



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

Nagpur Branch of WIRC of ICAI



After a stable government in the Country and State there is hope that the economy will be back on track and our profession will have a significant role to play in the upsurge of economic activity.



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Chairman's Communique

Every month, I ponder over what to write about in the Chairman's Communique. I am conscious of the fact that my illustrious predecessors have been writing on academic matters and on technical subjects of interest to members. On the other hand, I have deliberately stayed away from such topics. The reason for this is that I believe I have got an excellent opportunity to share my thoughts on other important topics by writing on topics or issues other than tax, accounting, auditing etc.,

After a stable government in the Country and State there is hope that the economy will be back on track and our profession will have a significant role to play in the upsurge of economic activity. The question that we need to ask ourselves is how far are we equipped to meet these demands? The evolution of internet has brought to us the gift of networking and communicating in the virtual world to explore the vast land of opportunities and the routine, repetitive work is now

taken care of by technology. Computerized accounting and audit driven by intelligent software has now become order of the day. However, verification of huge databases is still our responsibility. The new entrants to the profession are techno-savvy but most of the seniors are not. We realize our inadequate knowledge when we have to deal with subjects like information security and system audits. Undoubtedly, a few of us may have acquired the requisite knowledge but many of us have not. During the course of our audit we do rely on the work of experts in this area, but our level of comfort will increase only when our members equip themselves with knowledge in these areas.

As members of a dynamic and pragmatic profession, we have been continuously adapting ourselves to the latest concepts and techniques in various areas of our specialised services.

I conclude with the words of Dr. A.P.J. Abdul Kalam:

"When learning is purposeful,



IMPRESSIONS



CA. Julfesh Shah, Vice Chairman WIRC
inaugurating Seminar on Company Act-2013



CA. Rajeev Damani, Chief Guest inaugurating
9Days Study Course on MVAT Act-2002



Interactive Meet with Addl. Commissioner, VAT



Dhanteras Puja



WICASA - Garba



Swachhta Shapath

Speakers of Vaartalaap



CA. Jagdish Khatri



CA. V.N.Chari



CA. Kapil Hirani

CHAIRMAN'S COMMUNIQUÉ CONT...



creativity blossoms,
When the creativity blossoms, thinking
emanates,
When thinking emanates, knowledge is fully lit,
When knowledge is lit, economy flourishes.”
Let us all salute this great visionary and march

ahead with a zeal to contribute to the growth of
the economy.

Yours in Profession
CA. Ashwini Agrawal



JOINT EDITOR'S MESSAGE



Its that time of the year which every Indian looks forward to the month of Festivals !!!! The month of October promises to be busy on lot of fronts – Festivals starting from Dussehra followed by Bakri Id and then Diwali. Lot of young member are busy preparing for the annual cricket event of the

branch – CAPL 2014 which is scheduled to be held in the first week of November.

Adding to the festivities are the Elections for the Maharashtra Assembly which promises to be another block buster event which will keep everyone rooting for their choice of candidates and parties. We hope that the new government comes with good majority so as to take our state to greater heights. The menace of *corruption* has been endemic throughout Indian society and one hopes that this is curtailed by good governance.

With the Tax Audits due date extended, we Chartered Accountants are a relieved lot. We burn the midnight oil so as to ensure that the Audit Report & Returns of our clients are filed on time, even when they come to us with their books at the last moment. However, we must ensure that we are adequately compensated for the work we undertake for our clients and the extra efforts we put in so that they don't face the music of Taxmen.

We also look forward to your greater participation in Newsletter and request you to send your articles / analysis on important subjects to us.

Happy Reading,

Yours in profession,
CA. Tushar Singhvi.



Dear Professional Colleagues
October month was the month of festival; in this month we all celebrated Diwali festival of Light, Joy, Happiness, and family & friends get -together and many more. This October we also witness the political drama as it

was the time of assembly elections of Maharashtra. Hope this time Maharashtra will elect a good and strong government which will lead the Maharashtra towards a development and will give good governance.

