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SBS Wiki

monthly e-Journal

By

SBS and Company LLP
Chartered Accountants

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Dear Readers,

I am delighted to inform SBS Wiki has reached an important milestone in its journey. This month witnesses the release of the50th edition of our monthly journal. The objective of SBS Wiki is to provide clients with up-to-date and insightful views in the area of tax and compliances that are relevant to your business.

We thought it would be a phenomenal task to talk to every client regarding the changes in the law which would affect their business and choose the journal as one of the modes of communication with the clients and I am glad that it has served the cause. As such, the SBS Wiki aspires to be vibrant, engaging and accessible, and at the same time integrative and challenging.

The response and feedback from our clients are incredible, and undoubtedly it served as a constant source of inspiration to our organization to come up with a journal every month despite our busy schedules. Our organization conveys their regards to all the clients and other stakeholders who have read our journal and supported all through this 50 months and expect the same going forward.

This month also witnesses the loss of father figure to the entire country, Mr. Atal Bihari Vajpayee. Our organization offers condolences for loss, and I believe there cannot be a substitute for such a great personality. We have lost him physically, but his thoughts and actions will serve as an inspiration for the coming generations. The quote which I like the most and which also resonates one of the mottos of our organization is 'Our aim may be as high as the endless sky, but we should have a resolve in our minds to walk ahead, hand-in-hand, for victory will be ours.'

The tax audit season is here, and one crucial aspect is that the Clause 44 of Form 3CD is made inoperative by keeping the same in abeyance till 31st March 2019. It is a significant move by the CBDT considering the representations made, which will ease the reporting. The problems faced by Clients in the areas of GST are being addressed dynamically by the GST Council, and I hope by the end of this financial year, things will fall in line. The draft returns under GST laws is available in the public domain for their comments, and all the readers are requested to go through the same and share your feedback to our organization. We will share to the concerned for their action.

I am happy that our office has submitted specific recommendations about SEZ and allied laws to the committee constituted by Central Government to revive the SEZ community. I request the readers to go through such proposals which are in this edition of the journal. The Insolvency Bank Code had an vitalmilestone which recognizes the home buyers as a class of financial creditors. The amendment empowers the home buyers to resort to the code if the builder [the corporate debtor] fails to deliver his promise. The position of home buyers is growing strong day by day with the advent of RERA laws and IBC; this will increase the investment in this space leading to more business and professional opportunities.
In this edition of our journal, we have dealt with important topics about various laws which are useful for practical understanding. Hope the reader will benefit from the contents of this journal.

I once again thank the readers for making the journey of SBS Wiki memorable, and I assure you that we continue with the same spirit and try to deliver the best content as always.

Thanking You,

Suresh Babu S
Chairman cum Managing Partner

INTERNATIONAL TAXATION

ARTICLE ON AMENDMENTS IN FORM 3CD - TAR

Contributed by CA Suresh Babu S

Assessee's who enter into Specified Domestic Transactions (SDT's)/ International Transactions with related parties/ Associated Enterprises (AE's) must furnish the said details and independent CA certificate in Form 3CEB.However, the Govt. of India vide Notification No. 33/2018 (CBDT) has amended/ inserted some of Clauses pertaining to Transfer Pricing positions and its relevant disclosures in Form 3CD (Tax Audit Report).The said amendments shall come into effect from 20th August 2018 and these are applicable from FY 2017-18 onwards wherein the Chartered Accountant (CA) must comment upon the applicability of the amended clauses.

The following are the amendments w.r.t. Transfer Pricing provisions.

1) Addition of New clause 30A in Form 3CD:

Amendment made in TAR

Following disclosures to be made:

- Whether there has been a primary adjustment during the year, category & amount of primary adjustment made.
- Whether the excess money available is required to be repatriated to India and if yes, whether the excess money has been repatriated to India within the prescribed time limit.
- if the excess money is not repatriated to India within the prescribed time, amount of imputed interest on such deemed advance.

Analysis and Background

Finance Act 2017 introduced Secondary Adjustment provisions which triggers in a case there is a primary transfer Pricing Adjustment (voluntary TP adjustment in case of non arms length transactions) under the prescribed scenarios. In a case where due to a primary adjustment (when primary adjustments exceed 1 Crore) in the hands of the taxpayer, there results an excess cash with taxpayer's Associated Enterprise (AE) outside India, such excess cash is required to be repatriated to India within the prescribed time limit i.e., 90 days from the date of filing return of income (ROI). In case where the excess money is not repatriated to India within the prescribed time, such amount is deemed to be an advance made by the taxpayer to its AE and interest is levied on the deemed advance in a prescribed manner until repatriation of the money to India.

The interest rate will be as follows:

- For an international transaction denominated in INR – One year marginal cost of fund lending rate of State Bank of India as on 1st of April of the relevant previous year plus 325 basis points
- For an international transaction denominated in foreign currency – Six month LIBOR as on 30thSeptember of the relevant previous year plus 300 basis points.

2) Addition of New clause 30B in Form 3CD:

Amendment made in TAR

- Accountant to certify details of expenditure incurred by way of interest or similar nature, EBIDTA of the relevant year, quantum of interest expenditure or similar nature which exceeds 30% of EBDITA, & unclaimed interest expenditure eligible for carry forward to subsequent year.

Analysis and Background

Pursuant to BEPS Action 4 recommended by OECD, Finance Act 2017 inserted a new provision which limits interest deduction or similar payments made by Indian company / permanent establishment of foreign company for debt borrowed from or guaranteed by non-resident AE. The provision applies if interest or similar payments exceeds INR 10 million in which case, interest deduction is limited to lower of actual expenditure in favour of AE or 30% of Earnings before interest depreciation, tax and amortization (EBIDTA).

3) Addition of New clause 43(a) in Form 3CD:

Amendment made in TAR

- Accountant to report whether the taxpayer or its parent entity or alternate reporting entity is liable to furnish the CbC report and if yes, particulars relating to furnishing of such report.

Analysis and Background

Typically, CbCreport is applicable for all the entities whose consolidated group turnover exceeds Rs. 5,500 Crores. A single entity shall file CbC Report on behalf of the entire Group. Further, CbC reporting provisions requires Multi National Entities (MNEs) to report:

- Amount of revenue (related and unrelated party),
- Profits, income tax paid and taxes accrued, employees, stated capital and retained earnings, and
- Tangible assets annually for each tax jurisdiction in which they do business.

In addition, MNE's are also required to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of the business activities each entity conducts. This information is to be made available to the tax authorities in all jurisdictions in which the MNE operates. The overall TP documentation requirement follows a 3-tier approach: CbC Report, Master File, Local File. CbC Report shall be filed in Form 3CEAD if an entity crosses the abovementioned thresholds. However, if the said report has already been filed by any other entity on behalf of the entire group then, Indian entity shall file Form 3CEAC stating the name of the entity which has already filed the CbC report on behalf of the entire group.

Concluding remarks:

Please note that auditor shall comment on the applicability of the Clauses to the entity while furnishing the Form 3CD.Theseinsertions/ amendments are made in line with BEPS Action Points and recommendations. This provides additional disclosure liability to the assessee's, and at the same time it also provides a close watch on the TP aspects (all the recent developments) which are monitored closely by the governments across the globe.

This article is contributed by CA Suresh Babu S, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at suresh@sbsandco.com

AUDIT

PHARMACEUTICAL INDUSTRY

Contributed by CA Sandeep Das

Background

The modern pharmaceutical industry can be traced back to the discoveries of insulin and penicillin in the early 20th century. These products began to be mass manufactured, particularly in European countries, with other developed countries following close behind. The implementation of scientific processes to the research and discovery of new medicines has led to the industry that exists today, with companies constantly searching for new products that heal, prevent, and cure consumers.

Back in 2014, the total pharmaceutical revenues worldwide had exceeded one trillion U.S. dollars for the first time. Increased competition owing to the growing size of the industry has noticeably increased the complexities of operations, sales and marketing, which in turn have led to an alarming spike in malpractices by stakeholders involved at various levels in the industry.

The pharmaceuticals industry consists of drug manufacturers, biotechnology companies and the distribution and wholesale companies that handle the products produced. Most of the revenues in the industry come from drug companies who make prescription, generic, and over-the-counter drugs for medical or veterinary use. The major challenge faced by pharmaceutical industry is in generic drug exports which is a major source of their revenue.

Pharmaceutical companies may deal in generic or brand medications and medical devices. They are subject to a variety of laws and regulations that govern the patenting, testing, safety, efficacy and marketing of drugs.

Operational and strategic risks are central and inherent in pharmaceutical companies which are to great extent dependent on continuous research and development with long gestation periods, compliance issues with environmental laws, heavy capital investments as well as expenditures for environmental liabilities, management of their intellectual property rights, etc.

Strategic and Marketing risks on one side, compliance risks such as adherence to regulations, GMP, cGMP and other norms is again the most important and a whole different story where a small mistake or ignorance even at the minutest level of operation can cost a fortune to the businesses.

Indian pharmaceutical industry has grown at a high pace during the last few decades.

- The Indian pharmaceuticals market witnessed growth at a CAGR of 5.64 per cent, during FY11-16, with the market increasing from US$ 20.95 billion in FY11 to US$ 27.57 billion in FY16. The industry's revenues are estimated to have grown by 7.4 per cent in Fy17.
- Indian pharmaceutical market grew 5.5 per cent in CY2017 in terms of moving annual turnover. In March 2018, the market grew at 9.5 per cent year-on-year with sales of Rs 10,029 crore (US$ 1.56 billion).
- By 2020, India is likely to be among the top three pharmaceutical markets by incremental growth and 6th largest market globally in absolute size.
- Increase in the size of middle class households coupled with the improvement in medical infrastructure and increase in the penetration of health insurance in the country will also influence in the growth of pharmaceuticals sector.
- The steady decline in the Indian rupee is expected big bonanza for export-oriented businesses. Pharmaceutical firms which earn a large part of its revenues in dollars are likely to see increase in margin.
- EBITDA (earnings before interest, taxes, depreciation and amortization) margins and revenue of pharma companies will get a boost depending on the net of foreign debt exposure, hedged portion and how the rupee moves further from here. The debt exposure will increase interest payments.

THE GOVERNMENT NEEDS TO PLAY A CRUCIAL ROLE

- The government needs to play a direct role in driving access to healthcare through long range initiatives.
- Raise healthcare spending to stated 3 per cent of GDP.
- Invest in healthcare infrastructure, particularly in Tier-II and rural markets.
- Adopt a broader set of measures to contain healthcare costs.
- Reduce the shortage of physicians.

Key drivers of Pharma Industry

(i) Low Manufacturing cost

India is capable of manufacturing low cost generic alternatives due to several economic factors favoring the industry. Some of these include:

- cheap land rates;
- cheap labour available
- low resource costs like water, electricity
- lower cost of production machinery

(ii) Research & Development

India has a large branded generics market which enables most companies to launch their version of a generic drug in the market place. there are Indian companies who are investing in their R&D centres and are offering early stage discovery services as well as promising molecules.

(iii) Experience in International Servicing

Many of the Indian pharmaceutical companies are experienced in servicing top multinational companies for their highly regulated markets, meeting their stringent quality expectations

Illustrative list of regulatory frameworks applicable to Pharma Companies:

- National Pharmaceuticals Pricing Policy, 2012 (NPPP-2012)
- Guidelines for Blood Banks
- Good Clinical Practice Guidelines
- Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 1993
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- The Medicinal and Toilet Preparations (Excise Duties) Rules, 1956
- The Drugs (Prices Control) Order 1995 (under the Essential Commodities Act)
- Guidelines for import and manufacture of medical devices
- Guidelines on Recall and Rapid Alert System for Drugs

Significance of quality in Pharma industry

The pharmaceutical industry is a vital segment of the Healthcare cycle conducting research and manufacturing products which are life-saving, life maintaining and life restoring. Quality directly affects the purity, safety, effectiveness and reliability of the drugs produced. The stringent, scientific, systematic and sustainable approach to commercial drug production ensures protection of patients health.

