMA A.B. Nawal



Felicitation of Dr. Umir Mir



Felicitation of CMA V.S. Datey



Felicitation of CMA Debasish Mitra



Felicitation of CMA Shrenik Shah



Dr. Umair Mir



CMA M K Narayanswamy



CMA G.K. Das



View of participants



Mock test conducted by WIRC



CMA Arun Karnik offering bouquet to CMA Nayana Savala during CEP on Advance Excel organized by WIRC.



View of audience during CEP on Advance Excel organized by WIRC on 22nd November 2014.

(Contd. from Page No. 1)

made to update and share the knowledge in various fields.

National Convention of Practicing Cost Accountants: This year National Convention of practicing Cost Accountants will be held in coordination with WIRC. CMA Dr. Sanjay Bhargava is the Chairman of National Convention Committee. The Convention will be in the month of February 2015.

Regional Student's Convention: WIRC have planned Regional Student's Convention. WIRC will arrange jointly with Ahmedabad Chapter of Cost Accountants on 7th February 2015 at Ahmedabad. I appeal all the students to actively participate in the forthcoming student's convention.

To conclude December'14, January'15 & February'15 will be full of knowledge pack in CEPs, One Day Seminar, Regional Cost Conference, and National Cost Convention at Hyderabad on 31st January 2015 & 1st February 2015. National Convention of Practicing Cost Accountants, Regional Student's Convention and other seminars after amendment in The Companies (Cost Records & Cost Audit) Rules 2014. We are

focusing only on professional development and capacity building.

I appeal all of you to take the benefit of above and also actively participate in the activities conducted by WIRC. We also appeal for positive suggestions for professional development.

Obituary: I lost my very good friend CMA Girish Kulkarni from Aurangabad, who was also Regional Council Member of Institute of Chartered Accountant. He was actively associated with even Aurangabad Chapter of Cost Accountants and always promoting Cost Accounting Professionals. Due to his untimely and sad demise, our profession has suffered great loss. We pray to give the strength to his family members to bear the loss and May soul rest in peace.

I really congratulate the co-brotherly hood exhibited by CMAs of Aurangabad and his friends at Pune. I appeal to all members to join benevolent fund of our Institute. It will definitely help to the family members.

CMA Ashok B. Nawal

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

WESTERN INDIA REGIONAL COUNCIL

announces

Seminar on Excise, Service Tax & Customs - Search, Seizure and Investigation by DRI & Appeal & Adjudication Procedures

Date	:	Saturday, 27th December 2014
Venue	:	WIRC Hall, Rohit Chambers, Fort, Mumbai 400 001.
Time	:	9.30 p.m. to 5.00 p.m.
Speaker	:	CMA H.R. Garg , Addl. Director, DRI Advocate Naresh Thacker , Economic Law Practice Advocate Deepthi Srivatsan , CMA A. B. Nawal , Chairman, WIRC of ICAI Mr. Yashodhan Wanage , Additional Director, Service Tax agreed to grace the occasion
Fees	:	Rs. 600/-

(4 CEP Credit hours will be provided)

**Kindly register your participation on
email id : wirc@icmai.in**

For Details Contact :

Western India Regional Council of ICAI

Rohit Chambers, 4th Floor, Jannabhoomi Marg, Fort, Mumbai 400 001.

Tel.: 2204 3406/16

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory Body under an Act of Parliament)

WESTERN INDIA REGIONAL COUNCIL

Jointly with

NAVI MUMBAI CHAPTER

are pleased to announce

REGIONAL COST CONVENTION 2015

Theme:

"Role of CMAs-Mission - Make in India"

: Sub Theme :

- * **Improving bottom line through improving cost competitiveness**
- * **Maximum governance and minimum government**
- * **Foundation of growth - Infrastructure**

16th & 17th JANUARY 2015

at Imperial Banquets, Raghuleela Mega Mall, Opp. Vashi Rly. Stn., Navi Mumbai

Dear Professionals,

We have immense pleasure in informing you that the Regional Cost Convention (RCC) is being organized by Western India Regional Council of The Institute of Cost Accountants of India on **16th & 17th January 2015** at **Imperial Banquets, Raghuleela Mega Mall, Opp. Vashi Station, Navi Mumbai 400 703**.

The theme is basically selected to support to achieve the dream of Hon. Prime Minister Narendrabhai Modi to promote "Make in India" brand. Manufacturing sector needs to be focused through which employment opportunities will grow and also there will be a tremendous growth of India. CMAs can contribute a lot for optimum utilization of resources, build the competitiveness, ensure maximum corporate Governance and good management practices and hence this seminar will help for capacity building and enhance their knowledge through expert speakers.

We solicit your participation along with your professional colleagues in good numbers and also earnestly request your support for sponsorships and advertisements for the event.

We are looking forward to your continued patronage and co-operation in making the convention constructive and memorable.

Assuring you an Enriching Experience

CMA A B Nawal
Chairman, WIRC of ICAI

CMA G.R. Paliwal
Convenor, RCC 2014-15 &
Vice Chairman of WIRC of ICAI

CMA Dinesh Birla
Co-ordinator, RCC 2014-15 &
Secretary of WIRC of ICAI

CMA Debasish Mitra
Co-Convenor of RCC 2014-15 &
Treasurer of WIRC, ICAI & Chairman,
Professional Development Committee

CMA B. N. Sapkal
Co-Convenor of RCC 2014-15 &
Chairman, Navi Mumbai
Chapter of Cost Accountants

Behind every successful Business Decision, there is always a CMA

THEME

The theme is basically selected to support to achieve the dream of Hon. Prime Minister Narendrabhai Modi to promote "Make in India" brand. Manufacturing sector needs to be focused through which employment opportunities will grow and also there will a tremendous growth of India. CMAs can contribute a lot for optimum utilization of resources, build the competitiveness, ensure maximum corporate Governance and good management practices and hence this seminar will help for capacity building and enhance their knowledge through expert speakers.

This Conference will have lot of Value additions to address the concerns of the Nation- namely, growth and productivity. With the clarion call given by the new Govt. to promote "Make in India" and "Maximum Governance and Minimum Govt." we feel that the take away from this Conference would be matters like better understanding and effective utilization of CMAs in the making of the Nation, Re-look and Re-learning on matters relating to growth, productivity and improving bottom line by Cost Control, Cost reduction and Cost effectiveness. The scope of CMAs in the expected boom in Infrastructure will be another major take away for the professional to gear up to seize the opportunity for the professionals opening up in a BIG way. In short, we are sure that participation in this programme will bring you immense benefit.

Inauguration :

- * Mr. Babul Supriyo, the Minister of State for Urban Development, Housing and Urban Poverty Alleviation Development
- * Shri Chandrakant Dada Patil, Minister of Co-operation, Marketing and Textiles, Public Works (Public upakramansaha)
- * CMA Dr. A.S. Durga Prasad, President, ICAI
- * CMA P. V. Bhattad, Vice President, ICAI

Valedictory Session :

- * Shri Eknathraoji Khadse - Revenue, Minority Development and Waqf, Agriculture, Pashusavardhana, Dairy & Fisheries, State Excise of State of Maharashtra
- * Shri Sudhir Mungattiwar - Minister of Finance, Planning & Forest Division of State of Maharashtra
- * Shri Prakashbhai Mehta - Industry & Mining, Parliamentary Affairs Division of State of Maharashtra
- * Shri Vinodji Tawde - Education & Sports, Higher & Technical Education, Medical Education, Marathi language, Cultural work Division of State of Maharashtra
- * CMA M. V. Tanksale, Chief Executive, Indian Bank Association. Icon of our Institute of Cost Accountants of India

** Awaiting confirmation*

Speakers :* **CMA Dr. P. C. Basu**

Dr. Paritosh Basu has served the corporate world for about thirty-four years. He was the Group Controller of Essar Group till June, 2013, preceded by the CFO of Reliance Communications Ltd. till August, 2008. Presently he is a full time Senior Professor (Finance Area) of the School of Business Management, the NMIMS University, Mumbai and engaged in many research and consulting activities.