In this month everyone especially business community is eyeing on RBI as there are sentiments in market that Governor will announce some reductions in interest rates, so as funds would be available on cheaper rates, which will increase the funds in the market.

As there was lots of changes in new companies Act, and to dealt with the intricacies of companies act Nagpur branch has organized a full day seminar on Companies Act 2013, which got a very good response from the members.

At last I would like to request all our members to kindly actively participate, through some article or write up on some important subject which you feel is good for updating of knowledge of members.

With Warm Regards

CA. Ashish Agrawal





INCOME TAX UPDATES : COMPILED BY CA. TUSHAR SINGHVI



1. (2014) 50 taxmann.com 42 (Allahabad High Court)

Jurisdiction of ITO : ITO has no jurisdiction to declare sale deed void under section 281

2. DCIT vs. Ernst & Young Pvt. Ltd (ITAT Kolkata)

S. 195: Reimbursement of share of costs towards administrative and management support services in connection with technology updates etc is not taxable

3. CIT vs. N.G.C. Network (India) P. Ltd (Bombay High Court)

Advertisement expenditure incurred by agent to popularize the business of the channel run by the foreign principal is allowable as there is a direct business between the expenditure and the assessee's business as agent. The fact that the foreign principals also benefited does not entail right to deny deduction under section 37(1)

4. GEOJIT INVESTMENT SERVICES LTD. V. ACIT (Cochin - Trib.)

The Tribunal held that Rule 8D(2)(ii) seeks to allocate 'common interest expenses' to taxable income and tax exempt income. However, the definition of variable 'A' embedded in formula under rule 8D(2)(ii) is clearly incongruous as it specifically excludes interest expenditure directly related to tax exempt income, yet it does not exclude interest expenditure directly related to taxable income. Therefore, common interest expenditure could be computed only when interest directly attributable to tax exempt income, i.e., under rule 8D(2)(i), and interest directly relatable to taxable income, were excluded from the definition of variable 'A' in formula as per rule 8D(2)(ii).

5. CIT V. PP ENGINEERING WORK (2014) (Delhi High Court)

It is abundantly clear that where ITAT by its order excluded any income from the total income of

the assessee from a particular assessment year, then an assessment of such income for another assessment year could be made without any time-limit. Hence, it was noticeable that the appellate authorities did not refer to section 150 and Explanation 2 to section 153 and therefore, they erred in setting aside the order passed by AO

6. ITO vs. Onkarmal Kalaria Family Trust (ITAT Kolkata)

S. 50C: AO cannot straightaway adopt stamp duty value as consideration for capital gains but must offer assessee benefit of reference to DVO for valuation. It is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser.

7. CIT vs. Ghatge Patil Transports Ltd (Bombay High Court)

S. 2(24)(x) r.w.s 36(1)(va) & 43B: Even employees' contribution to PF etc is allowable if deposited before due date of filing ROI. Section 43B made it mandatory for the department to grant deduction in computing the income under section 28 in the year in which tax, duty, cess, etc. is actually paid.

8. CIT V. PARRY ENGINEERING & ELECTRONICS (P.) LTD. (Gujarat High Court)

Exp. on civil and electrical work for installation of windmill was eligible for depreciation at 80%. Where foundation, civil and electrical works were necessary for installation of windmill, depreciation at rate of 80 per cent was to be allowed. Therefore, the approach of appellate authorities to allow depreciation at the rate of 80 per cent on such installation was perfectly justified, as civil structure and the electric fitting were part and parcel of the windmill and could not be separated from the same.