The main functions of quality assurance systems in pharmaceutical companies are:

- To be the caretaker of the Pharmaceutical Quality System
- Preparing the groundwork for certification by the qualified Person
- Quality on floor
- Product and safety liability

Some of the key regulatory authorities in pharma include

Australia – Therapeutic Goods Administration (TGA)
Canada – Health Canada
Germany – Federal Institute for Drugs and Medical devices
India – Central Drug Standard Control Organization (CDSCO)
USA – Food and Drug Administration (FDA)
UK – Medicines and Healthcare Products Regulatory Agency (MHRA)

Impact of GST in Pharmaceutical Industry

Goods and Service Tax is having a constructive impact on the Indian Pharmaceutical Industries as it has increased the manufacturing cost. Most drugs mentioned in 5% tax bracket under GST were previously covered in 4% tax bracket under VAT. It will eliminate the cascading effect of multiple taxes applied on One Product. Under GST, Ayurvedic medicines could get costlier as they would be taxed at the rate of 12% which were earlier covered by 4% tax bracket under VAT regime. Because of this hike in the tax rates, MRP has to be revised to absorb overall effect.

As GST is applicable on phases of the supply chain, it will have a negative impact on Free-drugs samples, Bonus/Discount Schemes, Inter-state stock transfer, etc.

Beside negative impact, there are some negative positive impacts also. Traditional Cost and Distribution Model will get replaced by supply chain efficiencies due to discontinuance of the Central Sales tax and interstate transactions between two dealers will become tax neutral. Pharmaceutical companies will experience improved operational efficiency and improved compliance. It will also benefit warehousing strategy. As of now, companies kept their warehouses in different States to avoid Central Sales tax of different States. Now, they can consolidate warehouses at strategic locations as they will only have to pay Integrated GST (IGST) on inter-state supplies of Goods and Services. GST will surely benefit pharma sector by way of reduced complexities and the consolidation of multiple taxes into a single rate.

Now under GST, various distribution channels will now be required to obtain registration and file returns. Earlier they were not required to obtain registration since they were not involved in the payment of taxes and filing of returns. This will increase compliance and would curb practices of non-issuance of invoice.

AUDIT OF PHARMACEUTICAL INDUSTRY

Internal Audit and process

Internal Audit Definition:

According to the Definition of Internal Auditing in The IIA's International Professional Practices Framework (IPPF), internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations .It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

Performed by professionals with an in-depth understanding of the business culture, systems, and processes, the internal audit activity provides assurance that internal controls in place are adequate to mitigate the risks, governance processes are effective and efficient, and organizational goals and objectives are met.

Emerging trends in internal audit leverage on machine learning, predictive analytics and other data science techniques are also capable of identifying potential future threats and non-compliances through trend and process analysis allowing the organizations to have adequate controls and precautions to be future ready.

Internal Audit process

Internal audit revolves around the following key steps as a part of providing assurance and value add to the entire process

The audit process starts with the preparation of an audit universe which lists all the auditable units within an organization. Every year the first step that is undertaken is to update the audit universe and bring it in line with the organizational current state.

Then the Chief Audit Executive (CAE) would prepare a detailed audit plan taking into consideration the key risks as per the Enterprise Risk Management (ERM); including any other emerging risks; periodicity of coverage of the auditable units; perceived sensitivity; change in people, process and technology; understanding the business strategy and goals of the organization, and finally considering the inputs from the various stakeholders. These would include the various functional heads, business heads, CEO, CXOs and the second line of defense viz. financial controlling, security, risk management, quality, inspection and compliance. The final plan is then presented to the Board of Directors (BOD) for approval.

Few of the key areas to be reviewed for Internal Audit.

(i) Procurement to Pay
(ii) Statutory compliances
(iii) Production
(iv) Inventory Management

Brief description of various activities, control objectives and key controls relating to procurement to pay cycle and Inventory Management:

I. Procurement to Pay

1. Activity – Creation and Maintenance of Vendor Master

Control Objective -

Complete, accurate and updated data should exist in the vendor master. All changes to the vendor master should be duly authorized and accurately captured and no duplicate/redundant data should exist in the vendor master

Key Control

Review of the vendor master including documentation requirements.
Monitor all changes to the master file, i.e., review log of changes to the vendor master.

2. Activity - Creation and Maintenance of item master

Control Objective –

Complete, accurate and updated data should exist in the item master and All changes to the item master should be duly authorized and accurately captured and no duplicate/redundant data should exist in the item master.

Key Control

Review of the item master including documentation requirements.

Monitor all changes to the master file, i.e., review log of changes to the item master.

3. Activity - Purchase of Raw Material for production, purchase of engineering spares.

Control Objective -

All purchases should be supported by valid business needs and should be duly authorized.

Key Control

Review of monthly procurements and annual budgets for purchases along with approval.

4. Activity – Material Inwards at Warehouse

Control Objective –

All receipts should be duly approved and correctly accounted for in a timely manner.

Key Control

Review of processes at the time of receipt of goods at the factory including physical count of goods received

Review of Material Receipt Note (MRN)

5. Activity – Processing of Vendor Invoices

Control Objective –

Rates of goods/ services should be consistent with PO/ contract, should matching with receipts of goods/ services and no duplicate payments should be made. Liability should be correctly and completely recorded for invoices that have been processed.

Key Control

Review of invoices and comparison with PO and MRN including the approval process for payments.

Review of reconciliation of Purchase bills to be received with general ledger.

II. Inventory Management:

1. Activity - Physical verification of inventory items

Control Objective

Balance of inventories as per books of accounts should agree with the physical balance of inventories.

Key Control

To ensure that the physical stock verification has been carried out on a periodic basis and any discrepancies in physical stock and book stock is reviewed properly.

2. Activity - Updating Bill of Material (BoM)
Control Objective

BoM shall be updated in a timely manner

Key Control

To ensure that each new recipe is approved by R&D and the approved recipe is completely and accurately entered in ERP.

To ensure that all BoM updation cut off dates have been entered in ERP and all BoM updation cut off dates are informed to the respective division and plant heads.

3. Activity - Updating Item Master
Control Objective

Complete, accurate and updated data should exist in the item master and all changes to the item master are duly authorized and accurately captured.

Key control: To ensure that each new item code of FG and WIP is created on the basis of request received from concerned plant and item codes are created after receiving approval from the authorized personnel as per Organisation DOA matrix.

4. Activity - sale of scrap
Control objective

All sale of scrap should be duly approved and correctly accounted for in books of accounts on a timely basis.

Key Control

To ensure that all scrap sales are based on the invitation of the quotation and sale is awarded to the best approved rates.

To ensure that quantity of scrap is matched with invoice generated for scrap before dispatch

5. Activity - Obsolete Inventory
Control Objective

All obsolete inventories should be identified and accounted completely and accurately.

Key Control

To ensure that all obsolete inventories are identified, stock adjustment note is prepared for obsolete inventories identified during physical verification and approval is obtained from authorized personnel

Red flags in Pharmaceutical Industry

Globally, regulatory authorities have developed a keen interest in the pharmaceutical industry, few of the Pharma giants have paved the way for regulatory agencies to dig deeper into the malpractices prevalent in the pharmaceutical industry. With the growth of the pharmaceutical industry and the unavoidable by-products that result from it, the industry is currently faced with several schemes that have been tailored to manipulate and defraud enforcement agencies and the public at large

Red Flags and Fraudulent Schemes

The Indian pharmaceutical industry is faced with several challenges from a compliance point of view. The most prevalent fraudulent schemes in the industry relate to year-end targets, sales returns, etc., which are used as a veil to effectuate concerns around channel stuffing, free of cost products, free samples, fraud. These schemes are deeply entrenched into the system and are mingled into the day-to-day operations and accounting practices employed in the industry. Owing to the complex way these schemes operate, they remain concealed unless the substance of the activity is specifically analyzed.

Fictitious Sales

Modification of invoice number and other invoice details may enable distributor to claim incentives from the Companies by reporting bogus sales. Shell companies are also set up by distributors to claim more incentive from companies by showing false sales.

Free samples

Many a time, samples are provided free of cost to the distributors for distribution to end customers. However, these samples, if not specifically marked as “Free sample” are sold to the end customers at regular prices. Thus, the distributor records a profit of complete sale value violating the agency conditions with the company.

Expired Inventory

The expired inventory of daily-use drugs of low value lying with distributors is recorded as sales in the companies’ accounts without them being sold. The inventory is essentially not taken back from the distributors citing the higher administration costs involved in retrieving these medicines.

Distributor Channel Stuffing

Most of the companies engage in channel stuffing to inflate sales and earnings figures by deliberately sending distributors along its distribution channel more medications than they can sell to the public. The companies pay extra incentives to the distributors to hold up the inventory and not return it for a refund. Subsequently, the companies purchase back the inventory through shell companies created for this purpose at substantially lesser prices. This is generally done at the end of the financial year to inflate the revenue figures in the financial statements for investors.

Grey Market

A huge racket perpetrated by distributors in the pharmaceutical industry involves selling of grey market or generic drugs after illegally labelling and branding them. This issue recently caused much hue and cry in the US with consequences not only limited to civil liabilities but also criminal proceedings against the accused.

Institutional Dealings

Companies that supply medication and drugs to government hospitals and institutions also indulge in bribery of government officials to obtain or retain contracts associated with government hospitals. Commercial bribery in the form of giving kickbacks to vendors or offering unethical incentives to doctors or hospitals to promote specific pharmaceutical products is very common across the pharmaceutical industry.

Companies offer discounts to different categories of institutional buyers such as hospitals, corporates, research agencies and others. The discounts are mostly passed on in the form of credit notes, which are subsequently misappropriated in collusion with the buyers.

Under the present Indian legal framework, the Uniform Code of Pharmaceutical Marketing Practices (UCPMP or Code) regulates various marketing practices prevalent in the pharmaceutical industry. There are talks of making the said Code mandatory for all pharmaceutical companies, but now, the said Code is voluntarily implemented.

Conclusion:

Internal audit provides an independent and unbiased view on the organizational processes and activities thereby adding value to the organization. It greatly contributes in improving operational efficiency by objectively reviewing the organization's policies and procedures, providing assurance that the organization is doing what the policies and procedures say they are doing, and that the processes are adequate in mitigating unique risks, continuously monitoring and reviewing the processes, identifying control recommendations to improve the efficiency and effectiveness of the processes in turn, allowing your organization to be dependent on process, rather than people.

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DIRECT & INDIRECT TAXES

CHARITABLE ACTIVITIES

Contributed by CA Ramprasad T, CA Sri Harsha & CA Manindar

The taxation of charitable activities is quite an interesting area. This further assumes significance when the said taxation is studied from both income tax and goods and services tax laws. In this article, the authors dwell upon the basics of taxation of charitable institutions under income tax and goods and services tax laws, then proceed with taking up certain issues of significance to understand the interplay.

Taxation of Charitable Institutions under Income Tax Act, 1961:

An entity can claim exemption under the Income Tax Act, 1961 (Income Tax Act) under Section 11 or Section 10(23C) or Section 10(223BBA) depending upon the purpose of the trust or institution or by whatever name called.

Section 11:

Section 11 deals with taxation of institutions which are constituted for charitable or religious purposes. The income derived from the property held under the trust is not included in the total income to the extent such income is applied for such purposes in India and where any income is accumulated, such income not exceeding 15% of the total income shall not be included in the total income. The trust or institution can accumulate 85% of the income for a specific purpose for a maximum period of 5 years subject to certain conditions.

