



# Western India Chartered Accountants Students Association (WICASA) of The Institute of Chartered Accountants of India.

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Driven by Values

## NEWSLETTER OCTOBER, 2019

*Happy  
Diwali!*

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## WIRC CHAIRPERSON'S COMMUNICATION

Dear Students,

Swami Vivekananda said, "Whatever you think, that you will be. If you think yourselves weak, weak you will be; if you think yourselves strong, strong you will be."

India is the youngest nations in the world, with more than 50% of its population below the age of 25 and more than 65% below the age of 35. It is expected that by the year 2020, the population of India would have a median age of 29 years against 38 years for US, 42 years for China and 48 years for Japan.

Among the various ways which Swami Vivekananda suggested to rebuild the Indian society, education was the primary means for empowering the people. This is the maxim that we, at WIRC, have religiously followed since the Western Region was formed.

The primary goal of WICASA is to provide a strong career foundation through education. Over the years, we have refined this process to ensure that a holistic and overall development is encouraged taking into consideration physical, mental and educational. Today, I am proud to state that WICASA carries out these duties with complete dedication and the proof is in the large numbers of top quality Chartered Accountants produced by the WIRC of ICAI.

In the last month we organized some very good programs which included a Half Day Seminar on Income Tax Audit for CA Students which went far in helping students get deeper understanding of this subject.

The Teachers Day Celebration saw enthusiastic participation from many students who took part in the Essay Writing Competition and the Slogan Competition. The impact of teachers on the minds of students as well as their love for them was clearly reflected in the high quality essays and slogans created for the competition.

The youth of our country are intelligent and hardworking but very often unclear about their career choices. To help guide students towards a rich and fulfilling career we periodically organize Career Counselling sessions. Last month we counselled students in Mumbai at the M. M. K. College, Bandra West and at S. S. Sahani High School, Khar West. We were gratified by the positive response of the students there and look to take the career counselling sessions to other schools and colleges across the region.

To keep students up to date with their studies our Coaching Classes for Intermediate batches are taking place regularly. Similarly, our Crash Courses in Advanced Auditing & Professional Ethics, Corporate & Economic Law, Strategic Financial Management, Strategic Cost Management & Performance Evaluation and Direct Tax Laws & International Taxation are ongoing and much appreciated by all.

Swami Vivekananda rightly said, "Youth is the best time. The way in which you utilize this period will decide the nature of the coming years that lie ahead of you".

Take time during the holidays to understand the importance of this time in your life. Your goals to become a Chartered Accountant are laudable but more importantly they are also achievable all it takes is a focus. Use this time correctly and you will reap rich rewards in your professional and personal life.

The festive season has begun and I take this opportunity to wish all students and their families a very Happy Diwali and prosperous New Year.

*Priti Savla*

**CA. Priti Savla**

Chairperson, WIRC.



## WICASA CHAIRMAN'S COMMUNICATION

Dear Students,

Good wishes!

Dear Students,

As we mark 150<sup>th</sup> Birth Anniversary of the nations' father, Mahatma Gandhi we shall remember his way of leading a truthful and honest life,

He has rightly said, that **"Our greatest ability as humans, is not to change the world, but to change ourselves"**, hence, we shall keep learning from our mistakes, keep upgrading ourselves and finding out a positive outlook to every negative thing that happens to us.

Wishing you all the very best for your examination held next month, since the exams are approaching, study well, intensify your preparations, benefit with the mock tests organised for you all.

Hope you all have been deriving maximum benefit from the seminars and other activities conducted by WICASA. Looking at the positive response from my student fraternity, I am happy to inform you all about the Youth Festival is organised for you all just after you are done with your exams, so that no student misses the opportunity to enjoy his best.

And the most awaited National Conference in Mumbai is all set to take place in December, 2019.

To conclude, I would like to wish you all **Happy Navaratri, Happy and Safe Diwali, and a Happy New Year.**

Regards,

**CA Jayesh Kala**

Chairman, WICASA



**UPCOMING EVENTS**

<b>CA Final ( New Course) Crash Course for Nov 19 Exam</b>			
<b>Particulars</b>	<b>Duration</b>	<b>Venue</b>	<b>Fees</b>
Direct Tax Laws & International Taxation For CA Final Group II	26/09/2019 To 05/10/2019	ICAI Tower, BKC, Mumbai	4000