1. Recently Rule 4 (7) of the CENVAT Credit Rules, 2004 (herein after referred to as CCR) has been amended. The amended sixth proviso states that CENVAT Credit has to be availed within six months from the date of credit taking document.
2. The proviso is effective from 01.09.2014.
3. This has led to many difficulties for the trade. One of the difficulties is "Is re-availment of credit, reversed for non payment to creditors, possible if the payment to creditors is made after six months?"
4. A critical analysis of the aforesaid issue necessary because in various cases the payment to creditors is not within six months of the bill date.
5. The reasons for non payment to creditors might be varied like:
 - a. Shortage of funds.
 - b. Disputes as regards to the rates / quality / quantity delivered etc.
 - c. Retention / Security Deposits for performance of contracts.
6. Let's understand the provisions of the law:
 - a. As per Rule 4 (7) of the CENVAT Credit Rules, 2004 (herein after referred to as CCR) {as amended on vide Notification No. 13/2011 dated 31st March, 2011} service tax credit will be allowed on or after the day on which the invoice, bill or challan, as the case may be, referred to in Rule 9 of CCR is received by the service receiver.
 - b. Second Proviso of Rule 4 of CCR states that if the payment of value and service tax as indicated in the invoice is not made to the vendor within three months from the date of invoice (or any credit taking document as stated in Rule 9) then CENVAT Credit availed has to be reversed / paid. However, subsequently whenever the payment is made to the vendor, CENVAT Credit can be taken equal to the amount reversed / paid previously, subject to the other provisions of CCR. (After 01.09.2014 to be read as third proviso)
- c. Rule 4 (7) clearly states that credit can be availed on receipt of the document mentioned in Rule 9.
- d. Thus, eligibility of availment of CENVAT Credit is the receipt of the document mentioned in Rule 9.
- e. Rule 4 (7) has been further amended vide Notification No. 21/2014 dated 11th July, 2014 to insert sixth proviso. The sixth proviso states that CENVAT Credit cannot be taken after six months of date of issue of any documents mentioned under Rule 9 (1). This proviso is effective from 01.09.2014.
7. In case of retention of contractors, particularly, the amount is payable after the completion of contracts which inherently are for a duration of more than three / six months. This is also true for other amounts payable which are due for payment after the completion of contracts. This will result in payments being made after the time limit of three / six months as stated in second and sixth proviso respectively.
8. As stated in point no. 5 (b) the second proviso is made subject to other provisions of the rules. This means the CENVAT Credit which will be available on subsequent payment to vendors will be available only if it is not disallowed under any other CCR. Hence, there is an ambiguity whether the sixth proviso will overrule the second proviso (third proviso after 01.09.2014, herein after referred to as third proviso).
9. The two proviso, i.e. the third proviso and sixth proviso, are conflicting to each other because as per the third proviso CENVAT Credit can be re-availed, whereas as per the sixth proviso the credit cannot be availed after expiry of six months from the date of the credit taking document.
10. The issue was further complicated as the third proviso is subject to the other provisions of the CCR.
11. Thus, it was unclear whether the sixth proviso would overrule the third proviso or not. If so, this



would lead to non allowance of credit reversed as per third proviso for non payment to creditors, if they are paid after six months of invoice date.

12. Hence, the credit that was available as per the third proviso on subsequent payments made to the creditor was negated by sixth proviso. Thus, the sixth proviso infringed on the right of the tax payer that was given by the third proviso to re-avail the credit.
13. Generally, the fiscal statute is to be read literally. However, if after reading the provisions literally the result is absurd or the proviso give conflicting results then the same are to be read harmoniously.
14. Hence, it is necessary that the two proviso are read harmoniously with each other.
15. The department has issued a clarification in this

regard 19.11.2014 vide circular no.: 990/14/2014-CX-8.

16. The clarification states that "The purpose of the amendment made by Notification No. 21/2014-CE (NT) dated 11.07.2014 is to ensure that after the issue of a document under sub-rule (1) of Rule 9, credit is taken for the first time within six months of the issue of the document. Once this condition is met, the limitation has no further application." It further states that "the limitation of six months would apply when the credit is taken for the first time on an eligible document. It would not apply for taking re-credit of amount reversed, after meeting the conditions prescribed in these rules."
17. The circular has given welcome relief to the trade. This will reduce unnecessary litigation in this matter.