In computing 15% of the income which can be accumulated, any voluntary contributions referred in Section 12 of Income Tax act shall be deemed to be part of the income. Section 12 deals with voluntary contributions other than received with a specific direction that they shall form part of the corpus of trust or institution.

The income in the form of the voluntary contribution made with a specific direction that they shall form part of the corpus of the trust or institution is also not included in the total income of the trust or institution.

To claim exemption under Section 11 and Section 12, registration under Section 12AA is mandatory.

Section 13 states that provisions of Section 11 and Section 12 of Income Tax Act shall not be applicable to certain trusts or institutions which are created for a private religious purpose which does not ensure for the benefit of the public, concentrating on any particular religious community or caste and others.

Section 10 (23C):

Section 10 (23C) deals with incomes from the following not to be included in the total income:

- Any university/education institutions which are wholly or substantially financed by Government – 10(23C)(iiiab)

- Any Hospital/institutiontreatment of illness/mental effectiveness/medical attention/rehabilitation existing solely for philanthropic purposes and not for profit, which is wholly or substantially financed by Government - 10(23C)(iiiac)

- Any university/educational institutions existing solely for educational purposes and not for profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed [Rs 1 crore – Rule 2BC(1) of Income Tax Rules, 1962] - 10(23C)(iiiad)

- Any hospital/other institution treatment of illness/mental effectiveness/medical attention/rehabilitation existing solely for philanthropic purposes and not for profit, if the aggregate annual receipts of such hospital or institution does not exceed the amount of annual receipts as may be prescribed [Rs 1 crore – Rule 2BC(2) of Income Tax Rules, 1962] - 10(23C)(iiiae)

- Any other fund/institution established for charitable purposes having regard to the objects of the fund/institution and its importance throughout India or throughout any state or states subject to approval by prescribed authority being Principal Commissioner or Commissioner [Rule 2C of Income Tax Rules, 1962] - 10(23C)(iv)

- Any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes having regard to manner of affairs of trust/institution are administered and supervised for ensuring that the income accruing thereto is properly applied for objects thereof subject to approval by prescribed authority being Principal Commissioner or Commissioner [Rule 2C of Income Tax Rules, 1962] - 10(23C)(v)

- Any university/educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned above subject to approval by prescribed authority being Principal Commissioner or Commissioner [Rule 2CA of Income Tax Rules, 1962] - 10(23C)(vi)

- Any hospital/other institution treatment of illness/mental effectiveness/medical attention/rehabilitation existing solely for philanthropic purposes and not for profit, other than those mentioned above subject to approval by prescribed authority being Principal Commissioner or Commissioner [Rule 2CA of Income Tax Rules, 1962] - 10(23C)(via)

The exclusion from 10(23)(C)(iv)/(v)/(vi)/(via) is subject to the satisfaction of certain conditions like the application of income for the objects of the trust/institution and others.

Section 10 (23BBA):

Section 10(23BBA) deals with exclusion of income from total income of anybody or authority established, constituted or appointed by or under any central, state or provincial act which provides for the administration of any one or more of the following, that is to say, public religious or charitable trusts or endowments or societies for religious or charitable purposes registered under Societies Registration Act, 1860 or any other law for the time being in force.

Taxation of supplies made by Charitable Institutions under Goods & Services Tax Laws:

A. Charitable Activities vis-à-vis Scope of Supply:

Section 7 of Central Goods & Services Tax Act, 2017 (for brevity 'CGST Act') deals with the scope of 'supply.' As per Section 7(1)(a) the phrase 'supply' includes ***'all forms of supply*** *of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal* ***made or agreed to be made for a consideration by a person in the course or furtherance of business'.***

The important questions that the charitable institutions face is 'Whether the amounts received by them can be called as **consideration**?'and 'Whether the supplies made by them can be called as they are in the course or furtherance of **business**?'

The answer lies in the definition of phrases 'consideration' and 'business' as per the CGST Act. Section 2(31) CGST Act defines the phrase 'consideration' as under:

"consideration" in relation to the supply of goods or services or both includes—

> ***(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person*** but shall not include any subsidy given by the Central Government or a State Government;
>
> *(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

The above definition is evident that any payment made or to be made in respect of or in response to or for the inducement of supply of goods or services or both whether by the recipient or by any other person fits in the definition of 'consideration.' Hence, the amounts received by charitable institutions from the recipient or by any other person will undoubtedly fit in the above definition. It is important to note that the above definition has not dealt with the intention with which the consideration is received or paid. We will touch upon the aspect of intention more when we deal with the definition of the phrase 'business.'

Section 2(17) of CGST Act deals with the definition of the phrase 'business,' which is as under:

"business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
(f) admission, for a consideration, of persons to any premises;
(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
(h) activities of a race club including by way of totalisator or a license to bookmaker or activities of a licensed bookmaker in such club; and
i) any activity or transaction is undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

On a combined reading of clause (a), (b) and (c), it is evident that any activity whether or not for a pecuniary benefit irrespective of volume, frequency, continuity or regularity is termed as 'business.'

Hence, the supplies made by charitable institutions irrespective of their intention not to earn pecuniary benefit is not relevant, and accordingly, it can be concluded that it is done in course or furtherance of business to fall under the scope of 'supply.'

Accordingly, on a combined reading of the scope of 'supply,' definitions of 'consideration' and 'business,' it is evident that the supplies made by charitable institutions would fit in the ambit of CGST Act and supplies made by such institutions will be taxable unless exempted under Section 11 of CGST Act.

B. Taxability of Charitable Activities:

Notification 12/2017 – CT (Rate) dated 28th June 17 deals with supplies which are exempted from tax under Section 11 of CGST Act. The relevant entries which deal with charitable institutions are reproduced as under:

S No	Description of Services	Rate	Condition
1	Services by an entity registered under Section 12AA of the Income Tax Act, 1961 by way of charitable activities	Nil	Nil
13	Services by a person by way of – (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under Section 12AA of Income Tax Act, 1961 or a trust or an institution registered under Section 10(23C)(V) of Income Tax Act, 1961 or a body or authority covered under Section 10(23BBA) of Income Tax Act, 1961 Provided nothing contained in the entry (b) of this exemption shall apply to – i. Renting of rooms where charges are one thousand rupees or more per day ii. Renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day iii. Renting shops or other spaces for business or commerce where charges are ten thousand rupees or more per month	Nil	Nil
77A	Services provided by an unincorporated body or non-profit entity registered under any law for the time being in force, engaged in – (ii)promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare charitable activities and protection of the environment to its own members against consideration in the form of membership fee up to an amount of one thousand rupees per member per year	Nil	Nil
80	Services by way of training or coaching in recreational activities relating to – (b) sports by charitable entities registered under Section 12AA of Income Tax Act, 1961	Nil	Nil

It is important to note that the said notification has defined the phrase 'charitable activities' vide 2(r) as under:

charitable activities" means activities relating to -

(i) public health by way of ,-

(A) care or counseling of
(I) terminally ill persons or persons with severe physical or mental disability;
(II) persons afflicted with HIV or AIDS;
(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion , spirituality or yoga;
(iii) advancement of educational programmes or skill development relating to,-
(A) abandoned, orphaned or homeless children;
(B) physically or mentally abused and traumatized persons;
(C) prisoners; or
(D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests, and wildlife

C. Conclusion on Taxability:

From the above it is evident that a charitable institution to claim exemption under the GST laws has to satisfy the following aspects:

I. Whether services provided by the charitable institution are specified under Notification 12/2017- CT (Rate)?
II. Whether the services provided by charitable institution fits into the definition of 'charitable activities' as specified in the Notification 12/2017 – CT (Rate)?

If the answer to both the above questions is 'yes,' then the charitable institution can claim exemption from GST laws[1] to the income pertaining to such activities. If the answer is 'no,' then the income earned from such activities will be subjected to tax.

The interplay of charitable activities between Income Tax Laws and GST Laws:

By this time, it is clearly evident that the aspect of taxation under income tax laws and GST laws is completely different. A charitable institution might satisfy all the conditions specified in the income tax law and claim exemption from payment of income tax. However, if such charitable institution if not covered under any of the relevant entries in Notification No 12/17 – CT (Rate) or if covered do not satisfy the definition of 'charitable activities' specified in the said notification, such institutions will be subjected to tax under GST laws.

[1]GST laws include Central Goods & Services Tax Act, 2017, State Goods & Services Tax Act, 2017 and Integrated Goods & Services Tax Act, 2017

Hence, it is important to note that the income tax laws look at the intention of the charitable institution, whereas the GST laws look at the transactions rather than the intention. This important distinction plays a vital role because the majority of the charitable institutions presume that once they are exempted under income tax laws, they need not look at other laws for compliance.

The definition of charitable purposes/activities under the income tax laws and GST laws are quite different as evident from the below:

Aspect	Income Tax Act	CGST Act
Definition	**2(15) Charitable Purpose:** **Includes** relief of poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility. Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of nature of use or application, or retention, of the income from such activity unless – i. Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general utility and ii. The aggregate receipts from such activity or activities during the previous year, do not exceed twenty percent of the total receipts, the trust or institution undertaking such activity or activities, of that previous year	**2(r) charitable activities** **means** activities relating to - i. public health by way of ,- A. care or counseling of (I) terminally ill persons or persons with severe physical or mental disability; (II) persons afflicted with HIV or AIDS; (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or B. public awareness of preventive health, family planning or prevention of HIV infection; ii. advancement of religion, spirituality or yoga; iii. advancement of educational programmes or skill development relating to,- A. abandoned, orphaned or homeless children; B. physically or mentally abused and traumatized persons; C. prisoners; or D. persons over the age of 65 years residing in a rural area; iv. preservation of environment including watershed, forests, and wildlife

Certain Issues:

1. ***A charitable institution is engaged in an activity which is a 'charitable activities' under the GST laws and income tax laws. During the year, it has received voluntary donations without any specific direction for its utilization. What would be the treatment under the Income Tax laws and GST laws?***

Taxation under Income Tax Laws:

a. As per Section 12 of the Act any voluntary contributions received, other than those made with specific direction, be considered as income from property held under trust or other legal obligation for Charitable Purpose. Hence, such contributions along with other income is to be applied to the extent of 85% of such income for its objects in India to claim exemption from tax subject to exceptions mentioned in Section 11 as to the application.

Taxation under GST Laws:

b. Before proceeding to understand the tax impact, the initial question that triggers is, whether donation without any direction as to what purpose the same should be utilized amounts to 'consideration' as per Section 2(31) of CGST Act. If donation cannot be called as 'consideration,' then the supply fails and accordingly there will not be any tax on such amounts.

c. The definition of 'consideration' states that any payment made or to be made or monetary value of any act or forbearance ***in response to, or for the inducement, in respect of, the supply of goods or services or both.*** Hence, 'consideration' should be in response to or in respect of or for inducement. The donation is given without any inducement or without any response for goods or services.

d. Hence, donations without any expectation of returns would not be falling under the definition of 'consideration' and accordingly out of Section 7 of the CGST Act. If there is no consideration, Section 7 fails, and automatically Section 9 fails.

e. This view is also supported by Central Board of Indirect Taxes and Customs (CBIC) 'Taxation of Services – An Education Guide' vide Para 2.2.2 which states as ***'Activity carried out without any consideration like donations, gifts or free charities are therefore outside the ambit of service. For example, grants given for research where the researcher is under no obligation to carry out particular research would not be a consideration for such research.'***

2. ***A charitable institution is engaged in an activity which is not a 'charitable activities' under the GST laws, but for 'charitable purpose' under income tax laws. During the year, it has received voluntary donations with specific direction for its utilization. What would be the treatment under the Income Tax laws and GST laws?***

Taxation under Income Tax Laws:

a. Voluntary Contributions received with a specific direction for its utilization is not income of the Charitable Institution and hence no mandatory application of 85% is required. However, such amount would be considered for determining the requirement to get its books of account audited.