He holds a Master degree in Commerce and was awarded Ph. D. on 'Transfer Pricing' by the Calcutta University in 1999. He is a fellow member of both the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India.

Dr. Basu's experience in MNCs spans over a wide spectrum of functional areas, across continents and countries:

- Corporate finance, treasury, strategic planning and controlling, accounting and reporting under IGAAP and IFRS, risk management, governance, management audit, etc. in MNC and conglomerate environment,
- Mergers and acquisitions, restructuring, IPO and listing in overseas and domestic stock exchanges, FCCBs and other overseas loan market transactions;
- Extensive IT enablement of operations, accounting and reporting with multiple systems development and integration. One of his software is presently under the process of patent registration in India and the USA; and
- Mentoring, learning management, teaching and training.

Dr. Basu is associated with management education for about twenty-five years. He was a regular visiting faculty member of the Indian Institute of Social Welfare & Business Management, Kolkata and NMIMS, Mumbai for about six years each.

* **Mr. Shailesh Gandhi**

MBA from IIM, Ahmedabad, Associate Professor, Indian Institute of Management at Ahmedabad. Having Vast experience with Institute of Rural Management, Anand, Rubamin Limited, AF Ferguson & Co, Baroda

* **CMA C. S. Adawadkar**

Practising Cost Accountant and also faculty member at Indsearch & other Management Institutes specialized in the field of Bench Marking, Activity based Costing & other management functions & advising to the corporates.

* **CMA Milind Date** - M.Com., FCMA, CMA (US), Dip IFRS (ACCA, UK),

- Certified Independent Director, Member of IOD, Having 25 years of industry exposure worked in different capacities in Praj Industries Ltd, Thermax, SKF Bearings, Boots Pharmaceuticals,

Mather and Platt in India and W.J. Towell, Endurance Technologies Private Ltd, Jumbo group in the Middle East and Management Consultant in the area of IFRS, Finance, Corporate Risk Management, Accounting, IT and costing

✱ **CMA Jayantt Manmadkar**

CFO, Mahindra Lifespace Developers Ltd.

- He is possessing highest professional qualifications i.e. CA, CMA & CS. He has worked at VIP Industries,

✱ **Mr. Jayesh Kariya**

Partner - International Tax & Regulatory, KPMG

- Specializing in tax and actively leading our overall initiatives in the Infrastructure & construction sector
- Advising on various taxation and regulatory matters to multinationals and large Indian corporations. I also head the real estate & construction practice across service lines on all India basis.

PROGRAMME SCHEDULE

Friday, 16th January 2015

From	To	Details
09.30 am	10.00 am	Registration & Inauguration
10.00 am	11.30 am	Inauguration Session
11.30 am	11.45 am	Tea/Coffee Break
11.45 am	01.45 pm	Technical Session I - Improving bottom line through improving cost competitiveness
01.45 pm	02.30 pm	Lunch Break
02.30 pm	05.00 pm	Technical Session II - Maximum governance and minimum government
05.00 pm	05.30 pm	Break
05.30 pm	07.00 pm	Chapters Meet
07.00 pm	10.00 pm	Cultural Programme and Conference Dinner

Saturday, 17th January 2015

From	To	Details
09.30 am	10.30 am	Technical Session III - Foundation of Growth - Infrastructure
10.30 am	10.45 am	Tea / Coffee Break
10.45 am	12.00 Noon	Technical Session III - Foundation of growth - Infrastructure
12.00 Noon	1.30 pm	Valedictory Session
1.30 pm		Networking Lunch

CHIEF PATRON : CMA Dr. A.S. Durga Prasad, President, ICAI

PATRON : CMA P.V. Bhattad, Vice President, ICAI

: Advisors :

CMA Aruna Soman, CCM-ICAI

CMA Dr. Sanjay Bhargave, CCM-ICAI

CMA Amit Apte, CCM-ICAI & CMA V. S. Datey

: Convener :

CMA G. R. Paliwal, Vice Chairman, WIRC of ICAI

: Co-Convener :

CMA Debashish Mitra, Chairman, Professional Development Committee

CMA B. N. Sapkal, Chairman, Navi Mumbai Chapter

: Co-ordinators :

CMA Dinesh Birla, Secretary of WIRC of ICAI

CMA Shrenik S Shah, RCM of WIRC of ICAI

: Reception Committee :

CMA Dinesh Birla, Chairman, CMA Vijay Joshi, CMA M.K. Narayanswamy,

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For Self Sponsored CMAs : Rs. 2,250/- • For Corporate Delegates : Rs.3,370/-

Cheque DD should be in favour of 'ICAI-WIRC' • Six CEP Credit hours will be provided

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: For Registration Please Contact :**Western India Regional Council of ICAI**

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Tel. :(022)27663013 • E.mail: navimumbai@icmai.in

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AUDIT OF SERVICE TAX - SAY NO TO DEPARTMENT

By **CMA Ashok B. Nawal**

Contact: +91 9890165001 • Email: nawal@bizsolindia.com

Whether Audit of Accounts can be conducted under the Finance Act 1994 by the Departmental Officers. Whether CERA / CAG Audit can be conducted at the premises of the assessee w.r.t. Service tax?

The controversy has been arisen after the judgment of Hon. High Court in the case of TRAVELITE (INDIA) Vs. UOI 2014-TIOL-1304-HC-DEL-ST. In view of the same, it is interesting to understand the provisions of the Act / Rules:

Audit under Service tax by Departmental Officers Audit Provision for Service Tax

The provision of conducting an audit is incorporated in Rule 5A of Service Tax Rules, 1994.

Rule 5A. Access to a registered premise

- (1) An officer authorized by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every assessee shall, on demand, make available to the officer authorized under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India within a reasonable time reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-
 - (i) the records as mentioned in sub-rule (2) of rule 5;
 - (ii) trial balance or its equivalent; and
 - (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961), for the scrutiny of the officer or audit party, as the case may be.]

The service Tax Rules are enacted by the Central Government under power given in section 94 of Finance Act. The preamble of the rules is as under

In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules for the purpose of the assessment and collection of Service Tax,

The section 94 of finance act delegates the power to the Central Government to make rules on the following subjects;

94. Power to make rules

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
 - (a) collection and recovery of service tax under sections 66 and 68;

- (aa) the determination of amount and value of taxable service under section 67;]
- (b) the time and manner and the form in which application for registration shall be made 2[under sub-sections (1) and (2) of section 69;]
- (c) the form, manner and frequency of the returns to be furnished under sub-sections (1) and (2) [and the late fee for delayed furnishing of return under sub-section (1) of section 70;]
- (cc) the manner of provisional attachment of property under sub-section (1) of section 73C;]
- (ccc) publication of name of any person and particulars relating to any proceeding under sub-section (1) of section 73D;]
- (d) the form in which appeal under section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;
- (e) the manner in which the memorandum of cross objections under sub-section (4) of section 86 may be verified;
- (eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a a taxable taxable service;]
- (eeee) the manner of recovery of any amount due to the Central Government under section 87;]
- (f) Provisions for determining export of taxable services;
- (g) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;
- (h) rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India;
- (hh) rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India under Section 93A;]
- (hhh) the date for determination of rate of service tax and the place of provision of taxable service 12"under section 66C";]
- (i) provide for the amount to be paid for compounding and the manner of compounding of offences;
- (j) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 as made applicable to service tax vide section 83.
- (k) any other matter which by this Chapter is to be or may be prescribed.

