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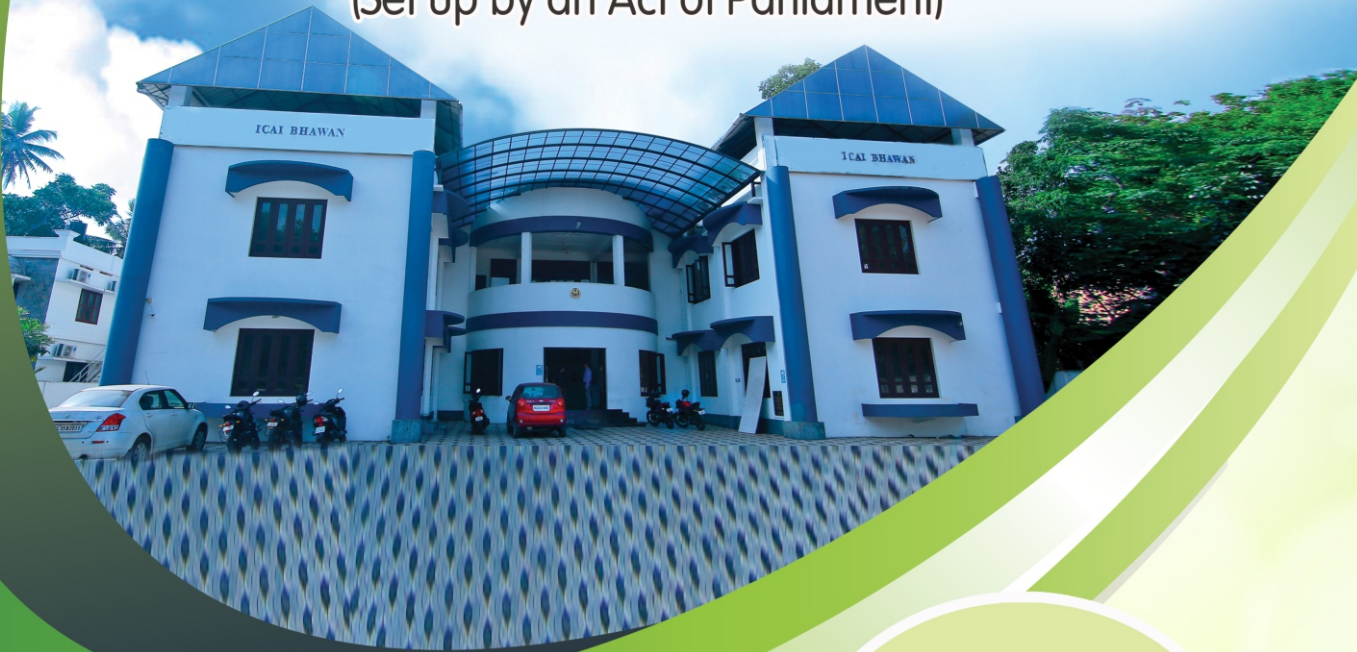
E- News letter

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)



**E- News
letter**

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69
YEARS OF
PARTNER IN
NATION BUILDING



Jomon K. George FCA
Vice Chairman - SIRC

Dear Colleagues,

I deem it a privilege to pen this message for your newsletter.

I am sure that the Value-Adding articles in this and the forthcoming issues will provide new insights to the members and students which will help them to surf through the waves of changes and challenges in their dream professional journey.

Our profession is going through probably the most turbulent times. There are a lot of new challenges. NFRA, invasion by foreign institutions, fading public image are all threats on CAs.

Innovation and progressive thinking should be the drivers in our way forward. We should also improve upon the deliverables and work on moulding the new-gen CAs.

Let us endeavour to enhance the glory of our profession.

Wish you all a Haapy Onam.

Yours in the service of the profession

Jomon K. George



Sherry Samuel Oommen

Advocate and a
qualified Chartered Accountant

Goods and Services Tax Constitutional challenge of Section 174

Goods and Services Tax ("GST") is undoubtedly the most dramatic taxation reform in the indirect tax system in the country. Ever since its introduction in July 2017, numerous issues have been raised before various High Courts including the High Court of Kerala. For instance, the Kerala High Court in the case of Eten Craft Holdings Private Limited (WPC 28801 of 2017) had directed the Government of Kerala to constitute the Authority of Advance Ruling having regard to Section 96 of the Central Goods and Services Tax Act, 2017.

In a recent issue now before the High Court of Kerala, various assesses have been filed writ petitions challenging the constitutionality of section 174 of the Kerala Goods and Services Tax Act, 2017 ("KGST Act") which grants saving to the Kerala Value Added Tax Act, 2003/ The Kerala Tax on Luxuries Act, 1976, etc. The challenge is inter-alia based on the fact that Section 19 of the Constitution (One Hundred and First Amendment) Act, 2016 ("Amendment Act") provides a lifeline of an outer limit of one year from the date of commencement of the Amendment Act (ie, one year from 16.09.2016)

in respect of the various laws enacted on the basis of entries deleted by the said Act. To illustrate, the entry relating to the levy of Luxury Tax (ie, Entry 62 of the Constitution of India forming part of the State List) or relating to Value Added Taxes, ie, Entry 54 of the Constitution of India has either been deleted or substituted in entirety. Accordingly, with effect 15.09.2017 (ie, one year from 16.09.2016), the State would not have power to recover VAT/ Luxury Tax, whether disputed or undisputed, as their powers have been denuded by the Amendment Act. Hence, the saving provisions of Section 174 of the KGST Act is ultra-vires the Amendment Act.

In this regard, it may also be noted that Article 265 of the Constitution of India provides that "No tax shall be levied or collected except by authority of law." The Honorable Supreme Court of India in various cases including in the case of Somaiya Organics (2002-TIOL-651-SC-STATE-CX-CB) has held that the terms "levy" and "collection" as found in Article 265 of the Constitution of India are not synonymous terms. Hence, there should be an authority of law/ lawful enactment which authorizes the related actions of the State both at the time of "levy" and at the time of "collection" of tax. In the present case, while the levy may have been with the authority of law, there is no authority whatsoever for the collection of VAT/ Luxury Tax post 15.09.2017 considering the Amendment Act.

An interesting ground that has also been raised is that any amount paid towards VAT/ Luxury Tax post 15.09.2017 would also need to be refunded to the concerned assessee, as there is no law that validates the collection of tax and hence any amount collected by the State would be confiscatory/ extortionary in nature and thus unconstitutional. Currently, the High Court has granted a stay in respect of notices issued by the VAT and the Luxury Tax Department on or after 15.09.2017 (see order of the High Court of Kerala in WPC 15851 of 2018 in the case of Messrs Leisure Stays). The matter is being argued in detailed before the High Court and a decision is expected by the end of September 2018.

REGIONAL RESIDENTIAL SEMINAR @ LAKE PALACE RESORT PUNNAMADA



SICASA SEMINAR



CA DAY CELEBRATION ON JULY 1st



INAUGURATION OF ADV -MCS & ORIENTATION COURSE



INDEPENDENCE DAY FLAG OFF CEREMONY





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