Taxation under GST Laws:

b. When the donation is given with a specific direction as to its utilization, the answer to the above question will suffice. However, if the donation is given with an expectation of return from the institution, such donations would acquire the definition of 'consideration' and becomes taxable.

c. This view is also supported by the Central Board of Indirect Taxes and Customs (CBIC) 'Taxation of Services – An Education Guide' vide Para 2.2.2 which states as ***'Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of the donor in a specified manner or such that it gives a desired advantage to the donor'***

3. ***A charitable institution which is engaged in the provision of 'charitable activities' as per GST and Income Tax laws. However, during the provision of said charitable activities, also engaged in the selling of certain goods which are incidental or ancillary to the charitable activities. What is the impact on Income Tax and GST laws?***

Taxation under Income Tax Laws:

a. Business Undertaking can be considered as a Property held under trust or other legal obligation for Charitable purpose. Such business should be incidental to the attainment of objectives of Charitable Institution and separate books of accounts are maintained in respect of such business. In such case business profits are not chargeable to tax subject to fulfilment of other conditions mentioned in Section 11.

Taxation under GST Laws:

b. It is important to note that the services provided by a charitable institution which is registered under Section 12AA of Income Tax Act by way of 'charitable activities' are exempted under Entry 1 of Notification 12/2017 – CT (Rate) dated 28th June 17.

c. However, there is no exemption for the sale of goods by such charitable institution because the definition of 'charitable activities' does not provide for the sale of goods and the exemption notification issued for goods does not deal with such situation.

d. The recent judgment by Authority for Advance Ruling (AAR), Maharashtra in the case of Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra 2018 (9) TMI 235 has stated that sale of spiritual products which is incidental or ancillary to main charitable object can be said to be 'business' and accordingly tax is required to be paid on such supply.

e. However, we would like to respectfully differ with the opinion of AAR, since the AAR has failed to consider important judgments laid down by the applicant namely Commissioner Of Sales Tax Versus Sai Publication Fund - 2002 (3) TMI 45 - SUPREME Court and others. For a detailed view of our difference of opinion, please read our article in this journal titled 'Fate of Business' under the GST section.

4. ***An educational institution is registered under Section 12AA of Income Tax Act, 1961 with an intention to provide education. For the provision of education, the institution has also thought it would be appropriate to have a residential facility for the students. In such a scenario, whether the provision of the residential facility by such institution would fall under the ambit of 'charitable purposes' for the income tax laws? Whether the provision of the residential facility by such institution would fall under the ambit of 'charitable activities' for the purposes of GST laws?***

Taxation under Income Tax laws:

a. The provision of education by an institution is undoubtedly covered under the definition of 'charitable purpose' which is laid down vide Section 2(15) of the Income Tax Act. Hence, the amounts collected for the provision of education will be exempted in the hands of the institution subject to other conditions laid down under the Income Tax Act.

b. The moot question that has to be answered is whether the fee received for the residential facility is also covered under the definition of 'charitable purpose' and accordingly exempted from tax assuming all other conditions are satisfied.

c. The said issue was dealt by Honorable Tribunal of Ahmedabad in the case of Shree Ahmedabad Lohana Vidyarthi Bhavan vs. ITO (Exemption) 2018 (7) TMI 1084 – ITAT Ahmedabad. The AO in the above case was under the opinion that residential facility is not akin to education and accordingly the said activity would not fall under the 'education,' but fits under 'advancement of any other object of general public utility,' and accordingly, the amounts collected for the residential facility were not exempted.

d. The Honourable Tribunal has held that *'hostel is an essential institution for students to stay and it paysan important role in the education and training of the students. They provide residential opportunities for the students to continue the process of education. It is a human practical laboratory for the development of students. It is the centre of education. It is one of the essential components of educational institution'* and accordingly held that residential facility forms part of attainment of education which is a charitable purpose.

e. The Honourable Tribunal has also held that *'if the activity of providing hostel facilities to the students fall within the ambit of education as referred to in Sec 2(15) then generation of surplus would be immaterial because the surplus will be utilized for the objects of the trust. In case surplus so used or accumulated to be utilized for the purpose of objects of the trust then income would not taxable.'*

f. The important observations from the above judgment are as under:

- o The incidental activities which contribute to the objects of the trust be regarded as a part of the object and not to be considered in isolation
- o The term Education be read in a sense that facilities which improve and stimulate the development of students are also part of it
- o The mere existence of surplus is not a sole criterion to consider the activity or object being commercial or business as long as the surplus is used or accumulated for the furtherance of objects of the trust it remains charitable.

g. From the above, it is evident that the residential facility is part of education and accordingly fits in the definition of 'charitable purpose,' thereby eligible for exemption despite the fact that such facility is generating a surplus.

Taxation under GST laws:

h. It is important to note that the provision of education is not covered under the definition of 'charitable activities' under the GST laws unless such education to a specified category of people like abandoned, orphaned and others. The education provided to regular students is not a 'charitable activities' under the GST laws, and accordingly, the residential facility would not be eligible for exemption unless it is for a specified category of people.

i. However, another entry which would cover the situation is Entry 66 of Notification No 12/2017 – CT (Rate) dated 28th June 17whichdeals with services provided by an 'educational institution' to its students, faculty, and staff. The phrase 'educational institution' is defined vide 2(y) of said notification as *'means an institution providing services by way of,- (i) pre-school education and education up to higher secondary school or equivalent', (ii) education as part of curriculum for obtaining a qualification recognized by any law for the time being in force (iii) education as part of approved vocational education course.*

j. The entry 66(a) provides an exemption only for services provided by educational institution pertaining to education. The residential facility is not covered under the said entry. However, the residential facility will be covered by such exemption entry in light of 'composite supply.'

k. The phrase 'composite supply' has been defined vide Section 2(30) of CGST Act which *'means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply'.*

l. The provision of education and residential facility are two supplies which are naturally bundled and supplied in conjunction with each other in the ordinary course and education will be the principal supply.

m. Section 8(a) of CGST Act states that the taxation of composite supply will be as such taxation of principal supply which is education services. Since education services are exempted vide Entry 66(a), the fee for the residential facility would also fit under the said exemption in light of Section 8(a) of CGST Act.

n. The said view is also supported by Central Board of Indirect Taxes and Customs (CBIC)'s 'Taxation of Services – An Education Guide' vide Para 4.12.4 which is reproduced hereunder *'Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case, since dominant nature is determined by the service of education another dominant service of providing residential dwelling is also covered in a separate entry of the negative list, the entire bundle would be treated as a negative list service'.*

o. The CBIC has also made a press release dated 13th July 17 which clarified vide Para 3 as under *'Thus, services of lodging/boarding in hostels provided by such educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognized by law, are fully exempt from GST. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall not attract GST.'*

p. The above view is also supported by the judgment of Honorable Tribunal in the case of Shree Ahmedabad Lohana Vidyarthi Bhavan vs. ITO (Exemption) 2018 (7) TMI 1084 – ITAT Ahmedabad, wherein it was held that residential facility is akin to the education.

q. The view is also supplemented by CBIC's circular under GST laws vide Circular No 28/02/2018 dated 08th Jan 18 which deals with taxation of mess fee when facility of mess is provided by the educationalinstitution. The said circular has clarified that if mess facility is provided by educational institutions, then such fee would be exempted in light of Entry 66(a) of Notification No 12/2017 – CT (Rate).

r. Accordingly, it can be concluded that if the residential facility is provided to a specific category of people who are mentioned in the definition of 'charitable activities,' the exemption is available under Entry 1 of Notification No 12/2017. This is irrespective of the quantum of the fee. However, if the residential facility is provided by educational institutions who are into pre-school and education upto higher secondary school or equivalent, then the said fee is covered under Entry 66(a) of Notification No 12/2017 and accordingly exempted.

5. ***An institution is registered under Section 12AA of Income Tax Act, 1961 and also obtained registration under Section 80G ibid. The main activity of the institution is to act as implementing agency for companies who are obliged to spend amount under Corporate Social Responsibility (CSR) which is mandated under Companies Act, 2013. The institution receives the funds which have to be spent for the objectives of CSR,and as a facilitating agency, the institution is given a certain fee. Whether such fee would be exempted under Income Tax and GST laws?***

Taxation under Income Tax Laws:

a. Charitable Purpose as defined in Sec 2(15) of the Act provides that the advancement of any other object of general public utility shall not be charitable purpose if it involves carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a fee or any other consideration irrespective of nature of use or application.

Carrying on activities as an implementing agency for CSR activities may be construed as the advancement of any other object of general public utility. However, in case such activity is carried on as a part of objects of the institution and fee do not exceed 20% of total receipts of the institution it is eligible to claim exemption subject to its application.

Taxation under GST Laws:

b. The activity of facilitation is not covered as 'charitable activities' under GST laws. Hence, the amount received shall be subjected to GST since it is not exempted elsewhere.

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GST

FATE OF BUSINESS UNDER GST

Contributed by CA Sri Harsha & CA Manindar

Introduction:

Under the erstwhile regime, levy of VAT on sale of goods is applicable only when such sale has been undertaken in the course of business. On the contrary, levy of excise duty or service tax are not connected with the existence of business. Under GST laws, the phrase 'business' assumes a lot of significance, for the reason that levy in general is on supply of goods or services while the definition of 'Supply' as given in Section 7 of Central Goods & Services Tax Act, 2017 (for brevity CGST Act) provides that they should be undertaken in the course of or furtherance of business. In this backdrop, let us analyse the term 'Business' in connection with supply and try to understand the possible scope for ambiguity and litigation.

Scope of Supply:

Before we proceed to understand the scope of the term 'Business', let us go through the definition of 'Supply' as given under section 7.

7 (1) For the purposes of this Act, the expression 'supply' includes –

a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person* ***in the course or furtherance of business***

From the above, it is evident that 'supply' includes all forms of supply of goods or services or both such as …… to be made for a consideration by a person in the course or furtherance of business. Hence, a transaction would be called as 'supply' only if such transaction is made in course or furtherance of business and accordingly subject to tax under section 9.If it is not made in course or furtherance of business, it would not be regarded as 'supply' (unless such transaction fits into other sub-sections of Section 7) and no tax would be levied.

Hence, the phrase 'Business', assumes significance as stated in the introduction. The definition of 'Business' is provided in Section 2(17) of CGST Act, 2017 and is reproduced hereunder;

Scope of 'Business':

The definition of 'business' is given under Section 2(17) of CGST Act, 2017. The relevant part is reproduced hereunder:

(17) "business" includes—

a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

f) admission, for a consideration, of persons to any premises;

g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

The definition is laid down in an inclusive manner. Clause (d) to clause (i) contains items which are expressly considered/clarified as activities of business under GST law in order to tax these activities. Clause (a) to clause (c) provides the meaning and scope of the term 'Business' in general for the purpose of GST laws.

The sub-clause (a) includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit. It covers the expressly mentioned items and all other similar activities whether such activities are done for pecuniary benefit or not. The sub-clause (b) states that any activity or transaction in connection with or incidental or ancillary to sub-clause (a) is also called as 'business'. Further, sub-clause (c) states that irrespective of the frequency, volume, continuity or regularity of transaction or activity mentioned in sub-clause (a), the said activity or transaction shall still be called as 'business'. Further sub-clause(i) provides that any activity or transaction undertaken by Central Government or State Government or any local authority would be considered as business even though their engagement in such activities is as public authorities.