In the section 94 there is no provision in relating to conduct of an audit and the said section does not grant power to make rule w.r.t to manner &

conduct of audit of accounts by the Departmental officer, hence said rule 5A ultra vires to the Finance Act.

Therefore, Departmental Officer cannot conduct the audit of the assessee.

Similarly this view has been upheld by the Hon'ble HC Delhi in case of TRAVELITE (INDIA) Vs. UOI 2014-TIOL-1304-HC-DEL-ST.

Moreover, Department vide circular no. 986/10/2014-CX dated 09.10.2014 also clarified that based on the above judgment though departmental officers cannot conduct the audit of service tax but same is not applicable in case of central excise.

However,

Part-II: Audit by CERA / CAG:

Yes. Central Excise Revenue Audit (CERA) Team / CAG can conduct the audit at the premises of the assessee.

1. Section 16 of the Act of 1971 deals with audit of receipts of Union or States, reads as under:

"16. It shall be the duty of the Comptroller and Auditor-General to audit **all receipts which are payable into the Consolidated Fund** of India and of each State and of each Union Territory having a Legislative Assembly and to satisfy himself that the rules and procedures in that behalf designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and **to make for this purpose such examination of the accounts as he thinks fit and report thereon.**"

2. The expression "to audit all receipts" includes all the revenue of the government. Revenues like,

- Income Tax
- Other Direct Tax
- Indirect Tax like Central excise, Customs and Service tax.
- Fees / Revenue to be received allocation of assets like Coal Blocks, Spectrum etc.
- Disinvestment income

3. For the purpose of audit of receipts, the duty of the CAG extends "to such examination of the accounts as it thinks fit and report thereon".

4. Above reasoning is further re-enforced if we look at Section 18 of the Act, which deals with the powers of the CAG in connection with the audit of accounts, which reads as follows :-

"18. (1) The Comptroller and Auditor-General shall in connection with the performance of his duties under this Act, have authority -

- a) to inspect any office of accounts under the control of the Union or of a State including treasuries, and such offices responsible for the keeping of initial or subsidiary accounts, as submit accounts to him;
- b) to require that **any accounts, books, papers and other documents which deal with or form the basis of or an otherwise relevant to the transactions to which his duties in respect of audit extend**, shall be sent to such place as he may appoint for his inspection;

c) to put such questions or make such observations as he may consider necessary, to the person in charge of the office and to call for such information as he may require for the preparation of any account or report which it is his duty to prepare.

(2) The person in charge of any office or department, the accounts of which have to be inspected and audited by the Comptroller and Auditor-General, shall afford all facilities for such inspection and comply with requests for information in as complete a form as possible and with all reasonable expedition."

Section 18(1) (b) delegates the powers of the CAG to call for the books of accounts, papers and other documents which form the basis of various transactions to which his duties extend.

5. Section 16 of Act 56 of 1971 has to be understood in the light of Article 266 of the Constitution. Article 266 also uses the expression "all revenue receipts by the Government of India" which evidently includes income of the nation received. This also includes service tax.

6. Service tax is a "revenue received by the Government" within the meaning of Article 266 i.e. "a receipt payable into the Consolidated Fund of India" within the meaning of Section 16 of 1971 Act.

7. Revenue share receivable by the Union being a receipt payable into the Consolidated Fund" by virtue of Section 16 and 18(1)(b) of 1971 Act, in relation to such receipts, the CAG is entitled to seek the records maintained by the assessee.

This view has also been expressed by the Hon'ble Supreme Court in case of Association of Unified Teleservices & Ors Vs. UOI.

CBEC have clarified that:

"The statutory backing for rule 22 thus flows from clause (x) of section 37(2) and the general rule making powers under section 37(1) of the Central Excise Act, 1944. Clause (x) of section 37(2) empowers the Central Government to make rules for verification of records and returns to check the correctness of levy and collection of duty which in the present regime of self-assessment would mean verification of correctness of self-assessment and payment of duty by the assessee. It may be noted that the expression "verification" used in the section is of wide import and would include within its scope, audit by the Departmental officers, as the procedure prescribed for audit is essentially a procedure for verification mandated in the statute."

Whereas in terms of Section 83 of Finance Act 1994 as amended, [sub- section (2) of section 9A"], 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 7(12E, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F)], 8[35FF,] to 35O (both inclusive), 35Q, 9[35R,] 36, 36A, 37A, 37B, 37C, 37D 10[38A] and 40 of Central Excise Act 1944 have been made applicable to Service Tax also and Section 37 of Central Excise Act as referred in the board Circular is not applicable to Service tax and therefore Central Excise Officer can audit only the records to be maintained for Central Excise and not for service tax, but CERA / CAG Auditors can audit service tax records.

GST CORNER

By CMA Ashok B. Nawal

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Hon. Finance Minister Shri. Arun Jaitely has expressed that he will be introducing the bill for GST in current winter session and likely to chair state FMs meet on GST Constitutional Amendment Bill on December 11. The Centre, which proposes Cabinet nod for the bill after the meet, plans to table it the current session of Parliament. The Centre proposes subsuming entry tax into GST and a 'nil rate' on petroleum. It also proposes to separate GST compensation legislation. Tax rates, exemptions, threshold to be decided by GST council. States are yet to receive the latest draft of Constitutional Amendment Bill. It may be recalled that the revenue department had proposed Rs 16,000 crore as first the tranche of CST compensation. However, the current fiscal position may delay part CST payment in the Winter Session.

Let us review the progress so far made

Progress of GST	Sequential Event
2000	Empowered Committee was set up on GST
2002-04	Recommendation of unification of all state and Central Taxes by Task Force under the Chairmanship of Shri Vijay Kelkar
April 2007	CST Phase out started
May 2007	Joint Working Committee formed by SC
Nov 2007	Report of Joint Working Committee has been submitted
Feb 2008	First Announcement of Introduction of GST w.e.f. 01.04.2010
April 2008	Finalization of views of expert committee
July 2009	Commitment to implement GST w.e.f. 01.04.2010
Nov 2009	First discussion paper released
Dec 2009	Task Force Constituted by FC released the report
Feb 2010	Then Fin. Minister Pranab Mukherjee announced in the Budget Speech to introduce GST w.e.f. 01.04.2011
March 2011	115th Constitution amendment introduced in Parliament for levy of GST on Goods & Services except the specified groups.
March 2012	Model legislation of Centre and State GST in connect with State - drafting in progress.

2013	Core Committees were constituted by Empowered Group to deal with various aspects of work relating to the introduction of GST The Centre had decided to drop the declared goods list from the Bill, thereby, accommodating the States' demand to continue to allow States to levy taxes on the products
Till date	Hon. Finance Minister Shri Arun Jaitely committed to introduce GST w.e.f. 01.04.2016

Looking back, the Constitution Amendment Bill, 2011, tabled on 22nd March 2011, proposed the following amendments:

- Provisions dealing with a body to be set up as GST Council, its composition, powers and functions
- Powers of the Parliament to establish a GST Dispute Settlement Authority, in order to adjudicate disputes between the Centre and States
- Set out the GST net, while excluding certain petroleum products and alcoholic liquor.

But, many States were not agreeable on various aspects, some of which were:

- The compensation mechanism for Central Sales Tax (CST) was not being enshrined in the Constitution
- The design of the Dispute Settlement mechanism threatened to supplant the States' fiscal autonomy
- The subsuming of local levies within the GST net and associated revenue loss fears.

The Bill, though referred to the Parliamentary Standing Committee which made its recommendations after two years, met a fatal end, with it lapsing.