<b>Mock Tests for Nov 19 Exam</b>			
<b>Particulars</b>	<b>Duration</b>	<b>Venue</b>	<b>Fees</b>
CA Foundation Series I Mock Test for Nov 19 Exam	03/10/2019 & 04/10/2019	ICAI Tower, BKC, Mumbai	400
CA Final Old Course Series I Mock Test for Nov 19 Exam	09/10/2019 & 17/10/2019	ICAI Tower, BKC, Mumbai	800
CA Final New Course Series I Mock Test for Nov 19 Exam	09/10/2019 & 17/10/2019	ICAI Tower, BKC, Mumbai	700
CA IPCC Old Course Series I Mock Test for Nov 19 Exam	09/10/2019 & 16/10/2019	ICAI Tower, BKC, Mumbai	700
CA Intermediate New Course Series I Mock Test for Nov 19 Exam	09/10/2019 & 17/10/2019	ICAI Tower, BKC, Mumbai	800



## ARTICLES



**Purva Katariya**  
SRN: WRO0596711

### **Important Judgement in case of Minkart India Private Ltd. (Under Maharashtra Value Added Tax relevant for various revenue laws)**



#### **Background:**

In a recent judgement pertinent to VAT regime, the High Court gave a very relevant and important decision that would help our readers in litigations under various tax laws. Let us try to understand the case and the decision.

#### **Facts:**

The petitioner M/s Minkart India Private Limited (formerly eBay) had received a notice under the MVAT Act. The petitioner made submissions accordingly. However, without considering the submissions made during the adjudication proceedings, the department raised an assessment order. The assessment order did not consider the contentions of the petitioner and did not state reasons as to why the contentions were not acceptable to the department. The petitioner had submitted that they are not dealers under the VAT laws as they were simply engaged in providing electronic platform which enables buyers and sellers to enter into transactions independently with each other.



Petitioner challenged the assessment order, on the grounds that the authority having recorded the submissions made by the petitioner had provided no reasons in the impugned order as why the contention of the petitioner was not acceptable.

**Decision of the Bombay High Court:**

The court held that the decision making process is flawed as it does not consider the petitioner's submissions. The court observed that unless the department considers the petitioners submissions at the submissions at the original stage, the petitioner debars his right to plead in the case in front of the appellate authority since the petitioner was unable to figure out as to why his contentions were not acceptable to the department.



In view of the above, the court directed to restore the assessment to the adjudicating authority for fresh consideration.

**Conclusion:**

Thus, it is necessary that the order passed by the adjudicating authority should deal with the submissions made by the parties before it by giving reasons in support of its conclusion, particularly when it does not accept the submissions made.

Thus the above order would entail the revenue to state grounds on which an assessee's contention/ submission is rejected.





## ARTICLES



**Pushp Kumar Sahu**

**SRN: CRO0553317**

### **Precautions to be taken while entering into a Real Estate Transaction.**

In this article we will be discussing about the precautions to be take care while entering into a real estate transaction.

#### **Let us understand this article in the form of short story;**

There are two brothers namely **Pushp Kumar Sahu and Uday Kumar Sahu** who have entered into a transaction of immovable property worth 48 lakhs INR in cash. (value as per Stamp valuation authority 60 lakhs INR ) But being not aware of the income tax provisions, they made a transaction violating the various provisions of the income tax act, 1961. Both brothers jointly sold the said property and thereafter received the whole consideration in cash and the same is deposited in the bank account.

The first violation of income tax provision which is made by the Sahu brothers is of Section 269ST, as they have received the entire sale consideration in cash which exceeds 2,00,000/- INR. Therefore penalty will be levied on them under section 271DA at the rate of 100% of the amount received in cash.

The second violation made by them was; they have sold the said property at a rate less than the rate as determined by stamp valuation authority [ section 50C ], as per this section; where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, is less than the value adopted or assessed by an authority of a state government ( stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted for the purposes of section 48, be deemed to be the full value of consideration received as a result of transfer.

The last mistake made by Sahu brothers was that they have deposited the entire cash received from such sale in bank account. As they have deposited the cash exceeding 10 lakhs INR in a single saving account. Because of such bulk deposit, bank official filed an annual information return u/s 285BA to income tax department. Due to such filing of AIR, transaction has been easily tracked by the department and in order to take such transaction under



income tax assessment , department issues a show cause notice to assessee that why this transaction has not been reflected in their IT returns.

Originally this income has been evaded by the assessee brothers, therefore A.O. has full access to issue income escaping notice to both assessee u/s 148 and complete the assessment as provided u/s 147. Moreover, A.O. can issue notice under section 271DA for violating provisions of 269ST for levying 100% penalty or can issue notice under section 271(1)(c) for concealment of income.