Upon perusal of the above discussed sub-clauses of the definition, the following questions arise for consideration;

(a) Whether an activity/transaction which is incidental or ancillary to a main activity which is not business would come under the ambit of 'Business' on its own if such incidental or ancillary activity has attributes of trade, commerce, manufacture, profession, vocation, adventure, wager?

(b) Whether an activity/transaction which is incidental or ancillary and not connected with the entities primary activity/transaction of the nature of trade, commerce would come under the scope of 'Business'?

(c) Whether an isolated activity/transaction of the nature referred in sub-clause (c) would be considered as 'Business' even though the said activity perse would not be of the nature of any trade, commerce, manufacture, profession, vocation, adventure, wager?

(d) Whether the transactions or activities undertaken by Government as public authority would be considered as 'Business' even though the ingredients of trade, commerce, manufacture etc are missing in the said transactions?

Under the erstwhile VAT laws also, the term 'Business' has been defined in the same manner as the present definition under GST law. The jurisprudence of erstwhile decisions would be of help in understanding the meaning and scope of business and to address the above questions.

In the case of Commissioner of Sales Tax vs. Sai Publication Fund (Civil Appeal No. 1716 of 1999), the Supreme Court vide para 11 has held— *"No doubt, the definition of "business" given in section 2(5A) of the Act even without profit- motive is wide enough to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern.* ***If the main activity is not business, then any transaction incidental or ancillary would not normally amount to "business" unless an independent intention to carry on "business" in the incidental or ancillary activity is established.*** *In such cases the onus of proof of an independent intention to carry on "business" connected with or incidental or ancillary sales will rest on the department.* ***Thus, if the main activity of a person is not trade, commerce, etc., ordinarily incidental or ancillary activity may not come within the meaning on "business. To put it differently, the inclusion of incidental or ancillary activity in the definition of "business" pre-supposes the existence of trade, commerce, etc.,*** *The definition of "dealer" contained in Section 2(11) of the Act clearly indicates that in order to hold a person to be a "dealer", he must "carry on business" and then only he may also be deemed to be carrying on business in respect of transaction incidental or ancillary thereto. We have stated above that a main and dominant activity of the Trust in furtherance of its act is to spread message"*

In the case of State of AP vs. Sri Bhramaramba Mallikarjuna Temple, (1989) 73 STC 321(APHC DB), it was held that if dominant activity of an institution such as a religious or charitable institution is not a business activity, the secondary activity which has elements of commerce or trading activity, will be exempt from tax if it is integral part of main activity. In this case, it was held that the following incidental or ancillary activities are held to not taxable

(a) Sale of food in canteen run by temple was not taxable as it was for supply of foodstuffs to visiting pilgrims at reasonable prices. It was integral to main activity and is not taxable.
(b) Similarly, temple was running motor vehicles for transporting pilgrims at reasonable rates. Hence, sale of unserviceable parts is not taxable as it has a character of functional integrity.
(c) Sale of human hair offered by pilgrims to the temple is not a commercial activity.

In the case of Manipal University vs State of Karnataka, STRP NO.412/2013 & STRP.NOS.795-850/2013, the Karnataka High Court has considered the issue whether sale of prospectus by University would be subject to VAT wherein the primary activity/objective of University is education which is not a business. In this case it was held – *"It is not the case of the University that they sale or sold the prospectus and application forms at cost. The price, as contended by learned counsel for the University, of the prospectus during the relevant period was ranging from Rs.350-Rs.500. We have perused the prospectus for the relevant period, which, in our opinion, was on the higher side. Therefore, it cannot be stated that there was no profit motive as claimed by the University. Merely because, the University was established for*

imparting education does not mean that it is not indulging in the business so as to make profit out of the sale of prospectus and application forms. Their intention to make profit is clear from the facts and figures placed on record."

Upon perusal of the above decisions, the following principles emanate;

a) When the main activity is not business, then the incidental or ancillary activity which is integral to main activity cannot be considered as business.
b) Even when the main activity is not business, the incidental or ancillary activity would be considered as business if an independent intention to carry business in such incidental or ancillary activity is evident.

The next important question to be considered is that every business is going to generate some sought of miscellaneous revenue which is insignificant, or which is not attributable to the primary business activity. Will these activities be also considered as incidental or ancillary to the main activity of business?

In the case of Panacea Biotech Limited vs. Commissioner of Trade and Taxes & Otrs, 2012(12)TMI826-Delhi High Court, wherein it was held vide para 2—*"In the present case, the main business of the petitioner is manufacture and sale of pharmaceutical products and the vehicles are used by it in the course of business (as written by Respondent No.-2 in the impugned order (Annexure A-1)). This may lead to the inference that proceeds from the sales of such vehicles should have been included in the turnover and must be taxed accordingly. But the selling of used cars cannot by any stretch of the imagination be characterized as "ancillary" or incidental to the business of a pharmaceutical company. It is not shown that the cars were of a special character e.g. air-conditioned vehicles especially designed to store and ferry pharmacy products. They were purchased for use of company employees and executives, for office purposes. At the stage of purchase, they suffered sales tax, which the assessee, as buyer, was bound to pay. However, the assessee never held them for the purpose of sale and purchase, but for using them. After their use, having regard to lapse of time, and their wear and tear, the assessee decided to replace them. These cars were then sold. Their sales, in a sense are twice removed from the business of the assesse. They cannot be called "incidental" or "ancillary" to the manufacture and sale of pharmaceutical products, which the assesse is engaged in."*

In the case of Morarji Brothers (I&E) (P) Ltd vs. State of Maharashtra, (1995) 99 STC 117 (Bom HC DB) wherein the assessee is engaged in the business of manufacture of chemicals and other products and is a registered dealer. The assessee has sold used motor cars. The issue before the Bombay High Court was whether such sale of used cars becomes incidental or ancillary to the main activity of business and accordingly liable to pay VAT. It was held that the sale of motor cars by a dealer who is engaged in the business of manufacturing, selling and supplying of chemicals cannot be considered as incidental or ancillary activity to the main business. Accordingly, held that no tax is payable on such sale.

In the case of State of Tamil Nadu vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd, 1972(10)TMI95-Supreme Court of India, wherein it was held – *"In the view we hold the scrap sold is certainly connected with the business of the company and the turnover in respect of this commodity is liable to tax. It cannot also be said that the turnover in respect of the sale of the assessee's advertisement materials at cost price or less than cost price is not connected with the business of the assessee. Calendars, wallets and key chains are all given by the dealers to its customers for purposes of maintaining and*

increasing the sales of the products of the assessee and is therefore connected with the business. What the assessee is doing is to facilitate the dealers to acquire at their cost such advertising materials of a uniform type approved by the assessee-company which, instead of allowing each of them to have these separately printed or manufactured, itself undertook to do so and supplied them to its dealers. The supply of such material is in our view being connected with the business is liable to be included in the turnover of the assessee."

In view of the above reproduced decisions, it has been settled under the erstwhile VAT laws that incidental or ancillary activities must have direct nexus or resultant of the main business activity. Thus, supplies arising out of activities which has no direct nexus with the business activity of a tax payer will not be considered to be incidental or ancillary to their main business. Accordingly, such supplies may not be considered as 'Supply' as defined under section 7 of CGST Act, 2017 for levy of GST for the reason that they are not arising in the course of or furtherance of business.

Extrapolating the above understanding of 'Business' to various scenarios:

We will now extrapolate the above understanding of the term 'Business' to the following activities and accordingly analyse the implications of GST.

a) **Educational institution renting out immovable property:** Let us say that a University which is established for the purpose of education, being their primary activity may not be considered as business. The University has given a space on lease to a canteen to be maintained in University. Whether the said leasing activity would amount to business? In view of the above decisions, leasing of space for canteen is ancillary or incidental to main activity of education which is not a business. Further leasing of space for canteen is integrally connected to education in order to arrange the facility of food supply to students and faculty at campus. Therefore, the said activity may not be business and accordingly it may not be subject to GST.

b) **A Software Company Providing Food to Employees at a Concessional Rate:** The primary business activity of a software company is software development which is a business. The incidental or ancillary activity would be something connected to the primary business. Providing food to employees may not be considered as incidental or ancillary to the software development. Accordingly, the said activity may not amount to business in order to subject them to GST. However, the recent AAR in the case of Caltech Polymers Limited 2018 (4) TMI 582 – AAR Kerala¬has considered this activity of food supply to employees as ancillary or incidental to main activity of business and accordingly held that GST is payable. However, Advance Ruling Authority has not analysed the phrase 'incidental or ancillary' in detail and has not considered the propositions laid down by various courts under the earlier VAT laws.

c) **Sale of motor vehicles:** Sale of motor vehicle is undertaken by a company which is in the business of tours and travels. Then such sale would become ancillary or incidental to their main business and accordingly subject to GST. The said proposition was upheld in the recent AAR CMS Info Systems Limited, 2018 (5) TMI 649 – AAR Maharashtra wherein sale of old vehicles by a company which is in the business of cash management services for banks as incidental or ancillary to main business. On the contrary, sale of motor vehicles by a company which is in the business of software would not be considered as incidental or ancillary activity as motor vehicles is unconnected to the business of software development. Therefore, the same may not be subject to GST.

d) **Activities undertaken by Government as public authority:** The important question to be considered is any activity undertaken by Government or local authority as public authority would come under the ambit of business even if the ingredients of trade, commerce, manufacture etc are missing. Let us take an example that a Municipal Corporation has let out their commercial buildings to various business entities. On the other hand, they have collected fee towards permission to construct a building. In the first activity of renting, there are ingredients of trade, commerce etc and accordingly it may come under the ambit of 'Business'. In case of second activity, the same is a statutory function and the elements of trade, commerce etc are missing. If the said activity is said to be a business, then it can be said that Government or local authorities are asked to pay GST (either by direct charge or reverse charge) on those activities which are not of the nature of trade, commerce etc while on the contrary the other entities are not required to do so. Whether this distinction has any rationale and is within the vires of Article 14 of the Constitution?

Conclusion:

In view of the above discussion on the ambiguity existing on various sub-clauses of 'Business' definition, the jurisprudence existing under VAT laws and extrapolating the same to various scenarios, it is clearly evident that this definition under GST laws is prone to lot of litigation in the times to come. Let us wait and see the fate of 'Business' under GST laws.

This article is contributed by CA Sri Harsha Vardhan K & CA Manindar K, Partners of SBS and Company LLP, Chartered Accountants. The authors can be reached at harsha@sbsandco.com & manindar@sbsandco.com

SEZ

SEZ PROPOSALS BY SBS AND COMPANY LLP

To
Mr Ravi Sannareddy,
Managing Director
Sri City India Private Limited,
Sri City

Dear Mr Ravi Sannareddy,

It gives me immense pleasure to congratulate your good self on being elected as member of committee responsible for recommending changes to the SEZ legislation. I am sure that this is one of the important mile stone in your efforts to make Sri City attain much brighter spot on the globe.

On behalf of our firm, I am herewith submitting certain issues which the firm encounters while helping our SEZ clients. The probable ways of addressing such issues were also detailed. I wish the committee will take the issues into consideration and deliberate on them and make recommendations for making the SEZ space more vibrant.

I once again on behalf of our firm congratulate your good self and submit our recommendations for due consideration. I shall assure that our team will be available at any time for discussion of the issues submitted hereunder. I shall also assure that our team can provide any technical or professional support required in this connection.

With Kind Regards,

For SBS and Company LLP
Chartered Accountants

Suresh Babu S
Chairman and ManAging Partner

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Proposals under SEZ Legislation

The recommendations are as a result of practical challenges faced by the firm during the course of assisting the developer and units of various SEZs. This set of proposals are contributed by Mr Murali Krishna, Partner SEZ Practice.