Based on information from various quarters (Centre, Empowered Committee of State Finance Ministers, etc.), the following may be the features of the redrafted Bill:

- Floor rate with a bandwidth within which the States can levy taxes
- The Revenue Neutral Rate (RNR) be fixed at 11% for the Centre and 12% for States totalling to an effective 23%
- Petrol and petroleum products are likely to be brought under the GST net at a nil rate of duty, thereby, giving flexibility to both the Centre and States to impose duties over and above GST
- A new voting pattern for the GST Council is proposed in the redrafted Bill under which the Centre will get a 1/3rd share in the voting rights. This will evidence the supremacy of the Centre as no decision will be

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झनोर गंधार
Jhanor Gandhar



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भारत की शक्ति

arrived at without the concurrence of the Centre. The proposed pattern will also mandate a quorum of 3/4th of the members of the Council.

Last year, the Centre had decided to drop the declared goods list from the Bill, thereby, accommodating the States' demand to continue to allow States to levy taxes on the products. However, there does not appear to be any recent development on this front.

It is understood that the Finance Ministry is in the process of preparing a Cabinet note on the Bill, and once the same is completed it will put to rest any speculation on this subject matter. In the backdrop of these developments the eagerness and determination to usher in this game-changing reform is a message the Government is strongly projecting and acting upon, even though there was a recent back and forth between Centre and States on the issue of threshold of annual turnover for levying GST; it seems that barring a few, most States are aligned with the Centre's proposal to set an annual threshold turnover at Rs. 25 lakh.

Industry and businesses must gear up and begin planning activities in order to brace themselves and prepare for GST. Even before a debate began on how exclusion of petroleum products and a high revenue neutral rate (RNR) among other regressive proposals could sully the image of the proposed Goods and Services Tax (GST), several major states had already impaired the structure of its precursor, the Value Added Tax. While experts vouch for the principles that must guide the GST/VAT design, namely levy at every transaction of businesses above a threshold and input tax credit for every buyer except the final consumer, these state governments have over the past few years violated them, almost recklessly.

The state VAT launched about a decade ago has been deprived of its ability to produce incremental economic growth. The states' policies that run contrary to the tenets of the VAT system began as they hiked tax rates by a quarter post-2009 when the Centre was still to withdraw a fiscal stimulus. The stimulus was meant to prevent a drastic fall in growth on the heels of the global economic crisis.

West Bengal Govt. has already raised major concern of the states regarding the goods and services tax (GST) rollout is "revenue loss" and the same is to be addressed.

CMA Sunilkumar Maniyar, Vice Chairman of the Chapter, CMA Neeraj Joshi, RCM-WIRC, CMA Dhananjay Joshi, Past President, ICAI, CMA Amit Apte, CCM-ICAI and CMA Vaibhav Argade Secretary of the Chapter during Half Day Seminar on "Costing MIS & Product Costing through SAP" organised by Aurangabad Chapter on 23rd November, 2014 Major challenge of the GST is the constitutions amendments and acceptability of various states considering their political agenda.

However, there will be no growth until GST is introduced. Let's hope GST is introduced w.e.f. 1st April 2016 and then only there will be a real growth in manufacturing and service sector.

Updated on Full day seminar on Service Tax workshop held at Navi Mumbai on 15th Nov. 2014.

Western India Regional Council jointly with Navi Mumbai Chapter organized a Full day workshop on Service Tax on 15th November 2014 at Navi Mumbai Sport Association, Vashi, Navi Mumbai.

Mr. Umar Mir Asst. Commissioner Service Tax, Division 5, was chief guest. CMA V. S. Datey - Well known author of Indirect Taxation, CMA Amit Sarkar - Sr. Consultant, Director, Indirect Taxes, Deloitte Touche Tohmatsu India Pvt. and CMA Ashok Nawal - Managing Director, Bizsolindia services Pvt Ltd. were speakers of the said full day workshop.

Mr. Umar Mir, at his speech discussed the importance of Service Tax and also discussed how the development of Indian economy depends upon the generation of Service Tax revenue.

CMA B. N. Sapkal - Chairman of the Navi Mumbai Chapter, discussed the chapter activities. He also informed that chapter conduct coaching class regularly and Continuing Education Programme on every 3rd Saturday at Modern Collage, Vashi. CMA Ashok Nawal - Chairman Western India Regional Council discussed the importance of the seminar on this subject. CMA Shernik Shah - Regional Council member also discussed the importance of Service Tax and it's contribution to the country's exchequer. CMA Debasish Mitra - Chairman Professional Development Committee, updated members on recent activities on Professional Development of WIRC. He also informed in details the forthcoming programmes to be held at WIRC.

CMA V. S. Datey discussed the constitutional background, definition of service, negative list in Service Tax etc. He also discussed elaborately on the declared and exempted list of Service Tax. In the second session CMA Amit Sarkar discussed at what point and place the Service Tax is to be levied. He also discussed Service Tax procedure, recent amendments in appellate procedures and other important provisions of the law. CMA Ashok Nawal at the last session of the workshop discussed the accounting controls for 100% statutory compliance for Service Tax and also informed certain recent important judgment relates to Service Tax.

CMA B. M. Sharma - Past President of the Institute was also present at the workshop. He advised WIRC to conduct this type of workshop regularly throughout the region, since regular updating of knowledge is very much required on this type of subject.

CMA M. K. Naryanswami - Vice chairman of the Navi Mumbai Chapter compared the full day programme. CMA G. K. Das - Secretary of the chapter, offered vote of thanks.

Validity of SCN issued by DGCEI asking Commissioner to adjudicate

CMA V. S. Datey



It is observed that in many cases, offences are investigated by office of Director General of Customs and Central Excise Intelligence (DGCEI). Show cause notice is issued by DGCEI and assessee is asked to reply to Commissioner of Central Excise. The Commissioner of Central Excise is required to adjudicate the case on the basis of show cause notice issued by DGCEI.

It is doubtful if such procedure of adjudication is valid. In my view, Notice issued by DGCEI but made answerable to Commissioner is void. The reasons for the same and issues involved are discussed in this Article.

1 Statutory Provisions

Provisions for issue of show cause notice and its adjudication are contained in both Central Excise and Service tax law.

Provisions in service tax law - Section 66B of Finance Act, 1994 w.e.f. 1-7-2012 (earlier section 66 of Finance Act, 1994), which is 'charging section' states that service tax shall be collected in such manner as may be prescribed.

'Prescribed' means prescribed by Rules made [section 65B(39) of Finance Act, 1994.

Rule 3 of Service Tax Rules empowers CBE&C to appoint Central Excise Officers to exercise powers under the Chapter V of Finance Act, 1994.

Section 73(1) of Finance Act, 1994 (which contains provisions relating to service tax), empowers the Central Excise Officer to serve notice demanding service tax short levied or short paid and then determine the tax payable.

As per section 73(1), the Central Excise Officer may serve notice on the person chargeable with service tax.

The Central Excise Officer obviously means who has jurisdiction over the assessee.

As per section 73(2) of the Finance Act, 1994, the Central Excise Officer shall, after considering the presentation, if any, made by the person on whom on whom notice is served under section 73(1) determine the amount of service tax due from him.

The section 73(2) use the term 'The Central Excise Officer' and not 'An Central Excise officer'. 'The' obviously means the Central Excise Officer who has issued the show cause notice under section 73(1) of the Finance Act, 1994.

Provisions in Central Excise - Section 3 of Central Excise Act (which is charging section) states that excise duty shall be collected in such manner as may be prescribed. Section 2(b) of Central Excise Act read with rule 3(1) of Central Excise Rules empowers CBE&C to confer powers on an officer of excise with powers of Central Excise Officer.

Section 11(1) of Central Excise Act authorizes Central Excise Officer empowered by CBE&C to levy such duty or require the payment of such sums, to commence recovery proceedings.