**Happy reading.**





## ARTICLES

**Vimal Sharma**

**NRO0293843**

### **'Export Sale or Domestic Sale?'**

In the **Goods and Services Tax** regime, even today most of the people get confused regarding the nature of some transactions, i.e. on which basis to apply GST provisions in the transaction i.e. whether we charge CGST-SGST, IGST or go for export.

A transaction that created same kind of dilemma came to my notice a few days ago, it was little difficult to understand whether this transaction is to be considered as Export Sale or Domestic Sale.

The transaction was:

*"ABC Pvt. Ltd. is an Indian Company, Foreign INC is an Overseas Company and Vinay Kumar is an Indian Resident, living in India. Vinay Kumar visited Foreign INC and purchased goods worth 145 USD and paid the amount through banking channel in their account. Then to complete this order, Foreign INC ordered the goods from ABC Pvt. limited at 120USD and asked them to deliver those goods from their Store in India to Vinay Kumar, an Indian buyer. ABC Pvt. Ltd. raised the bill of 120USD in the name of Foreign INC as Bill to Foreign address of Foreign INC. and Ship to Indian address of Vinay Kumar and then Foreign INC Transferred 80USD in account of ABC Pvt. Ltd. Now **as the goods have not moved outside the India, it is Export Sale or Domestic Sale?"***

Different people have different opinions on this transaction based on their experiences and knowledge in the field of GST.

So let us start to understand this transaction according to the provisions provided in the GST Act and rules relating thereto, to reach at the final conclusion that whether in the said case sale is Export Sale or Domestic Sale.

#### **Physical exports [Section 2(5)]:**

Export of goods requires taking the goods from India to a place outside India. India is defined as extending to the limits of its maritime zone, which is 200 nautical miles from the coastal baseline.

Normal definition of India, which only includes its territorial waters, which in turn extend 12 miles from the baseline. Given the extended meaning of India, export would require that the



goods must travel beyond 200 miles from the baseline in order to qualify as having been exported.

In short the goods must be moved outside India and for claiming the input of GST the following documents are also required to produce when demanded such as:

1. Shipping Bill,
2. Bill of loading,
3. Receipt of Duty paid to Custom department,
4. Clearance certificate etc.

In the said case the goods have not moved outside the India and also seller does not have any document that can be furnished in future to prove that the said transaction was export sale.

Hence as per section 2(5) (i.e. 'Export of Goods') of Integrated Goods and Services Tax (IGST) Act, 2017, this transaction cannot be considered to be as Export Sale.

However, the said transaction does not fulfil the requirement of the said definition [sec. 2(5)] but it is possible that this transaction may be considered as deemed export.

So let us begin that whether the said transaction can be covered under the definition of deemed exports and what are essential conditions and category of supply of goods defined under the GST Act, required to be fulfilled for the Sale/transaction considered as deemed export.

### **Deemed Exports:**

Deemed Exports is not a new term under the indirect tax system. Foreign trade policy entails a detailed discussion and schemes governing the same. Under GST, the term deemed exports are defined under the IGST Act.

Meaning of Deemed Exports: Deemed exports refers to supplies of goods manufactured in India (and not services) which are notified as deemed exports under section 147 of the Central Goods and Services Act, 2017. Such supplies do not leave India and it is irrelevant that payment for the same is received in Indian rupees or in convertible foreign exchange. But there are also the some which are required to be fulfilled:-

Conditions required to be fulfilled qualify as Deemed Exports are:-

- Applicable only for the supply of goods (not applicable to services).
- Goods are not required to be taken outside India.
- Such supply of goods must be notified by the Central Government as Deemed exports under Section 147 of the CGST Act, 2017.



- Goods must be manufactured or produced in India.
- Payment can be received in Indian Rupees or in convertible foreign exchange.
- Such supplies cannot be made under Bond / LUT.

Supplies notified as Deemed Exports under GST Act:

Following categories of supply of goods have been notified as deemed exports by the Government vide Notification No. 48/2017 CT dated 18.10.2017:

- Supply of goods by the registered person against Advance Authorisation (AA) i.e. Supplier must be registered under GST and recipient must be an Advance Authorisation holder.
- Supply of capital goods by the registered person against Export Promotion Capital Goods Authorisation (EPCG)
- Supply of goods by the registered person to Export Oriented Unit (EOU)/ Electronic Hardware Technology Park Unit (EHTP) / Software Technology Park Unit (STP) / Bio-Technology Park Unit (BTP)
- Supply of gold by Bank or Public Sector Undertaking against AA

Note: Deemed exports have also been defined under the Foreign Trade Policy 2015 – 2020 (FTP). However, the definition of deemed exports under FTP is different from the definition under GST law and should not be considered while applying GST provisions. A particular supply of goods can be deemed exports under FTP but may not qualify as deemed exports under GST. The purpose of the two legislations is different.