Issue #1: Returnable Goods:

The current rules only deal with reporting of goods on non-returnable basis. There are certain instances where the goods are admitted into SEZ unit on returnable basis. There is no mechanism for reporting of such goods in https://sezonline-ndml.co.in/.

Proposal:

It is recommended that the portal should be equipped with a mechanism to report goods procured by SEZ unit on returnable basis.

Issue #2: Reporting of Services:

The current https://sezonline-ndml.co.in/ allows reporting of goods into SEZ unit. The SEZ unit also procures services. The portal does not allow reporting of services.

Proposal:

It is recommended that the portal should be equipped with a mechanism to report services procured by SEZ unit.

Issue #3:Reporting of Transactions between Developer and Unit:

The current https://sezonline-ndml.co.in/ allows reporting of sales between two SEZ units irrespective of locations of units in SEZ. The portal does not allow reporting of transactions of sales between the SEZ developer and SEZ unit.

Proposal:

It is recommended that the portal should be equipped with a mechanism to report such sales in the portal.

Issue #4: Work from Home/On Travel for Employees of Units engaged in business other than IT/ITES:

Current regulation Instruction No 55 dated 5th May 10 and Instruction No 58 dated 21st Ma y 10 allows the facility for employees of IT/ITES units of SEZ to work from home or while they are in travel.

Proposal:

It is recommended that such facility is also extended to all other applicable sectors so that the burden of reporting/approval to the DC/Customs Authorities on the units will be reduced.

Issue #5: Provisions pertaining to The Destructive Insects and Pests Act, 1914:

The SEZ Act does not have any provisions pertaining to implementation of Plant Quarantine Act. This creates a vacuum for any unit which is required to adhere to the provisions of Plant Quarantine Act.

Proposal:

It is recommended that suitable amendments may be made to incorporate the procedure for allowing SEZ units to adhere to provisions of Plant Quarantine Act so that the units can carry the business more efficiently.

Proposals under Direct Taxation

The recommendations are as a result of practical challenges faced by the firm during the course of various interactions with developer and units of SEZs. This set of proposals are contributed by Mr Suresh Babu S and Mr Ramprasad T, Partners of Direct Taxation Practice.

Issue #6: Investment in Non-Processing Areas:

The deduction under Section 10AA of Income Tax Act, 1961 relating to Year 10 to 15 be allowed based on creation and utilisation of SEZ Re-investment reserve. The objective is to create new infrastructure by investing in new plant and machinery. So, the last five years of deduction under Section 10AA focus on re-investment on Infrastructure. However, there is no clarity as to whether such investment can be made into non-processing areas.

Proposal:

It is recommended that the amount be allowed to be utilised in developing or creating a non-processing area where in supporting infrastructure is created by the SEZ Unit. These facilities could be used to upgrade the skill level of unemployed local youth.

The above proposal is line with the requirement of 10AA (2) (ii) of the Income- Tax Act, 1961 which allows usage of amount in the SEZ Re-investment reserve for business purpose till the new plant and machinery is acquired.

Issue #7: Certain Amounts to be excluded while calculation of SEZ Re-Investment Reserve:

For computing the amount to be transferred to the SEZ Re-Investment reserve only export profits are considered. Though amount utilised outside India out of export proceeds are considered as part of export turnover the same view cannot be extended to more than what it intended for. Since the amount in the reserves cannot be used in creating an asset outside India the amount so utilised out of export turnover would not qualify for deduction during Years 10-15.

Proposal:

Amount utilised in convertible foreign exchange outside India with RBI approval out of export proceeds should be excluded while determining the amount of profits to be transferred to the reserves.

Issue #8: Addition of SEZ Re-Investment Reserve to the Book Profits:

While computing book profits under Section 115JB of Income Tax Act, 1961 any amount transferred to any reserve should be added back to book profits for determining the tax liability. As MAT provisions are applicable to SEZ units, the mandatory requirement of transfer to SEZ Re-investment reserve deserves a separate treatment.

Proposal:

Sec 115JB of Income Tax Act, 1961 which provides for taxation based on book profits of the company should provide for exclusion of amount transferred to SEZ Re-investment reserve considering larger object of infrastructure creation.

Proposals under Indirect Taxation

The recommendations are as a result of practical challenges faced by the firm during the course of various interactions with developer and units of SEZs. This set of proposals are contributed by Mr Sri Harsha and Mr Manindar, Partners of Direct Taxation Practice.

Issue #9: Conflict between GST Laws and Rules for supplies made to SEZ unit/SEZ developer:

Section 16 of Integrated Goods & Services Tax Act, 17 (IGST Act) deals with the concept of 'zero rated supplies'. As per Section 16, any supply made to SEZ developer/SEZ unit is treated as 'zero rated supplies' and the supplier has an option to make such supply without payment of tax.

On the other hand, Rule 89 of Central Goods & Services Tax Rules, 17 (CGST Rules) state that the supplies which are used for authorised operation are only eligible for refund.

Hence, there is an apparent conflict between the IGST Act and CGST Rules. The IGST Act does not specify that the supplies to SEZ unit/developer should be for authorised operations, where as the rules specify such condition.

Proposal:

It is recommended that the IGST Act is to be amended in line with the CGST Rules, so that the supplier providing supplies to SEZ unit/developer will be in a position to understand that no tax is required to be charged if such supplies are used for authorised operations of SEZ unit/developer. If the SEZ unit/developer does not use the supplies for authorised operations, then the supplier only be referring to the IGST act will not be in a position to understand that on such supply IGST has to be charged.

Issue #10:Endorsment by Specified Officer for claim of Refund of Input Tax Credit:

Rule 89 of CGST Rules vide second proviso states that in respect of supplies to a SEZ unit/developer, the application for refund shall be filed by supplier of services along with such evidence regarding receipt of services for authorised operations by the specified officer of the Zone.

However, as stated in the proposals under the SEZ legislation, the current portal https://sezonline-ndml.co.in/ does not allow reporting of services. In such a situation, the specified officer does not have any trial to examine whether the developer/unit has received such services for endorsing.

Proposal:

It is recommended that appropriate changes shall be made to https://sezonline-ndml.co.in/, to allow the developer/unit to report services. The same would also enable the specified officer of zone to examine the trail to endorse the invoices, so that the supplier shall be eligible for refund of input tax credit. Needless to say, any issue faced by the supplier, the consequences will be on the developer/unit. Hence, there is a requirement to make changes in the law to accommodate the supplier, who is also an important stakeholder in the transactions.

Issue #11: Reporting of Works Contract Services for New Units:

The newly established SEZ units will procure construction services either from developer or units locat2ed in domestic tariff area. The construction services were treated as 'composite supply' and accordingly deemed as 'services' in terms of Para 6 of Schedule II of Central Goods & Services Tax Act, 17 (CGST Act).

Hence, the supplier providing construction services has to raise an invoice under CGST Act as if the said transaction is a supply of service. Whereas, the supplier shall mobilise cement, sand, steel and other materials to the location of newly established unit to commence the construction activity, which the unit has to report that it has received goods. However, the invoice state that the supplier has provided services. There is a mis-match between the portal and CGST Act and non-adherence of any of these would lead to defeat of respective provisions under the said laws.

Proposal:

It is recommended that the https://sezonline-ndml.co.in/will be amended in such a way to capture the transaction of works contract services so that the GST laws and SEZ laws are in compliance by the unit/developer. The committee may also think of creating a facility to capture the details of the goods with help of delivery challan and other related information instead of only invoices.

Proposals under various Labour Laws

The recommendations are as a result of practical challenges faced by the firm during the course of various interactions with developer and units of SEZs. This set of proposals are contributed by our associate Mr S V Ramachandra Rao, Manging Director of Resource Inputs Limited.

The Contract Labour (Regulation and Abolition) Act 1970:

Issue #12: Applicability of the Act:

Section 1(4) deals with the applicability of the Act.

In case of any **establishment,** the Act shall be applicable in which **fifty or more (AP State amendment)** are employed or were employed on any day of the preceding twelve months as contract labour. Where as in case of **Contractor** who employs or employed **fifty or more** workmen on any day of the preceding twelve months.

Proposal:

To boost up the economy and for smooth functioning of small size and un organised sectors, it is recommended to increase the limit of **Fifty to Hundred.**

The Factories Act 1948:

Issue #13: Applicability of the Act:

Section 2(m) deals with the definition of "Factory".

The Definition of "Factory" means any premises including precincts where-

In case of manufacturing process is being carried on with the aid of power, where on **twenty or more (AP State amendment)** workers are working or were working on any day of the preceding twelve months

In case of manufacturing process is being carried on without the aid of power, where on **Forty or more** workers are working or were working on any day of the preceding twelve months

Proposal:

As the minimum limit of Twenty and Forty is very smaller in number which forces smaller size and informal sector to abide with many rules and regulations. It is recommended to increase the minimum limit of **Twenty to Forty** in case of manufacturing process being carried on with the aid of power or without the aid of power.

Issue #14: Increase in the Overtime Hours:

Section 64(4) deals with limit of number of overtime hours for a quarter.

The total number of hours of work in a week including overtime, shall not exceed Sixty. The total number of hours of overtime shall not exceed fifty for any quarter

Proposal:

It is recommended to increase the limit of total number of overtime hours from **Fifty to one hundred and forty-four** as recommended by International Labour Organisation.

The Industrial Employment Standing Orders Act 1946:

Issue #15: Applicability of the Act:

Section 1(3)deals with the applicability of the Act.

It applies to every industrial establishment where in one hundred or more workmen are employed or were employed on any of the preceding twelve months

However, the Andhra Pradesh Government vide GO Ms No 33, Labour Employment Training and Factories (Lab II) dated 5th July 1999 reduced the requirement of hundred and or more workmen to fifty or more workmen.

Proposal:

It is very tough for small size and unorganised sector employers to abide with formally defined conditions of employment. Hence it is recommended to increase the applicability limit to two hundred and or more workmen.

The Building and Other Construction Workers (RE and CS) Act, 1996:

Issue #16: Applicability of the Act:

Section 25-A deals with the applicability of Section 24-C and 25-E of the Act.

It is applicable to industrial establishments in which **less than fifty workmen on an average per working day have been employed in preceding calendar month**

Proposal:

It is recommended to increase the limit to **one hundred workmen** on an average per working day.

Issue #17: Notice to close down any undertaking:

Section 25-FF-A deals with the serving of Sixty days' notice to be given of the intension to close down any undertaking.

An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective clearly stating the reasons for closure of the undertaking

However, Service of Notice shall not applicable to an undertaking in which less than **fifty workmen** are employed or were employed on an average per working day in the preceding twelve months.

Proposal:

It is recommended to increase the limit of fifty workmen to **one hundred workmen.**

The Building and other Construction Workers Welfare Cess Act, 1996:

Issue #19: Collection of Cess

:

Section 3 deals with the levy and collection of cess.

Cess shall be levied and collected at such rate not exceeding two percent, but not less than one percent of the cost of construction incurred by an employer.

Proposal

There is no clarity on the costs and expenses to be included in cost of construction and it is recommended that cost incurred on the purchase and transportation of plant, machinery and other equipment meant to be used in a factory shall be excluded from the cost of construction incurred by the employer.

Trade Union Act 1926

Issue #20:Membership of a Trade Union:

Section 9A deals with the minimum requirement about the membership of a Trade Union.

An establishment or an industry having workmen **not less than ten percent or one hundred of workmen,** whichever is less, subject to minimum of seven workmen shall continue to have at all times a registered trade union of workmen.

Proposal

As it makes small scale industries hard to establish and maintain labour unions, it is recommended to increase the limit to **thirty percent or three hundred of workmen**, subject to minimum of seven workmen.