CA. OMPRAKASH BAGDIA

First of all, I would like to thank Nagpur Branch of ICAI for giving me an opportunity to introspect and analyze the issues relating to charging fees in our office. I am confident that all the problems as mentioned below can be resolved if every practicing member introspect his practice and answers the questions mentioned below without considering any opinion or suggestion given by others. If we can properly define answers to these questions for our office every practicing chartered accountant would be flourishing without favor or fear.

1. Your Opinion as to what ails our Fraternity vis-a-vis the fees charged by CA's for their work?

Ans: We as Chartered Accountant provides services for the compliance audits under the statutory provisions and advisory services. Multiplicity of the compliance audits under the statutory laws like Income Tax, VAT, Companies Act etc. have different reporting requirements and responsibility attached. Unfortunately, for want of clarity, all these statutory audits are club together and clients considered the fees high. But the facts remains that each audit report require different set of mind, expertise and procedure to perform. The clients are to be educated to understand these so that while making the payment, he must realize the value of our services for statutory compliances in time.

In case of advisory services, I do not think there is any issue in charging the fees as they are always based on the benefits derived by the clients from the advise.

2. Should the fees be charged as per the cost involved in delivering the services or the value generated for the client?

Ans: There is no yard stick in this regard. It is always based on the one's own expertise of the subject, experience and the comfort which his advice gives to the clients.

3. How the Valuation / Costing of our work should be done? What factors should be taken into account?

Ans: It is not easy to answer. In early stage of practice, new CA may offer the services at less fees because of low overheads, proprietary

nature of practice i.e doing the things themselves and operating from small infrastructure. As we scale up our practice, our cost on physical infrastructure, human resources etc also goes up. At this point of time lower fee structure put constrain on our growth. We have to think big to become big. From the beginning itself, we should concentrate on providing value added services. If the quality of our services are comparable with others, there is no logic to charge less fee for the same work.

4. How the value of our Service offering should be communicated to the client? How should he be convinced to pay not only as per time involved but also considering the value of advice & risks involved?

Ans: First we should not take any assignment which are unimportant to us. Also we should not afraid or feel shy in saying that he is not expert in the relevant field. Our knowledge, expertise, commitment and confidence to execute the assignment will give will reduce negotiating on fees. However one should always be reasonable towards the fees.

5. Should some part of Audit Fees or any other work be taken in Advance?

Ans: For statutory assignments, I feel that advance payment of fees should be avoided. For other professional work, we may take advance depending upon nature of work and period require to complete the assignment.

6. How to discourage the client from Bargaining of the quoted fees?

Ans: Any negotiation before taking the assignment



should always be welcome. It is noticed that many times we do not initiate the discussion about the fees, resulting that when the assignment is completed, we try to justify the fees. It is better that prior to taking assignment, we should explain the scope of our work and about the likely fees, so that later on negotiation can be avoided.

7. How can we bring in the system of charging for Consultations?

Ans: When people come from small town and a simple upbringing, they often deeply discount themselves for their inability to relate to the

uncertainties of a professional life. As we spend more time in profession and become more experienced, we have to deal with volume of work and its complexity. There is truly no beginning or end in being a professional. It is lifetime learning curve. It is important to take feedback from the clients regarding the value of our professional services and evaluate ourselves. Most feedback, by its very nature, feels uncomfortable. A good professional craves real feedback and act on it. What we wish to know "A professional or merely professionally qualified"



EXPERIENCE CORNER PAST CHAIRMAN SHARE THEIR EXPERIENCE



CA. PANKAJ AGRAWAL

Ans-1: At times we are not that self-confident and eventually we end up in charging lesser to our clients for the work done.

comfort which he gets due to the work being delegated to us.

Ans-2: Normally it should be on the basis of cost involved in delivering the services and a mark-up on that.

Ans-5: As per the present trend, generally we should not take any advance for regular, recurring annual audit fees. However for other assignments, yes we should take advance.

Ans-3: Valuation/ Costing should be done on time spent i.e. number of hours devoted approximately over the professional work. Time spent in hours should be considered. One should fix up his cost and then add twice more to cover the office overheads and profit element.