Section 11A(1) of Central Excise Act empowers the Central Excise Officer to serve show cause notice to person chargeable with duty.

Section 11A(10) of Central Excise Act states that the Central Excise Officer shall determine the amount of duty of excise due from such person.

The section 11A(10) use the term 'The Central Excise Officer' and not 'An Central Excise officer'. 'The' obviously means the Central Excise Officer who has issued the show cause notice under section 11A(1) of the Central Excise Act.

1.1 Departmental instructions

The aforesaid statutory provision has been reflected in departmental circular also.

Para 8 of CBE&C circular No. 752/68/2003-CX dated 1-10-2003 states as follows -

8. Regarding issue of show cause notices, it is clarified that in respect of all cases, whether or not fraud, collusion, wilful mis-statement, suppression of fact or contravention of Central Excise Act/Rules with intent to evade duty and/or where extended period has been invoked i.e. cases falling under any category (A), (B) or (C) of Para 3 above, the show cause notice shall be approved in writing and signed by the officer competent to adjudicate the said show cause notice. This instruction will come into effect prospectively i.e. from the date of issue of this Circular.

The same instructions have been reiterated vide Chapter 13 part I para 2.7 of CBE&C's excise Manual of Supplementary Instructions, 2005.

1.2 Adjudicating authority is required to apply his mind before issuing show cause notice

The reason for the aforesaid provision is quite clear that the adjudicating authority should apply his mind about prima facie case, before issuing show cause notice.

If the SCN is issued by DGCEI, the adjudicating authority has not even seen the notice, let alone applying his mind.

This procedure is completely against statutory provisions, the specific instructions of CBE&C and also against basic principles of natural justice.

1.3 Officer of DGCEI is authority to issue SCN if he is adjudicating the matter

Officer of DGCEI is 'Central Excise Officer', as per Notification No. 38/2001-CE(NT) dated 26-6-2001

Thus, he has powers to issue show cause notice. However, he can issue show cause notice only if he himself is going to adjudicate the case, in view of statutory provisions as well as departmental circular cited above.

2. Parallel Jurisdiction when one authority exercises jurisdiction

Since officer of DGCEI has been designated as Central Excise Officer having all India jurisdiction, it is clear that there are two authorities having parallel jurisdiction.

When there are two or more authorities having parallel jurisdiction, then when any one of them takes cognizance of the issue, jurisdiction of second and other authorities are eclipsed. This is theory of 'committee of courts'. - Pushpit Steels v. CC 2001(130) ELT 520 (CEGAT). [Otherwise, chaotic conditions will prevail]

In Orient Arts v. CC 2003 (155) ELT 168 (CEGAT), it was held that the theory of 'committee of courts' postulates that when there are two or more courts having parallel jurisdiction over the same matter, when one authority exercises its powers, jurisdiction of second and any other authority are deemed to be ousted. [In this case, it was held that when Commissioner of Customs has exercised his powers, Commissioner of Customs (Preventive) cannot exercise the powers, even if he has concurrent parallel jurisdiction - followed in Saraf Fabrics v. CC 2003 (157) ELT 62 (CESTAT).

3. Adjudicating authority should not adjudicate whether there is real likelihood of bias

Apart from the fact that the show cause notice is clearly against the statutory provisions and is void, and that when one authority has exercised jurisdiction, jurisdiction of other authority is deemed to have been ousted, another issue is that the adjudicating authority should not exercise jurisdiction where there is real likelihood of bias.

3.1 Officer in department of senior in organisational hierarchy cannot ask officer junior in organisational hierarchy to decide the case

The DGCEI is an all India body having jurisdiction all over India, while Commissioner of Central Excise is one of the various Commissioners of a limited area.

Thus, office of DGCEI which has all India jurisdiction is certainly superior to office of Commissioner in organisational hierarchy of the department.

In such case, there is reasonable ground to believe that the Commissioner is not likely to take an independent and unbiased view in the matter.

In view of the organisational hierarchy, the Commissioner who is in lower strata of authority is very much likely to be prejudiced to uphold the demand. He will be under tremendous psychological pressure to decide the matter in favour of revenue.

Thus, there is real likelihood of bias towards confirming the demand by Commissioner.

3.2 Justice should not only be done but should be seen to have been done

It is well settled that justice should not only be done but should also be done.

In this case, there is real likelihood of bias as department higher in organisational hierarchy is asking officer in a junior department to decide the matter.

In P K Ghosh v. J F Rajput - AIR 1996 SC 513 = (1995) 6 SCC 744, it was observed - 'A basic postulate of the rule of law is that 'justice should not only be done but it also must be seen to be done'.

3.3 Case law in respect of Real likelihood of bias

In following cases, it has been held that when there is real likelihood of bias, the authority should not decide the case.

In Rattan Lal Sharma v. Managing Committee 1993(4) SCC 10 = 1993 AIR SCW 2400 = AIR 1993 SC 2155, it was held that the test was one of 'real likelihood' of bias even if such bias was not in fact the direct cause. A real likelihood of bias means at least substantial possibility of bias. - - It is in this sense that it is often said that justice must not only be done but must also appear to be done. - quoted with approval in Badrinath v. Government of Tamil Nadu 2000 AIR SCW 3745, where it was held that plea of bias can be raised at appellate stage even if not raised during inquiry proceedings, as it goes to root of the question, if based on 'admitted and un-controverted facts'.

In P D Dinakaran (1) v. Judges Enquiry Committee (2011) 8 SCC 380, it was held that test of 'real likelihood of bias' and 'reasonable suspicion' should be applied. There is preference to 'real likelihood' over 'real suspicion' test in India.

In Kumaon Mandal Vikas Nigam Ltd. v. Girija S Pant AIR 2001 SC 24 = 2000 AIR SCW 3826 = (2001) 1 SCC 187, it was observed, 'Bias means and imply pre-disposition or prejudice. The test is as to whether there is mere apprehension of bias or there is real danger of bias. If there exists a real danger of bias, the administrative action cannot be sustained. If allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, tribunal or authority, question of declaring them unsustainable would not arise.

In State of Punjab v. V K Khanna (2001) 2 SCC 330 = 2000 AIR SCW 4472, it was held that there must be real danger of bias and not mere apprehension - quoted with approval in N K Bajpai v. UOI (2012) 4 SCC 653 = 35 STT 350 = 19 taxmann.com 178 = 278 ELT 3 (SC).

In Jindal Drugs v. UOI (2008) 223 ELT 561 (Bom HC DB), it was observed that adjudicator should be disinterested and unbiased. Actual existence of bias is not necessary. Test of bias is 'real likelihood of bias'.

The Courts have applied the test of real likelihood and reasonable suspicion of bias. The test is whether a reasonable man would, in the circumstance, infer that there is a real likelihood of bias or not - N K Bajpai v. UOI (2012) 4 SCC 653 = 35 STT 350 = 19 taxmann.com 178 = 278 ELT 3 (SC).

3.4 Practical experience

It is also practical experience that once show cause notice is issued by DGCEI, it is almost always confirmed by Commissioner, whatever may be the merits of the case.

4. Writ jurisdiction at show cause notice

There is ample case law that High Court should not interfere at the show cause stage and exercise writ powers.

It is consistent view of Supreme Court that the adjudicating authority should be allowed to decide the issue in normal course.

As a general rule, writ petition is not entertained by High Court when alternate remedy is available.

As an obvious corollary, if alternate remedy is not available, High Court can exercise its writ powers.

Interference of writ court at show cause stage - Normally, writ court should not interfere at the stage of issuance of show cause notice. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or if there is abuse of law, writ court would not hesitate to interfere at the stage of show cause notice. The interference at show cause notice stage should be rare and not in a routine manner - UOI v. Vicco Laboratories (2007) 13 SCC 270 = 218 ELT 647 (SC).