Issue #21: Mode of Registration:

Section 4 deals with mode of registration.

Any seven or more members of a Trade Union may, by subscribing their names can get registered. However, not required to registered if less than ten percent, or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.

Proposal

It is recommended to increase the limit to **thirty percent or three hundred of the workmen** which ever is less.

Issue #22:Proportion of office bearers from the industry:

Section 22 (2) deals with the proportion of office bearers.

There is a provision of all the office bearers of a registered trade union, except not more than one third of the total number of the office bearers or five whichever is less, shall be person engaged or employed in the establishment or industry with which the Trade Union is connected.

Proposal

It is recommended to also include a provision that that all the office bearers of the registered trade unions of the industrial establishments ***situated in the Special Economic Zone*** declared as such by the Government of India shall be persons actually engaged or employed in an industry (as on the date of application for registration)with which trade union is connected.

Issue #23: Renewal of Registration Certificate:

There is no provision for renewal of registration certificate

Proposal

It is recommended to that submit an application by every registered trade union for renewal of registration once in three year thirty days before the expiry of three years and the authority after satisfying that the provisions of the act and rules made under are complied with, may renew the registration for a further period of three years. Non-renewal amounts to cancellation of registration of the Trade Union.

Issue #24: Recognition of Trade Union:

There is no provision in the Law for recognition of Trade Union. However, at the sixteenth session of the Indian Labour Conference held at Nainital in May, 1958, the Code of Discipline was ratified by all central employers and workers organizations. Accordingly, where there are more than one registered trade union, verification of membership is done by Labour Department and the union having simple majority is declared as recognised union for a period of two years.

Proposal

It is recommended that most of the Employers and Recognised Trade Unions sign long term settlements for a period of 3 years. The recognition of trade union may be done for a period of 4 years so that the trade union and the management will have better relations to address the issues.

The Interstate Migrant Workmen Act 1949

Issue #25:Applicability of the Act:

Section 1(4) deals with the applicability of the Act

The Act shall be applicable in case of every establishment, in which five or more inter-state migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months and in case of every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.

Proposal

As it is very hard for small scale businesses to get registered and follow rigid rules to regulate the employment of interstate migrant workmen, it is recommended to increase the limit of five to fifty

LABOUR LAW

DYNAMICS OF EMPLOYEE RELATIONS - PART II

Contributed by S V Ramachadra Rao

Industrial Disputes Act, 1947

Termination of non-workman

- The termination of a 'non-workman' is covered under The Indian Contract Act. That is to say, the termination can be made in accordance with the terms of the contract.
- The appointment order is nothing but a contract
- For non fulfillment of the conditions of the contract by an employer, the employee can claim only compensation / damages and not re-instatement and back wages.

APPRENTICE:

- The termination of an apprentice registered under the Apprentices Act will be governed by the registered agreement between the company and the apprenticeship advisor.

TRAINEE:

- A trainee is a learner and not a workman hence I D Act is not applicable.

- Any Termination of workman is covered under Industrial Disputes Act and it falls under **'Retrenchment'**

But

It has exceptions

Let us understand those exceptions.

What is Retrenchment

- Retrenchment means the termination by the employer the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include
- Voluntary retirement of the workman
- Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- Termination of the service of a workman on the ground of continued ill-health.

Retrenchment

Supreme Court – Punjab Land Development Corporation Vs Labour Court 1990 (II) LLJ 70 SC

- The expression 'retrenchment' is not to be understood in its narrow, natural and contextual meaning, but is to be understood in its wider, literal meaning to mean termination of service of workman for any reason whatsoever.

Supreme Court – Santosh Gupta Vs State Bank of Patiala AIR 1980 SC 1219

- The expression retrenchment must include every termination of the services of a workman by an act of the employer. Thus the discharge of a workman on the ground that she did not pass the test which would have enabled her to be confirmed is retrenchment.

- Termination for unauthorized absence, without enquiry, not justified [2014 LLR 1075 SC]

- Termination by one month's wages without compliance of applicable law is illegal retrenchment. [2015 LLR 603 SC]

Mohd Abdul Razzak Vs. The EE, Irrigation & Power G H Q Division AP HC (unreported 7.4.1982.

- Termination of a workman on the ground of unauthorised absence from duty (which is a misconduct under the Standing Orders) without complying the procedure to establish the misconduct committed by the workman is retrenchment.

Bhola Ram Vs. Presiding Officer Labour Court Ambala 2012 LLR 136 P&H HC

- Termination of daily wager, who completed 240 days service will be illegal.

Termination – The employer can use

- (bb) termination of the service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

- [2017 Uttr HC LLR 469] – Termination of employee engaged for fixed term will not be illegal.

- [2016 Guj HC LLR 1193] – Termination is automatic when appointment is for fixed term,

- [2013 Del HC LLR 687] – Termination of fixed term employee will not be illegal & many more similar case laws are there

Not Retrenchment

Supreme Court – SM Nilajkar V Telecom Dist. Manager 2003 (II) LLJ 359 SC

The termination of a workman engaged in a scheme or project may not amount to retrenchment subject to the following conditions being satisfied:

- That the workman was employed in a project or scheme of temporary duration;
- The employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
- The employment came to an end simultaneously with termination of the scheme or project and consistently with the terms of the contract;
- The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of the employment.

Supreme Court – State of Rajasthan V Sarjeet Singh 2007 (I) LLJ 236 SC

- Workman appointed as Pump Operator by Gram Panchayat pursuant to joint scheme with State of Rajasthan for supply of water, initially for six months and extended thereafter till the scheme is ended. The workman, having been appointed for a fixed period, it was a case which attracted section 2 (oo) (bb) and hence does not fall under retrenchment.

Supreme Court – Bhogpur Co-op Sugar Mills Ltd V Haremesh Kumar AIR 2007 SC 288

- Termination due to non-renewal of the contract of employment is not **'retrenchment'.**

Industrial Disputes Act, 1947 – Not Retrenchment

- **Termination of a workman falls under retrenchment only when the workman has put in –**

✓ Continuous Service of one year with the employer.
✓ During the 12 preceding calendar months the workman worked for 240 days it will be continuous service.
✓ Termination justified if 240 working days are not proved. [2013 LLR 184 Del HC]
✓ Termination of a sweeper would not be illegal when she fails to prove 240 days working [2014 LLR 608 Del HC]

Not Retrenchment

Haryana State Vs Presiding Officer, 1995(2) LLJ 1054 (P&H HC)

- Termination of employee employed in leave vacancy- not retrenchment

JB Kumar Vs Brijesh Sethi 2007 LLR 303 Dec HC

- Termination for continued ill health of an employee is excluded from retrenchment.

Probationer

RSRTC Vs. R Sharma, 1998 (I) LLJ 973 Raj HC DB.

- Termination of a probationer during probationary period was termination simpliciter and since the termination was as per the Standing Orders, it did not amount to retrenchment.

Divisional Manager LIC Vs Venu Gopal, 1993 LLR 317 AP HC

- Where the services of a probationer was terminated by giving one month's salary in lieu of notice in accordance with terms of employment, it does not amount to retrenchment.

Termination As a Punishment - Not Retrenchment

- Punishment of termination from services can be imposed after conducting an enquiry following the principles of natural justice.
  "Then it will not fall under **'retrenchment'"**
- Dismissal of a sleeping chowkidar on duty is justified [2017 LLR 1150 Gau HC]
- Misrepresenting for obtaining a job amounts to moral turpitude and dismissal justified. [2017 LLR 816 All HC]
- Frequent and Long unauthorized absence amounts to serious misconduct. [2017 LLR 666 Kar HC]

Principles of Natural Justice

- Objective is to secure justice or to put it negatively, to prevent miscarriage of justice. These principles can operate only in areas not covered by any law.
- No man shall be judge in his own case.
- A person cannot decide a case to which he is a party or in the outcome of which he is interested.
- Hear the other side.
- Before proceeding against a person, he should have a reasonable and adequate notice of the case he has to meet so as to enable him to prepare his defense and to make his appearance in the proceedings.
- He would further have to be given fair and reasonable opportunity of adducing all evidence on which he relies and to cross examine the witnesses produced by the management to substantiate charges.

Termination – The employer can use

Loss of Confidence

- Loss of confidence in an employee would justify his dismissal from service [2016 LLR 113 SC]...
- An employee committing theft looses confidence of employer [2017 LLR 1032 Chhat HC]
- Employee guilty of embezzlement loses confidence of employer.[2016 LLR 463 P&H HC]
- Loss of confidence by workman will be presumed when he trespassed and made unauthorized search of the record in the room of the supervisor. [2066 LLR 1199 Mad HC]

- Management can also resort to Service Conditions to terminate the services of an employee for loss of confidence. [2007 LLR 435 Del HC]
  However
- Loss of confidence, without supporting material, will not be sufficient for termination. {2009 LLR 110 (SN) Del HC]

Misconduct

- Non performance is not a misconduct
- So placing an employee in the Performance Improvement Plan and terminating thereafter is not valid.
- The Supreme Court in the matter of KS Ravindran V B.M. New India Assurance Co [2015 LLR 790] held that Termination for failure to achieve targets, without enquiry, not valid.

Termination through VRS – Not Retrenchment

Voluntary Retirement Scheme

- Company can introduce VRS Scheme and employees with 10 years of service or 40 years of age will be eligible for income tax exemption up to five lakhs.
- If the above criteria is not fulfilled, the VRS amount received by the employee is taxable.
- The period of the scheme operation is the discretion of the Management.
- The vacancies arisen out of VRS Scheme should not be filled again.
- A resignation is distinct from voluntary retirement since an employee can resign at any point of time, even on the second day of his appointment but in case of retirement, he retires only when opts for voluntary retirement and his option has been accepted. [Prabhakar V Canara Bank 2013 LLR (SN) 110 Supreme Court]
- VRS aims at weeding out the deadwood [Francis V Union of India 2013 LLR 785 SC]
- After accepting the dues, VRS cannot be challenged[2011 LLR 1009 Supreme Court]
- After having received VRS dues in full and final besides provident fund dues without any protest, raising of any claim later on by the employee is not tenable.[2012LLR 446 Cal HC]

Restrictions on Termination

ESI Act

- Employer shall not dismiss, discharge or reduce or otherwise punish an employee during the period when he or she is in sickness benefit or maternity benefit or temporary disablement benefit under section 73 of ESI Act.
- If any employer contravenes section 73, it would not only render the dismissal or discharge invalid but also expose the management to prosecution under section 85.
- Dismissal of an employee, as covered under ESI Act during receipt of his sickness benefit, would be void and the employee will be entitled to reinstatement with other benefits. ***Maharastra State RTC Vs Sherkhan Chhotekhan[2004 LLR 600 Bom HC]***

- Where notice of dismissal or discharge or reduction is given during the specified period of illness, the same shall remain in abeyance because the same is not valid nor the same can be made operative during that period.
  Ramachandra Sitara Kale Vs Maharastra State RTC [2009 FLR 100 Bom HC]
- The Act only requires the employer not to dismiss or terminate during the period of sickness benefit period. However, in the case of voluntary abandonment, this will not be applicable.
  Guest Keen Williams Ltd Vs P O Labour Court {Kar HC}

Maternity Benefit Act

- No employer shall dismiss or discharge a women employee who is absent from duties under the provisions of this Act and also any time during pregnancy.
- Women employees engaged directly or through any agency are covered under the Act.
- Any employee worked for 80 days or more is eligible for benefits under the Act.
- An employee while on probation applied for maternity leave. LIC of India discharged her from the services. Supreme Court held in the case of Neera Mathur Vs LIC of India ruled in favour of the women employee and ordered reinstatement.