Ans-6: We should be first convinced ourselves on the fees, that we are proposing to charge and once we are convinced then we should stick to it. At the max we can keep our point of view. Alternatively, then we can request the client that we will not be able to provide him services as he is not agreeing to reasonable professional charges.

Ans-4: Client should be communicated and tried to get him confident on our communication. He can be convinced on the basis of benefit and

Ans-7: We should do approximation of what consultation a client is being given time to time and then depending on the frequency we can charge him annually or quarterly or monthly separately for consultation charges.





After long years of existence the Central Excise, Customs & Service tax Commissionerates PAN India has gone Split into more number of Commissionerates following the Major CADRE restructuring proposed CBEC. The Existing Nagpur Commissionerate has been divided into 3 as Nagpur –I, Nagpur-II & Wardha Commissionerate. Each of the 3 Commissionerates i.e Nagpur I, Nagpur-II & Wardha will have 5 Divisions & 25 Ranges. The 3 Commissionerates will be headed by Separate Principal Commissioner / Regular Commissioner whereas the Division offices will be headed by Assistant/Deputy Commissioner of central excise & the Ranges will be headed by Superintendent of Central excise. In addition to above the functioning of ICD, Ajni, Glocal ICD, Butibori and Dr Baba saheb International Airport, Nagpur shall function under the Jurisdiction of Nagpur-I Commissionerate.

The jurisdiction of these three Commissionerate, including the Divisions and Ranges thereof, shall be as under with effect from 15th October, 2014.

Nagpur Commissinerate-I

Areas Covered:- Area falling south of Hingna road from Hingna Tahsil borde to road joining Hingna Road T-Point Ring road-Khamla Square-Ajni Square –Ajni Railway Flyover-Wanjari Nagar, Kukde Layout T-Point and area falling west of the road joining kukde layout T point Rameshwari Square to padmawati Nagar T point and area falling north of road joining Padmawati Nagar T point to Somalwada square or N.H.7 and area on the west of N.H.7 from Somalwada square up to Nagpur district boarder and Hingna Tahsil. Nagpur District.

CENTRAL EXCISE RANGES AND DIVISIONS COVERED UNDER NAGPUR COMMISSIONERATE-I

DIVISION	RANGES UNDER THE DIVISION
<u>HINGNA-1</u>	Area bifurcated into Range 1 to Range 5 (Entire Area Of MIDC, Industrial Area Hingna, Other Than MIDC Area Plot No 1 To 46 Of Series A,B,C,D,E,F,G And X Series And Ordnance Factory Under Division Hingna II)
<u>HINGNA-II</u>	Area bifurcated into Range 1 to Range 5 (Area Plot No 1 To 46 Of Series A,B,C,D,E,F,G And X Series Of MIDC Industrial Area Hingna, Ordnance Factory Hingna)
<u>BUTIBORI-I</u>	Area bifurcated into Range 1 to Range 5 (Entire Area Of MIDC Industrial Area Of Butibori Excluding Plots Of Series A,C,D,H,I And Plots B-93 To B-108 Falling, Under Division-II Butibori)
<u>BUTIBORI-II</u>	Area bifurcated into Range 1 to Range 5 (Plots Of Series A,C,D,H,I And Plots B-93 To B-108 Of Industrial Area Of Butibori)
<u>MIHAN</u>	Area bifurcated into Range Khapri, Mihan, Kanholibara, Mondha, Somalwada Consists area of (Hingna Tahsil excluding area covered by Hingna MIDC area Ordnance Factory Hingna and area of Nagpur falling south of Hingna Road from Hingna Tahsil Border to Road joining Hingna Road T-point Ring Road-Khamla Square-Ajni Square- Ajni Railway Fly Over Wanjari Nagar-Kukde layout T-point and area falling; west of the road joining kukde layout T point Rameshwari sq. to padmawati Nagar T point and area falling north of Road joining Padmawati Nagar T point to Somalwada sq. on N.H.7 and area excluding area falling under Butibori MIDC.)