If the show cause notice is in excess of jurisdiction, writ powers can be exercised to save unnecessary harassment to the person concerned - East India Commercial Co. v. CC (1963) 3 SCR 338 = AIR 1962 SC 1893 = 13 ELT 1342 (SC) * N B Sanjana v. E S and W Mills - AIR 1971 SC 2039 = 1978 (2) ELT (J 339) (SC) = AIR 1961 SC 372 * Calcutta Discount Co. Ltd. v. ITO (1961) 41 ITR 191 (SC) = AIR 1961 SC 372 (Constitution Bench) * UOI v. Hindalco Industries 2003 AIR SCW 2062 = 135 STC 281 = 153 ELT 481 (SC) * Universal Cables Ltd. v. UOI - 1978 (2) ELT (J632) (MP HC) * Venlon Polyester v. CCE 1999(108) ELT 23 (Kar).

If the show cause notice issued is without jurisdiction, Court can interfere as the show cause notice itself cannot be sustained without any provision of law - State of UP v.

Anil Kumar Ramesh Chandra (2005) 11 SCC 451 = 145 STC 656 (SC) * Telco v. UOI - 1991 (52) ELT 500 (Bom HC), followed in S L Kirloskar v. UOI - 1993 (68) ELT 533 (Bom HC) same view in Hindustan Electro Graphites Ltd. v. UOI - 1990 (50) ELT 15 (MP HC) * Panama Chemical Works v. UOI - 1992 (62) ELT 241 (MP HC) * Jayant Vitamins Ltd. v. UOI - 1991 (53) ELT 278 (MP HC) * Godrej and Boyce Mfg. Co. (P.) Ltd. v. UOI - (1984) 18 ELT 172 (Bom HC) * Dr. Hemendra Surana v. State of Rajasthan - (1993) 90 STC 251 (Raj HC) * Krishna Kumar Agarwala v. CTO - (1993) 90 STC 392 (WBTT).

5. Commissioner may be requested to decide the issue as preliminary issue

In view of the aforesaid statutory provisions, departmental instructions, real likelihood of bias and when one authority i.e. DGCEI has exercised the jurisdiction, it can be said the Commissioner has no jurisdiction to decide the case.

In my view, Commissioner can be requested to decide this issue as preliminary issue, since the matter goes to root of the case as the show cause notice is void.

6. Conclusion

Following conclusions can be drawn -

Show cause notice is void - The show cause notice issued by DGCEI and made answerable to Commissioner is void for following reasons - (a) It is not according to statutory provisions and departmental circular (b) When authority senior in hierarchy exercises jurisdiction, the jurisdiction of authority lower in departmental hierarchy stands eclipsed (c) There is real likelihood of bias in deciding the matter and hence is in complete violation of principles of natural justice.

Commissioner may be requested to decide the issue as preliminary issue - Commissioner may be asked to decide the issue preliminary issue as preliminary issue.

Writ petition may be tried - If Commissioner refuses to decide the issue as preliminary issue or takes adverse view, in my view, it is a good case to file writ petition before High Court, though normally High Courts do not entertain writ petitions at show cause stage.

OBITUARY



CMA Girish Ramchandra Kulkarni (M-19263) Associate Member of the CMA Institute & Aurangabad Chapter passed away on 11th November 2014 at Aurangabad.

CMA/CA Girish Kulkarni was one of the leading & young Practising Chartered Accountant in Aurangabad & also First WIRC Member of ICAI (CA) who had elected from the Aurangabad & Marathwada Region. He had also been the Treasurer & Faculty Member of Aurangabad Chapter.

May God give the necessary courage and strength to the bereaved family members in this hour of grief.

May his soul rest in eternal peace



Committee Mechanisms in Corporate Governance : Companies Act 2013 Scenario with Special Reference to NRC & SRC

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1. AN OVERVIEW:

The Companies Bill 2012 after receiving the assent of Hon. President of India has been enacted as Companies Act, 2013 and has been published through issue of notification in the Official Gazette so as to replace Companies Act, 1956. Passing of this Bill has been termed as a historic event for India as it will usher in a new era in the Corporate Governance.

This Act is likely to be a modern legislation for growth and regulation of corporate sector because it is full of potential to facilitate business-friendly corporate regulation, improve corporate governance norms, enhance accountability on the part of corporate / auditors, raise levels of transparency and protect interests of investors, particularly small investors.

The Companies Act, 2013 has brought significant changes with respect to corporate governance using committee mechanisms. In this article, an attempt has been made to present a study of corporate governance through committee mechanisms in The Companies Act 2013 scenario with special reference to Nomination & Remuneration Committee (NRC) and Stakeholders Relationship Committee (SRC).

2. LEGAL REFERENCES:

Section 178 of the Companies Act, 2013 read with Companies (Meetings of Board and its Powers) Rules, 2014 has made it mandatory to form Nomination & Remuneration Committee (NRC) and Stakeholders Relationship Committee (SRC) for certain classes of Companies. It is to be noted that clause 49 of the Listing agreement had made it recommendatory even before.

3. APPLICABILITY:

- 3.1. **NRC:** Every public company must form NRC if it is:-
 - 3.1.1. Listed; or
 - 3.1.2. Having as on the date of last audited financial statements:-
 - 3.1.2.1. Paid up capital of Rs.10 crores or more; or
 - 3.1.2.2. Turnover of Rs. 100 Crores or more; or
 - 3.1.2.3. Aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores.
- 3.2. **SRC:** Every company must form SRC if it is having more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year.

4. CONSTITUTION:

- 4.1. **NRC :** This should have at least three non executive directors of which at least 50% should be independent directors. The chairperson of NRC should be a person other than one who is chairman of the company.
- 4.2. **SRC :** This should have such members as may be decided by the Board. However the chairperson of SRC should be a non executive director.

5. ROLES & RESPONSIBILITIES :

The chairpersons of NRC & SRC or, in his absence, any other member of the committee authorized by him in his behalf shall attend the general meetings of the company. Following are the roles and responsibilities of NRC & SRC:

- 5.1. **NRC :** This shall:
 - 5.1.1. Identify persons qualified to become directors and who may be appointed in senior management in accordance with the laid down criteria,
 - 5.1.2. Recommend to the Board the appointment and removal of directors,
 - 5.1.3. Evaluate each director's performance.
 - 5.1.4. Formulate the criteria for determining qualifications, positive attributes & independence of a director and
 - 5.1.5. Recommend to the Board a remuneration policy (to be disclosed in Board's Report) for the directors, key managerial personnel and senior management (personnel of the company one level below the executive directors) through which it shall be ensured that:-
 - 5.1.5.1. The level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
 - 5.1.5.2. Relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
 - 5.1.5.3. Remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives are appropriate to the working of the company and its goals.
- 5.2. **SRC:** This shall consider and resolve the grievances of shareholders, debenture-holders,

deposit-holders and any other security holders of the company.

6. PENALTIES:

Any contravention of the provisions relevant with NRC & SRC will attract the following penalties:-

- 6.1. **For the defaulting company:** Fine which shall not be less than Rs.1,00,000/- but which may extend to Rs 5,00,000/-.
- 6.2. **For the defaulting officer:** Imprisonment for a term which may extend to one year or Fine which shall not be less than Rs.25,000/- but which may extend to Rs.1,00,000/- or both.

7. CONCLUSION:

Compared with The Companies Act, 1956, The Companies

Act, 2013 has brought in a large number of changes so far as corporate governance through company mechanisms is concerned. Broadly speaking most of these changes are leading towards good corporate governance practices. This on one hand brings more burdens on the part of management so far as compliance to law is concerned but on the other hand it may also prove a mile stone in enhancing transparency and trustworthiness of this form of business organization.