Misconduct connected with the dispute

Supreme Court Lord Krishna Textile Mills Vs its workman [1961 AIR 860]

Held that in case of misconduct connected with pending dispute the discharge or dismissal shall tak effect only on approval granted by the concerned Industrial Court.

Supreme Court Ram Lakhan Vs Presiding Officer [2001(I) LLJ 449]

Held that during the pendency of management's application for permission to dismiss the workman, the company shall pay the subsistence allowance, if placed under suspension.

Misconduct not connected with the dispute

- Employer can alter the conditions of service not connected with the dispute or Discharge / dismiss or punish Provided One month wages paid and Make an application for approval
- Employer is required to do all the three things simultaneously ie Discharge or Dismissal; Making payment of one month wages and Making application for approval
- The Supreme Court held that employer shall ensure that all the three actions shall be simultaneous, failing which the application runs the risk of being rejected. …

Industrial Disputes Act - Chapter V-A & V-B

Chapter V-A & V-B deals with

- Layoff - Procedure
- Retrenchment - Procedure
- Closure - Procedure
- Transfer of undertaking

✓ Defines continuous service
✓ Procedure for Lay Off, Retrenchment, closure and transfer of undertakings
✓ Compensation payable
✓ Approvals from government etc.,

Industrial Disputes Act - Retrenchment

To which industrial establishments the Retrenchment provisions apply (Chapter V-A & V-B)

Industrial Establishments employing below 100 workmen

- One month notice or wages in lieu of notice.
- Compensation of Fifteen days average pay for every completed year of service. 6 months and above to be treated as one year
- Notice to the appropriate Government

Industrial Establishments employing 100 and above workmen (will not apply to Shops and Establishments – Section 25 L)

- Three months notice or wages in lieu of notice
- Compensation of fifteen days average pay for every completed year of service. 6 months and above treated as one year.
- Prior permission from the appropriate

Section 25L

- For the purpose of this Chapter

Industrial Establishment means
a) Factory
b) Mine
c) Plantation

Note : Thus Chapter V-B is not applicable to shops and establishments

Shops and Establishments

- A Hotel will not be an 'Industrial Establishment' under Section 25L to attract the provisions of Section 25N under Chapter V-B of the ID Act. (25N is conditions precedent to retrenchment)

Welcom group Searock v Searock Hotel Employees' Union (2005) (Bom HC)

- Consumer Co-operative wholesale stores will not be treated as 'Industrial Establishment' under the Section 25L of I D Act and as such the closure of such stores will not attract section 25N of the I D Act providing for prior permission for retrenchment of workmen.

Rajinder Singh Chauhan V State of Haryana (2005) SC

- No prior permission for closing a hotel is required since it is not an 'Industrial Establishment' under Section 25L of the ID Act.

Lal Bavta Hotel Aur Bakery Mazdoor Union v. Ritz Private Ltd., 2007(Bom HC)

Conditions Of Service

Industrial Disputes Act – Notice of Change

- Section 9A – No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in fourth schedule, shall effect such change
  (a) without giving to the workmen
  (b) within 42 days of giving such notice.

No such notice is required, if the change is effected pursuance of any settlement or award.

Section 9A – Fourth Schedule
Conditions of Service for change of which notice to be given

- Wages, including the period and mode of payment
- Contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force
- Compensatory and other allowances
- Hours of work and rest intervals;
- Leave with Wages and holidays
- Starting, alterations or discontinuance of shift working otherwise than in accordance with the standing orders
- Classification by grades
- Withdrawal of any customary concession or privilege or change in usage

- Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders
- Rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;
- Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department of shift [not occasioned by circumstances over which the employer has no control]

Industrial Disputes Act – Conditions of Service

Conditions of Service

- The Apex Court in the case of State of Punjab Vs. Kailash Nath (1989-I CLR 60) has observed that the expression of 'conditions of service' means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in matters of pension etc.,

- Change in service conditions not permissible without workmen's consent.
  CS Saran Kumar V Union of India 2017 LLR 193 Madras HC

Conditions of Service – Increase in Hours of Work

- Increase in Hours of Work by half-an-hour on a particular day of the week when total working remained intact, will not amount to change in conditions of services of the employees to attract Section 9A of the Act
  Rajya Pariwahan Yantrik Kamgar Sangathana V Maharashtra SRTC 1991LLR 246 Bom HC

- Increase in prevalent working hours will amount to change of conditions of service attracting section 9A of the Act.
  NTC Ltd Vs Labour Court Jaipur1996 LLR 31 Raj HC

Manpower Rationalization - Conditions of Service

- A notice of change must precede to the introduction of manpower rationalization of an industry resulting into retrenchment of workmen.
  Lokmat Newspapers Pvt Ltd Vs Shankaraprasad (1999) 6 SCC 275 (Supreme Court)

Reduction of Wage / Allowances - Conditions of Service

- Unilateral reduction of wages of an employee will be contrary of section 9A of the I D Act.
  SN Kedare Vs Ceat Tyres of India Ltd (2001) 91 FLR 922

- Reduction of wages not stipulated in the settlement without notice under section 9A of ID Act, not legal.
  T Rajamanickam Vs Binny Ltd 2009 LLR 323 (SN) Mad HC

- Reduction of project allowance from 10% to 8%, without giving 21 days notice as prescribed by section 9A of the I D Act, will not be sustainable.

  State Farms Corporation of India Ltd Vs Industrial Tribunal Bikaner (2003) 97 FLR 1110 Raj HC

Reduction in leave - Conditions of Service

- Reduction of earned leave from 32 to 18 is not valid in the absence of 'notice of change' as prescribed under section 9Aof the ID Act.
  Mgt of Salem Dist Coop Milk Producers Union Ltd Vs PO Industrial Tribunal 2010 LLR 435 Mad HC

New Enactment or Amendments to Law – Change in Service Conditions

- When there is change in the service conditions by virtue of an amendment to the applicable law or through a introduction of new legislation the provisions of Section 9A of ID Act are not applicable. In a decided case, the ESI scheme has come into force by operation of law and the management is only informing that fact to the employees. Hence provisions of section 9A are not applicable.
  All India TDC Employees' Union Bangalore Vs. Hotel Ashok Bangalore 1984 –I LLN 659 Kar HC

Industrial Disputes Act – Notice of Change

Existing Enactment (EPF) and Change in Conditions of Service

- Employer contributing provident fund contributions over and above limits prescribed under the enactment and the employer discontinued PF contribution paid in excess of limits. The High Court of Kerala (DB) (Vijayan Vs Secretary to Government 2006 (3) LLJ 337) held that the Provident Fund contributions made by the employer in excess of the statutory limits are only gratuitous concession and its withdrawal required no notice and this cannot be challenged.
- Employers EPF contribution can be reduced to maximum ceiling when notice was not given.
  Mgt of Marathawada Gramin Bank Vs Union of India 2011 LLR 1130 SC

Whether Transfer amount to change in Conditions of Service

- In a point of fact the transfer of an employee has no concern whatsoever with the pending dispute relating to fixation of wages which will not amount to altering service condition much less to his prejudice. In another case Bombay High Court has also held that transfer of an employee during pendency of the proceedings will not amount to change in conditions of service.
  Dainik Naveen Duniya Vs Labour Court 1991 – I LLN 745 (Madras HC)
  Wimco Ltd Vs Wimco Employees Union 2002 LLR 30 (Bombay HC)
- Transfer is not a change in service conditions.
  Sh Mohd Azim V Saro Up Gramin Bank 2015 LLR 464 Delhi HC

Whether increase in prices in canteen amounts to change in Conditions of Service

- The Management is well within the right to increase the prices of eatables etc., without giving notice under section 9A of the ID Act. The Bombay High Court (Blue Star Workers Union Vs Blue Star and others, 1990 LLR 543) held that the canteen facility, given to the workmen at confessional rates for over several years were merely a welfare facility and could not demand to be a condition of service of the workmen. The management may revise the rate of food items unilaterally when the prices of the food items have risen rapidly.
- Again in the year [2001 [LLJ 1261 Voltas Switchgear Plant Employees' Union V Voltas Switchgear Ltd] Bombay High Court held that – Fixation of new rates for canteen items cannot be treated as change in conditions of service.

Whether change of Weekly Off day amounts to change in Conditions of Service

- Where the company has changed the weekly rest day from Sunday to Monday due to partial load shedding, it has been held that where notice was given for the change of weekly rest day under section 65 of Factories Act to the authority concerned, such change of weekly rest day will not come within the purview of section 9 A of I D Act.
  Sommuggar Jute Factory Company Ltd Vs. Workmen and ors 1982-II LLN 88 Cal HC

Unfair Labour Practice

Industrial Disputes Act – Unfair Labour Practices

On the part of the employers

- To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining.
- Threatening workmen with discharge or dismissal, if they join union;
- Discharging or punishing workman because he urged other workmen to join or organize trade union.
- Discharging or dismissing a workman for taking part in any legal strike
- Threatening a lock-out or closure, if a trade union is organized
- Granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.
- Employer taking active interest in organizing a trade union
- Employer showing partiality or granting favour to one of several trade unions
- Giving unmerited promotion to certain workman with a view create discard among the workmen.
- Transfer a workman malafide from one place to another, under the guise of management policy.
- To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status of permanent workmen.
- To recruit workmen during a strike which is not an illegal strike
- To indulge in acts of force or violence
- To refuse to bargain collectively
- To abolish the work of a regular nature being done by workmen, and to give such work to contractors

On the part of workmen and trade unions

- To advice or actively support or instigate any strike deemed to be illegal
- To coerce workmen to join a trade union or refrain from joining a trade union
- To stage, encourage or instigate such forms of coercive actions as wilful "go slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.
- To stage demonstration at the residence of the employer
- To incite or instigate wilful damage to employer's property
- To indulge in acts of force or violence or hold out threats of intimidation against any workman with a view to prevent him from attending work.
- Unfair labour practice if proved, against the Management, is a punishable offence.
  PK Naik Vs State of Orissa 2013 LLR(SN) 671 Ori HC
- Denial maternity benefits and termination is unfair labour practice
  Zee News Ltd Vs Sonika Tiwari, 2017 LLR 912 Bom HC
- Obtaining resignation under pressure and coercion amounts to 'unfair labour practice'
  Choksi Heracus Ltd Vs State of Rajasthan, 2015 LLR 658 Raj HC
- Paying lesser wages or delayed wages amount to unfair labour practice.
  Urmila Gram Panchayat Vs Municipal Employees Union 2015 LLR 449 SC
- If domestic enquiry is conducted without following the principles of natural justice, such an act of the employer can be characterized as unfair labour practice.
  G Vinayagam Vs GM Metropolitan Transport Corporation 2014 LLR(SN) 222 Mad HC
- Successive appointments for fixed-term employment will be unfair labour practice.
  Sunder Singh Vs PO Industrial Tribunal 2013 LLR 420 Del HC
- Engaging casual and temporary workers for years together and denying permanency will amount to unfair labour practice.
  Gujarat SRTC Vs Workmen STC 2000 LLR 182 Guj HC
- Engaging labour through contractor who could be employed directly by an undertaking will be unfair labour practice
  Gujarat Electricity Board Vs HMS 1995-II LLJ 790 SC
- Even a threat of discharge or dismissal of a workman for joining union may amount to unfair labour practice.
  Hindustan Lever Ltd Vs Ashok Vishnu Kate, AIR 1996 SC 285
- Engagement of trainees and apprentices within the permissible limits will not amount to unfair labour practice.
  Mahesh Chand V Mgt of M/s Le Meridien 2013 LLR 899 Del HC
- Complaint for unfair labour practice will not lie for continuation of contract labour system
  Cipla Vs Maharastra General Karmgar Union AIR 1999 SC 1635
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