VOLUME 50, OCTOBER 2018

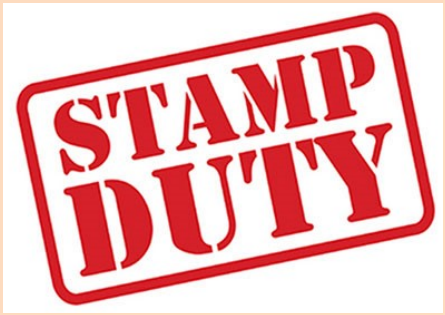
Chir Amlit Legal LLP
Jaipur | Mumbai | Delhi
www.chiramritlaw.com

THE NEWSLETTER

UPDATE YOURSELF

Stamp Duty not Necessary for Enforcing Foreign Award

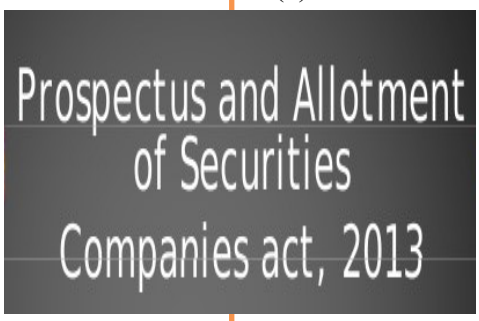
The Hon'ble Supreme Court of India in its recent judgment in the case of **Shriram EPC Limited vs. Rioglass Solar SA decided on 13.09.2018**, has observed that foreign award is enforceable without paying any stamp duty under the Indian Stamp Act, 1899 ("Stamp Act"). The dispute at hand arose before the Hon'ble Supreme Court on appeal filed by Shriram EPC Limited ("Appellant") against the decision of the Division Bench of the Madras High Court. Initially, Rioglass Solar SA ("Respondent") filed a petition before the Single Bench of the Madras High Court to enforce a foreign award delivered by the International Chambers of Commerce in London against Appellant. The Single Bench of the Madras High Court enforced the foreign award and the Appellant filed an appeal against this enforcement before the Division Bench of the Madras High Court. One of the contentions raised by the Appellant before the Division Bench was that stamp duty had not been paid by the Respondent on the foreign award under the provisions of the Stamp Act. The Division Bench of the Madras High Court decided the appeal in favour of the Respondent and upheld the enforcement of the foreign award. Consequently, the dispute was brought before the Supreme Court, but only to the extent of the question of law that whether stamp duty is payable on a foreign award under the provisions of the Stamp Act. The Hon'ble Supreme Court while deciding the said question of law held that foreign award is enforceable without paying any stamp duty under the Stamp Act. The rationale for this decision was that the Stamp Act is only operational in the territory of the Union of India, and the definition of the term 'award' under the Stamp Act has never been amended to include a foreign award, despite the parallel developments in the arbitration law in India. Hence, it needs to be construed that for the sake of enforcement of a foreign award, no stamping is required.



Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 notified by MCA

The Ministry of Corporate Affairs ("**MCA**") has *vide* Notification No. F. No. 1/21/2013 CL-V dated 10.09.2018, notified the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 ("**Amendment**") to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**Rules**"). The Amendment has come into force on 02.10.2018. The Amendment has inserted Rule 9A in the Rules providing for issue of securities in dematerialized form and facilitating dematerialization of existing securities by unlisted public companies. An unlisted public company ("Company") shall ensure that (a) their securities are issued only in dematerialized form, (b) facilitate dematerialization of existing securities and (c) prior to any further offer for issue or buyback of securities or issue of bonus shares or rights offer, entire holding of securities of its promoters, directors and

Inside this issue:



key managerial personnel are dematerialized. Further, any holder of securities of the Company is obligated to (a) dematerialize the securities before transfer of such securities on or after 02.10.2018, or (b) before further subscribing to any securities of the Company on or after 02.10.2018, shall ensure that all his existing securities are held in dematerialized form. As per sub-rule (5) of Rule 9A, the Company must also ensure (a) timely payment of fees to depository and registrar to an issue and share transfer agent, (b) maintain security deposit, at all times, of not less than 2 (two) years fee with depository and registrar to an issue and share transfer agent, (c) comply with the guidelines and regulations notified of SEBI and Depositories Act 1996 and regulations thereunder. In case of any default by the Company pertaining to the said sub-rule (5), the Company will be prohibited to offer or buyback securities or issue bonus or right shares until the requisite payments to the depository, registrar to issue and share transfer agent are made. Further, the Company is also required to submit their audit reports as provided under Regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 on half yearly basis with the Registrar of companies, in whose jurisdiction, the registered office of the Company is situated.