Nagpur Commissionerate-II

Areas Covered:- Municipal Corporation limit of Nagpur City except area covered under Nagpur-I commissionerate, Nagpur Rural Tahsil except area covered under Nagpur-I commissionerate, Tahsil of Kamptee, Ramtek, Parseoni, Kalmeshwar, katol, Narkhed saoner, Mouda, Kuhi, Umrer, Bhiwapur of Nagpur District, District of Bhandara and Gondia



CENTRAL EXCISE RANGES AND DIVISIONS COVERED UNDER NAGPUR COMMISSIONERATE-II

DIVISION	RANGES UNDER THE DIVISION
<u>NAGPUR CITY-I</u>	Area bifurcated into Range of Wanjra, Uppalwadi, Chhaoni, Civil Lines, Dharampeth (Area falling under the North side of Nagpur-Hingna Road starting from Hingna Tahsil –Hingna T point Ambazari T point to Zansi rani sq. to Kastruchand park sq. to Indira Gandhi medical college, Bhandara road, from Indira Gandhi medical college to Itwari old motor sq. to Itwari railway station to shantinagar to ring road flyover to kalmna market to suryanagar sq. to Bhandara road upto Nagpur municipal limit)
<u>NAGPUR CITY-II</u>	Area bifurcated into Range of Bagadganj, Mahal, Sita buldi, Ghat Road, Bajaj Nagar (Area falling under the South side of Nagpur-Hingna Road starting from Hingna Tahsil –Hingna T point Ambazari T point to Zansi rani sq. to Kastruchand park sq. to Indira Gandhi medical college, Bhandara road , from Indira Gandhi medical college to Itwari old motor sq. to Itwari railway station to shanti nagar to ring road flyover to kalmna market to surya nagar sq. to Bhandara road upto Nagpur municipal limit and Area on North of N.H.7 from Somalwada sq to district border of Nagpur, excluding area covered by Nagpur-1 Commissionerate)
<u>KALMESHWAR</u>	Area bifurcated into Range of Kalmeshwar, Katol, Bazargaon, Saoner, Gondkhairi (Area falling under the Tahsil of Kalmeshwar , katol , Narkhed, Saoner and area of Nagpur Gramin Tahsil following under the south east of katol Tahsil , southwest of Kalmeshwar Tahsil and north west of Hingna Tahsil following under east of Kalmeshwar Tahsil, north east of Hingna Tahsil, west of Nagpur Municipal area, South west of Kamptee Tahsil and south of saoner Tahsil)
<u>KAMPTEE</u>	Area bifurcated into Range of Kamptee, Kapsi, Mouda, Umrer, Parsioni (Area of Kamptee, Parsioni, Ramtek, Mouda, Umred Bhiwapur and kuhi Tahsil)
<u>BHANDARA</u>	Area bifurcated into Range of Bhandara, Gadegaon, Tumsar, Gondia I, Gondia II (Area of Bhandara and Gondia District)

Wardha Commissionerate

Areas Covered:- District of Wardha, Amravati, Akola, Yavatmal, Buldhana, Washim, Chandrapur, Gadchiroli of the state of Maharashtra