However, in the given case the goods have not moved outside the India but still can be considered as deemed export if some other conditions and criteria of sale that are given u/s 147 are fulfilled. We can see that in the given case the transaction does not fulfil any condition and criteria notified by the Government in said notification i.e. sale was not done against the Advance Authorisation (AA) and not against Export Promotion Capital Goods Authorisation (EPCG) and also the goods are not supplied to export oriented unit/to SEZ. Therefore, we can't consider this sale as deemed export.

Merely by issuing invoice to foreign company and by receiving consideration in foreign currency, we cannot consider any sale transaction as export sale. There are many other practical requirements that are required to be fulfilled for qualifying as export sale as mentioned above.

**So according to GST Act this sale is a Domestic Sale.**

**"Believe in yourself. You are braver than you think, more talented than you know, and capable of more than you imagine. "**



## ARTICLES

**Rahil Lokhandwala**  
SRN: WRO0624007

### **TAG- ALONG RIGHTS CLAUSE IN SHARE HOLDER AGREEMENT**

#### **MEANING**

Tag along rights give a shareholder the right to join (or 'tag along' with) another shareholder if they find a buyer for their shares.

#### **BASIC**

**A tag along clause will prevent a key shareholder, or group of key shareholders, from selling their shares without giving the other shareholders a right to participate (or 'tag along') in the sale, resulting into a creation of shield to minority shareholders or investor(s).**

#### **REASONS**

The two main reasons behind inserting this clause under shareholder's agreement are:-

- (1) One would normally want the opportunity to sell shares and realise the value of their investment at the same time as other shareholders; and
- (2) If the success of the business is likely to be dependent on the on-going involvement of a key shareholder, one may want the opportunity to sell down (or out) if that person ceases to be a shareholder.

#### **STRUCTURE**

Tag along clauses typically work in one of two ways.

- The first type of tag along clause allows all shareholders to participate in the sale proportionally. For example, if you own 10% of the company's shares and you have a



tag along right, you would be given the opportunity to sell 10% of the total parcel of shares that are being sold. This type of clause would typically result in shareholders selling some of their shares, but none of them being able to sell all of them.

- The second type of clause prevents a key shareholder from selling their shares unless the entire company is sold.
- There can be variants of the above clauses, some of which address the situation where some shareholders (but not all) wish to 'tag along'.

### **EXCEPTIONS**

As the key shareholder, one might ask for a small portion of owed shares to be exempt from the tag along clause - so that if he can find a willing buyer, he can be permitted to sell those shares and be partially rewarded for his contribution, without diluting other shareholders.

A different type of exception could be based on the achievement of a particular milestone (eg a profit or value milestone), or the passage of a period of time. This type of exception could apply to all shares held by the key shareholder, or a small portion.

Allowing an exception to a tag along clause and permitting a key shareholder to sell a small proportion of their shares can provide a tangible benefit to the shareholder without having any detrimental effect on anyone else (or the business) as it might be necessary in order to keep shareholder interested in the company.

### **DRAFTING**

When preparing a shareholders agreement, it will be important to consider how the tag along rights will tie in with other clauses that regulate the sale of shares, particularly pre-emptive rights. For example:

- Should the tag along rights apply if an existing shareholder wishes to buy the shares from the key shareholder?
- Should the key shareholder be required to offer their shares for sale to the existing shareholders before offering them to a potential external investor?



The answers to these questions will depend on circumstances prevailing in the company and also its relation with its share holders.

The main considerations will be the composition of your share register and the extent to which the company's success is dependent on specific shareholders, the maturity and profitability of the business, and the shareholders' intentions generally in relation to an exit or other liquidity event.



**SEPTEMBER 2019 SNAPSHOTS**



**Teacher's Day Seminar on 5<sup>th</sup> September, 2019**



**Tax Audit Seminar held on 6<sup>th</sup> September, 2019**





## SEPTEMBER 2019 SNAPSHOTS



Advanced Auditing and Professional Ethics for Final CA Students held on 1<sup>st</sup> September-  
4<sup>th</sup> September, 2019



**SEPTEMBER 2019 SNAPSHOTS**



**Corporate and Economic Law for Final CA Students held on 5<sup>th</sup> September-9<sup>th</sup> September, 2019**



**SEPTEMBER 2019 SNAPSHOTS**



**Strategic Financial Management for Final CA Students held on 11<sup>th</sup> September-18<sup>th</sup> September, 2019**



**Strategic Cost Management and Performance Evaluation for Final CA Students held on 19<sup>th</sup> September-25<sup>th</sup> September, 2019**

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