Disclaimer: This article is based on comparative study of Companies Act, 1956, Listing Agreement, Companies Act, 2013 & relevant rules 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.

CHAPTER NEWS

AURANGABAD

Half day seminar on Costing MIS & Product Costing through SAP

Half day seminar on Costing MIS & Product Costing through SAP was organized by Aurangabad Chapter of ICAI on 23rd November, 2014 at Hotel Atithi, Aurangabad.

CMA Amit Apte (Central Council Member, ICAI) & CMA Neeraj Joshi (Regional Council Member WIRC of ICAI) were the Chief Speakers. CMA Sunil Maniyar Vice Chairman of Aurangabad Chapter & CMA Vaibhav Argade Secretary of Aurangabad Chapter welcomed the Speakers & Audience.

CMA Vaibhav Argade briefly narrated the theme of the Seminar. Mr Vasant Tondwalkar introduced the speakers to the audience.

CMA Amit Apte guided on how to use MIS to analysis of on-line access to the organization's current performance with historical records & Rivals data and for function of planning, controlling, decision making and for organizations operations.

CMA Neeraj Joshi explained how product costing work and how it is integrated with other modules, for making master integrated planning, product cost planning, Manufacturing methods, for Streamline controlling processes in SAP & many more reporting.

Mr Vasant Tondwalkar co-ordinated the programme and CMA Namdeo Kuyate proposed Vote of Thanks.

Past President of the Institute CMA D.V.Joshi, Managing Committee Member CMA A.R.Joshi, CMA Umesh Ruparel, CMA Azhar Wadiwala, Sr Member CMA S.R.Pimple, CMA S.P.Bhangale, CMA S.B.Khadke, CMA B.Sen, CMA Kiran Kulkarni, CMA Mahesh Avhad and large number of participants from the industry were present.

PUNE

Half Day seminar was held on 11th October 2014 on Tax Audit under Income Tax Recent Development

Chapter organised a Half day seminar on "Tax Audit under Income Tax Recent Development" at MCCIA Trade Tower from 2.30 pm to 7.30 pm on 11th October 2014.

CA Chandrashekhkar Chitale was key speaker for this seminar. CMA Chaitanya Mohrir welcomes the speaker and the participants. CMA Amit Apte felicitated the honorable speaker.

The honorable speaker explained about the changes made in the formats & Tax Audit Report. He also explained the amended provisions of section 44AB of the Income Tax Act 1961, changes made in Form 3CA, Form 3CB & Form 3CD of the Tax Audit Report

The session was concluded with a vote of thanks & National Anthem by CMA Chaitanya Mohrir

CEP was very interactive and all the members were actively participated.

* * *

Pune Chapter of Cost Accountants celebrated Student Day Program on 12th October 2014 at Auditorium of PVG's College of Engineering and Technology.

Students who have excelled in the examinations are felicitated at the hands of the Chief Guest Air Cmde (Retd) Madhukar Marathe, CMA Dr. S.R.Bhargave CCM, CMA Amit Apte, CCM, CMA N.K.Nimkar, CMA Meena Vaidya.

Chief Guest shared his experience with the students. In his inspiring speech, students came to know about how he used costing techniques in Air Force and in the industries of various countries, role of CMA in the industries, importance of communication & management skills etc.

CMA D. R. Kulkarni proposed vote of thanks. This was

followed by a cultural programme. Students & their parents enjoyed the entire program with great enthusiasm.

* * *

Full Day seminar was held on 8th November 2014 on "SAP CO Module : Concepts & Overview "

The Pune Chapter of WIRC of the Institute of Cost Accountants of India organised a Full day seminar on "SAP CO Module : Concepts & Overview" at YASHADA from 9.00 am to 6.00 pm on 8th November 2014.

CMA Neeraj Joshi, CMA Chaitanya Mohrir, CMA Pravin Ambeskar, CMA Vaibhav Joshi, Mr. Parisheel Wakalkar, Mr. Vikas Jain were the speakers for the seminar . CMA Amit Shahane welcomes the speaker and the participants. CMA Dr. Dhananjay Joshi felicitated CMA Manubhai Desai for achieving "Rajiv Gandhi Gold Medal Award -2014".

The honorable speaker s explained about the Concept of Cost Center Accounting & Cost Center Hierarchy, Integration points of CO Module with other modules - FI,MM,PP,SD etc, Concept of Assessment & distribution cycle, Concept of costing run, Concept of material ledger, overview of profit center accounting & many other view on SAP were discussed.

The session was concluded with a vote of thanks by CMA Amit Shahane.

CEP was very interactive and all the members were actively participated.

SURAT – SOUTH GUJARAT

Inauguration of new premises (furnished) of Surat South Gujarat Chapter of WIRC of ICAI, Seminar and Annual Function

Surat South Gujarat Chapter of ICAI has acquired its new premises at 103, Ritz Square, Nr. Indoor Stadium, above Ajay Vijay Jewellers, Ghod Dod Road, Surat. The inauguration of the furnished premises was done by Shri Chhatrasinh Punjabhai Mori - Minister of State Food and Civil Supplies, Consumer Affairs (Ind. Charge), Government of Gujarat in the presence of CMA Dr.A.S. Durga Prasad, President, ICAI on 16th November, 2014, CMA P.V.Bhattad ,Vice president, ICAI, CMA B.M Sharma, Past president, ICAI ,, CMA A.B.Nawal, Chairman -WIRC, CMA S.S. Shah, CMA S .N. Mundra, Chairman of the Surat South Gujarat Chapter of WIRC of ICAI, CMA R. K.Rathi, Vice-Chairman of the Chapter, CMA Brijesh Mali, Secretary of the Chapter and CMA Nanty Shah, Joint secretary of the Chapter & other Past Central and Regional Council members and other members of the chapter.

CMA S.N. Mundara, Chairman of the Surat South Gujarat Chapter of WIRC of ICAI welcomed the Chief Guest Shri Chhatrasinh Punjabhai Mori - Minister of State Food and Civil Supplies, Consumer Affairs (Ind. Charge), Government of Gujarat in the presence of CMA Dr. A.S.

Durga Prasad, President, ICAI on 16th November, 2014, CMA P.V.Bhattad ,Vice president, ICAI, CMA B.M Sharma, Past president, ICAI ,, CMA A.B.Nawal, Chairman -WIRC, CMA Shri R.M.Bhave, Founder chairman of Surat South Gujarat Chapter, Shri Manubhai Desai, Past Chairman of the Chapter, Smt. Heena Oza, Past Chairperson of the Chapter, Shri Biswadev Chanda, Past Chairman of the Chapter, CMA S.S. Shah and other present & past members from Central & Regional Council, Surat South Gujarat Chapter and members from the Chapter.

Shri Chhatrasinh Punjabhai Mori - Minister of State Food and Civil Supplies, Consumer Affairs (Ind. Charge), Government of Gujarat, CMA A.S. Dr.Durga Prasad, President, ICAI and other dignitary on the dais performed lamp lighting ceremony.

The felicitation of Shri Chhatrasinh Punjabhai Mori - Minister of State Food and Civil Supplies, Consumer Affairs (Ind. Charge), Government of Gujarat in the presence of CMA Dr. A.S. Durga Prasad, President, ICAI on 16th November, 2014, CMA P.V.Bhattad ,Vice president, ICAI, CMA B.M Sharma, Past president, ICAI ,, CMA A.B.Nawal, Chairman -WIRC, CMA S.S. Shah, CMA G.P.Rao, GM(F&A), KRIBHCO and senior Members of the Chapter was done for participation in the programme and for their contribution to the profession.