CENTRAL EXCISE RANGES AND DIVISIONS COVERED UNDER THE WARDHA COMMISSIONERATE

DIVISION	RANGES UNDER THE DIVISION
<u>WARDHA</u>	Area bifurcated into Range of Wardha, Sewagram, Deoli, Arvi, Hinganghat (Area of Wardha Tahsil excluding MIDC industrial Area of Sewagram, Tahsil Seloo, MIDC Industrial Area of Sewagram, Tahsil Arvi, Ashti and karanja, Tahsil Deoli, Tahsil Hinganghat and samudrapur)
<u>AMRAVATI</u>	Area bifurcated into Range of Amravati, Akola, Yavatmal, Khamgaon, Malkapur (Area of Amravati, Akola, washim, Yavatmal, Buldhana Districts)
<u>CHANDRAPUR-I</u>	Area bifurcated into Range of Chandrapur-I, Chandrapur II, Chandrapur III, MUL, Brahmapuri (Area of Chandrapur Municipal and Tahsil of Mul, Sawali, Sindevahi, Brahmapuri, Nagbheed, wadsa, Kurkheda korvi and Armori of Gadchiroli District)
<u>CHANDRAPUR-II</u>	Area bifurcated into Range of MIDC Chandrapur, Tadali I, Tadali II, Warora, Ghughus (Area of Chandrapur Tahsil outside Municipal limits falling in south west of Chandrapur- Wardha Rly. Line and Tahsil of Warora, Bhadravati and chimur, Chuggus Revenue Circle of Chandrapur District.)
<u>CHANDRAPUR-III</u>	Area bifurcated into Range of Ballarpur, Ashti, Awarpur, Gadchandur, Rajura (Area of Ballarpur Tahsil, Ashti Village, Tahsil of Chamorshi, Etapalli, Bhamragarh, Aheri, Sironcha, Gondpipri, Pombhurna, Korvi, Dhanora, Korpana, rajura)

In addition to above 2 New Audit Commissionerates are also formed for separate execution of Audit of Central excise, customs & Service tax assesses . The details are as under :

Name of Commissioner	Headquarters
Commissioner of Central Excise (Audit)-I	Nagpur
Commissioner of Central Excise (Audit)-II	Aurangabad
Commissioner of Central Excise (Appeals)	Nagpur

The Subordinate officers of the officers of the Commissioner of Central Excise (Audit)-I and Central Excise (Audit)-II are specified below:

SL.NO	Commissioner of Central Excise (Audit)	JURISDICTION (Audit Circles under CCE (Audit)-I & II Nagpur)
1.	Commissioner of Central Excise (Audit)-I Nagpur	In the jurisdiction of the Principle Commissioner /Commissioner of Central Excise, Nagpur-I, Nagpur-II and Wardha. Total Area consist of Audit Circle-I,II Of Nagpur-I, Audit Circle-I,II Of Nagpur-II, & Audit Circle-I,II Of Wardha.
2.	Commissioner of Central Excise (Audit)-II Nagpur	In the jurisdiction of the Principle Commissioner /Commissioner of Aurangabad, Nasik-I, Nasik-II. Total Area consist of Audit Circle-I,II Of Aurangabad, Audit Circle-I,II Of Nasik-I, & Audit Circle-I,II Of Nasik-II.

Last but not the Least the Commissioner (Appeals) , Nagpur now has wider jurisdiction and now will decide the appeals for the areas covered by Nasik-I, Nasik-II & Aurangabad Commissionerates also.

SL.NO	Commissioner of Central Excise (Appeals)	JURISDICTION
1.	Commissioner of Central Excise (Appeals) Nagpur	In the jurisdiction of the Principle Commissioner /Commissioner of Nagpur-I, Nagpur-II, Wardha, Aurangabad, Nasik-I and Nasik-II.

For more details reference may please be made to Nagpur Commissionerate **Trade Notice No.01/2014 Dated 09.10.2014 & Trade Notice No.04/2014 Dated 14.10.2014**



**Members are requested to pay Annual Membership fees
of Nagpur Branch of WIRC of ICAI for the Year 2014
You can pay online at nagpuricai.org**



PRINCIPLE OF NATURAL JUSTICE COMPILED BY : CA. NIKHILESH THAKKAR



Wish you all Happy New Year. In dealing with Govt. Dept. on behalf of the client it happens that some time the authority act arbitrarily & the matter ends against our client. We have option of going in appeal against order of lower authorities. However in the cases where technically our case is not very strong we have to find fault in procedural compliances of the authority. Based on my experience I have observed that in many cases relief is granted a higher level to the clients on this issue. Non giving of proper opportunity to other party is the defiance of rule of natural justice & it can be taken as very strong ground of defense. It has been observed that the authorities given time of 2 to 3 days to give information, notice is not properly serviced, all this may be treated as breach of rule of natural justice by not giving proper opportunity. What is natural justice?, When it should be denied? What if it is not provided in the statute?. Based on analysis of Judicial pronouncement I have tried to elaborate the principal of Nature Justice.

Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly, i.e. fair play in action. It is held by Supreme Court in *A.K. Kraipak v. Union of India* that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it.

Hon'ble Supreme Court in case of *Swadeshi Cotton Mills v. Union of India* lucidly explained the meaning and scope of the concept of "natural justice" by referring to several decisions, it was observed that:

"Rules of natural justice are not embodied rules.

Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of man kind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are viz. (i) *audi alteram partem* and (ii) *nemo iudex in re sua*. (A man may not be a Judge in his own Cause and a man's defence must always be fairly heard). The *audi alteram partem* rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience".

However prior hearing may be denied if it is provided in statute, but it has rider also. It was observed by Court.

"It is well settled that the principle *audi alteram partem* can be excluded only when a statute contemplates a post decisional hearing amounting to a full review of the original order on merit."

"The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings".

So if there is a provision in a tax statute of recovering tax without any opportunity of being heard then in such case if the affected person proves that such recovery of tax is detrimental to him then it amounts to denial of natural justice. Similarly if there is no provision in a statute of post decisional hearing against any action of a authority than that action can be challenged in Court of Law on the ground of being against rule of Natural Justice. Particularly referring Income Tax Law where the operation of Section 132 have been challenged in many cases.

"While deciding on the principle of Natural Justice it was held in that the court must make every

effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise”.

However, no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision., There can be exceptions to the said doctrine. While deciding on the matter of Natural Justice the Courts have held that they refrain from giving an exhaustive catalogue of the cases where the said principle should be applied.

The question in regard to the requirement of opportunity of being heard in a particular case, even in the absence of provision for such hearing, has been considered by Supreme Court on a number of occasions. In *Olga Tellis v. Bombay Municipal Corporation* while dealing with the provisions of section 314 of the Bombay Municipal Corporation Act, 1888, which confers discretion on the Commissioner to get any encroachment removed with or without notice, a Constitution Bench observed as follows:

“It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency. In all other cases, no departure from the audi alteram partem rule could be presumed to have

been intended. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence”.

It is the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings. However in *State of Orissa v. Binapani Del* the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. However we are more concerned about judicial or quasi-judicial proceedings.

Some time the authorities in guises of the wording immediately in statute try to act fast. Here also Courts have defined this word it was held.

“Immediacy' does not exclude a duty to act fairly, because, even an emergent situation can co-exist with the canons of natural justice. The only effect of urgency on the application of the principle of fair-hearing would be that the width, form and duration of the hearing would be tailored to the situation and reduced to the reasonable minimum so that it does not delay and defeat the purpose of the contemplated action”.

Through this article I have tried to throw light on the topic in nut shell. Hope we may take benefit of this principle and won a lost legal battle against arbitrary action of authorities.



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2. ELIGIBILITY: -

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- i) Who qualifies CA IPCC Examination from Nagpur center
- ii) Whose name appear in the Merit list of Rank holders
- iii) And His/ Her parents total income is not more than Rs. 1,80,000/- per annum

is eligible to apply for award of Merit–Cum - Need based scholarship. The student who would be selected for scholarship will be granted Rs. 1000/- p.m for 6 months. Total two scholarships will be awarded every year.

In Case of No Rank Holder from Nagpur Center Qualifying in CA IPCC Examination

- a) In case if there is no rank holder from Nagpur center, the scholarship would be given to the student who has secured the highest marks in the CA IPCC examination from the Nagpur center in aggregate & qualifies under other basic eligibility criteria as given in point 2 (a) except point 2.

3. PROCUREMENT OF SCHOLASHIP APPLICATION FORM: -

The application form to apply scholarship can be obtained from the Nagpur Branch Office or downloaded from the Nagpur Branch website.

4. SUBMISSION OF SCHOLARSHIP FORM: -

The duly completed scholarship form in the prescribed format should reach to the Branch Chairperson, before the last date i.e 10th August for May examination i.e October - March Term and 10th February for November Examination i.e. for the April–September Term.



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