CMA P.V.Bhattad, Vice-president ICAI and CMA A.B.Nawal, Chairman WIRC of ICAI, appreciated the efforts put in by the Management Committee Members of the Surat South Gujarat Chapter of WIRC of ICAI in organizing this programme and assured to extend full support including video conference facility to chapter.

President, CMA Dr.A.S.Durga Prasad while appreciating the efforts being put in by the Cost and Management Accountants in the areas of Cost reduction and optimization also advised them to contribute for the development of Medium and Small Scale Industries by rendering professional advice to them in the areas of Cost reduction and Cost Optimization. He also emphasized the role the Cost Accountants and Management Accountants can play in the optimum utilization & distribution of Food and Civil Supplies with the least cost.

Shri Chhatrasinh Punjabhai Mori - Minister of State Food and Civil Supplies, Consumer Affairs (Ind. Charge), Government of Gujarat, while congratulating the Chapter for the New Premises in the prime location also assured for full support of Govt of Gujarat in utilizing the service of the members of the Profession especially the students who completed CAT Courses and also offered to extend full support required by the ICAI for betterment of the profession.

The function concluded with vote of thanks by CMA R Rathi Vice-chairman, Surat South Gujarat Chapter of WIRC of ICAI.

Seminar on Role of CMA in Nation Building Vis a Vis "Make in India"

First technical session on Role of Cost Accountants in Nation Building & Companies Act was taken by learned CMA Nawal, Chairman WIRC of ICAI. CMA Nawal had explained the multiple opportunities available to Cost Accountants in addition to Cost Audit and session was very interactive and appreciated by all the members and participants.

Second technical session on IFRS was taken by learned CMA R.M.Bhave, Founder Chairman of Surat South Gujarat Chapter. CMA R.M.Bhave, had explained the IFRS in detail for optimum benefit of all participants. He also explained the various types of intangible assets and their relevance in business. Question Answer session was very interactive and the entire participants had taken active part in clarifying their doubts.

Many senior officials from Reliance, NTPC, GNFC, KRIBHCO and other organizations and many practicing Cost Accountants participated in the inaugural function and Seminar and appreciated the efforts put in by the Members and students in organizing such useful seminar conducted by the eminent faculty who have spared their valuable time.

Annual Function (Prize Distribution & Cultural Event)

In the evening the Annual Function (Prize Distribution & Cultural Event) was held at KRIBHCO Auditorium at KRIBHCO NAGAR, Surat. CMA Dr.A.S. Dr.Durga Prasad, President, ICAI was the Chief Guest and Shri R.K.Aggarwal, Operations Director, KRIBHCO was the Guest of Honour for the function. The dignitary lighted the lamp and inaugurated the annual function.

The Function was attended by more than 300 students & members of the Institute and their parents along with the invited guests and several present & past Members of the Central, Regional and Chapter Management Committee members.

CMA S.N. Mundara, Chairman of the Surat South Gujarat Chapter of WIRC of ICAI welcomed CMA Dr. A.S. Durga Prasad, President, ICAI, Shri R.K.Aggarwal, Operations Director, KRIBHCO, present & past Members of the Central, Regional and Chapter Management Committee members, students and their parents and invitees to the Annual function and Cultural evening.

Shri R.K.Aggarwal, Operations Director, KRIBHCO, emphasised the importance of the Cost and Management Accountants in providing the Management Information on day to day basis for management decision making in cost reduction and cost optimization. He was very much impressed with the theme of Annual Function with a purpose i.e., Three Es (i.e. Engagement, Education and Entertainment).

Prizes were distributed to all the students who passed the Foundation, Intermediate and Final exams in the presence of their parents and a great applause from the audience.

CMA Dr. A.S. Durga Prasad, President, ICAI presented a special memento to CMA Manu bhai Desai, Former Chairman of the chapter for his contribution in the starting of the chapter and its growth and for the contribution to the profession.

The Culture event was a combination of the internal talent of the Cost and Management Accountant students and the performance of Shri Naresh Kapadia & his team on the theme of 60 years of Silver screen Heroins.

CMA Sejal and CMA Jaimin anchor the programme in an excellent way which was appreciated by one and all.

Vote of thanks was proposed by CMA Nanty Shah, Joint secretary of the Chapter. He thanked all the dignitary who spared their valuable time in attending the same function, students and their parents who participated in the function, CMA Girish Prajapathi, KRIBHCO for all the arrangements made in KRIBHCO, CMA Sejal and CMA Jaimin for preparing the students for the cultural programme and anchor the same, CMA Netrananda Swain, CMA Nanty Shah, CMA Bhanwarlalji for sponsoring the event, CMA R.A.Mehta & his team his making the food arrangements and other arrangements. He also thanked all others who have directly and indirectly participated in making the function a grand success.

CEP REPORT

On **8th November 2014** WIRC organised CEP on ISO Certifications and Scope for CMAs at WIRC Office Hall. Mr. Nishid Shivdas was the speaker for the same.

On **22nd November 2014**, WIRC organised CEP on Advance Excel at WIRC Office Hall. CMA Nayana Savala and Ms. Falguni Mulani were the speakers.

On **29th November 2014**, WIRC organised CEP on Overview of Credit Rating at WIRC Office Hall. Mr. Akhil Thakkar and Mr. Nilesh Dhoot were the speakers.

CMA Debasish Mitra, Chairman, P. D. Committee, WIRC and CMA Kishore Bhatia co-ordinated the above CEPs.

WESTERN INDIA STUDENTS CONVENTION

Students Convention organised by Ahmedabad Chapter of Cost Accountants is scheduled at Ahmedabad on 7th February 2015 at AMA H. T. Parekh Auditorium, Near Atira, IIM Road, Ahmedabad 380 015.

Please check WIRC website for more details.

Glimpses of Pune Chapter Activities



CA Chandrashekhar Chitale giving presentation.



Inauguration of Student Day Programme



Student felicitation by Air Cmde (Retd) Madhukar Marathe during Student Day Programme



CMA A. B. Nawal, Chairman WIRC addressing during Central Excise Programme held at Pune. Also seen CMA Mrs. Sangeeta Sharma, Commissioner and CMA Dr. Sanjay Bhargave, CCM-ICAI



CMA Manubhai Desai was felicitated by CMA Dr. A.S. Durga Prasad, President ICAI for achieving "Rajiv Gandhi Medal Award-2014" during Annual Function organised by Surat-South Gujarat Chapter on 16th November 2014. Also seen CMA A. B. Nawal, Chairman WIRC, CMA S. N. Mundra, Chairman, Surat-South Gujarat Chapter and CMA Rajendra Rathi, Vice-Chairman Surat-South Gujarat Chapter.



Dr. Shivkumar Pandey, Vice Chancellor, Ravi Shankar University, Dr. Sachhinand Joshi, Vice Chancellor, Kushi Bhai Thakre University, Shri Pradeep Kumar, Commissioner, Central Excise & Customs, Raipur Commissionerate, Shri Lalit Surjan, CMAs P. V. Bhattad, Vice President-ICAI, Ashok Nawal, Chairman-WIRC, Samir Rakshit, Ratan Khatwani, Pramod Chaudhary, Arindam Goswami during Seminar organised by Raipur Chapter on 23rd November 2014.



CMA Sunilkumar Maniyar, Vice Chairman of the Chapter, CMA Neeraj Joshi, RCM-WIRC, CMA D.V. Joshi, Past President, ICAI, CMA Amit Apte, CCM-ICAI and CMA Vaibhav Argade, Secretary of the Chapter during Half Day Seminar on "Costing MIS & Product Costing through SAP" organised by Aurangabad Chapter on 23rd Nov. 2014.



View of Audience during Seminar organised by Raipur Chapter on 23rd November 2014

Glimpses of Inauguration of New Premises, Annual Function held on 16th November 2014 – Surat South Gujarat Chapter



To

If undelivered please return to:

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