Maharashtra State Advance Ruling Appellate Authority Upholds GST on Liquidated Damages

The Maharashtra Authority for Advance Ruling (**"AAR"**) in its order held that the liquidated damages are classifiable under 'other services' and chargeable to GST at the rate of 18%. This ruling was challenged by the Maharashtra State Power Generation Company Limited (**"Appellant"**) before the Maharashtra Appellate Authority for Advance Rulings (**"AAAR"**). The AAAR upheld the finding of AAR vide its order ***MAH/AAAR/SS-RJ/09/2018-19, dated 11.09.2018***, in a ruling that may have far reaching effects. As per the facts of the case, the contracts between the Appellant and a contractor had a time limit for completion of each project, wherein it was stated that if a project would not be completed within the given time limit, a certain amount of money would be payable as liquidated damages. In this regard, the Appellant argued that there was no agreement for supply of services in form of tolerance of delay caused by way of taking the liquidated damages. Thus, the money so received is not income but rather a compensation for loss caused. However, the AAR held that the payment of liquidated damages by the contractor to the Appellant was covered in the term 'obligation to tolerate an act or situation' and was thus a 'supply'. This reasoning was agreed with by the AAAR, and it was added that since the contract specifically provided for payment of damages, it will be treated as an independent supply. Herein, the Appellant had also argued that the damages to be recovered are deducted from the amount to be paid to the contractor and is thus a mere redetermination of the consideration amount for the same supply. This argument was also rejected, and the AAAR held that the value of the work done, and the consideration remained the same; and that since such deduction related to the manner of recovery, it would not affect the nature of supply. Thus, the ruling by AAR was confirmed, and the time of such supply was held to be the time when the delay in successful completion of the operation was established.

Karnataka HC Imposed Cost on Deputy VAT Commissioner for Passing a Whimsical Order

The Hon'ble Karnataka High Court ("**Court**") in the matter of **M/s Kalyani Motors Pvt. Ltd.** ***[W.P. No. 60480/2016 & 62125-135/2016 (T-RES)*** *decided on* ***24.09.2018]*** has imposed a cost of Rs. 50,000/- on the Deputy VAT Commissioner ("**Respondent**") for passing a whimsical sales tax assessment order against M/s Kalyani Motors Pvt. Ltd. ("**Assessee**"). The Assessee was a registered person under the Karnataka VAT Act and deals in sale and purchase of used cars.

The Assessee for the period 01.04.2011 to 31.08.2015 ("**Impugned Period**") was entitled to pay only 5% of the tax on the difference of value between the taxable turnover in respect of such sales of used motor vehicles and the amount paid towards the purchase of such used motor vehicles in accordance with Notification No. FD 82 CSL 10(VI), Bangalore, dated 31.03.2010 ("**Notification**"). The Respondent ignored the Notification and demanded the purchase tax from the Assessee on whole of its turnover. Also, the authority denied their claim of input tax credit. Against the said order of the Respondent, the Assessee filed the present writ petition. The Court noted that the Assessee during the relevant period was dealing in the business of sale and purchase of used cars only and therefore, the applicability of the Notification on the facts of the case of the Assessee for the Impugned Period is not in dispute. The Court also observed that the Impugned Order nowhere laid down the reason as to why the Notification is not applicable to the present case. Hence, while deciding the matter, the Court, set aside the impugned demand and stated that the Impugned Order passed by the Respondent is both bad in law as well as bad in facts as it completely ignored the provisions of the Notification without any reasonable basis. The Court also held that the responsible officer deserves to pay the exemplary costs for passing such whimsical order. Accordingly, the Court directed the Assessing Authority Ms. K.C. Sujatha, Deputy Commissioner of Commercial Taxes (Audit) – 2.4, Bengaluru to deposit the costs quantified at Rs. 50,000/- from her personal resources with the Registrar General of the Court within a period of one month. The Court further stated that the amount upon deposit shall be remitted to the 'Prime Minister's Relief Fund', Delhi, for meeting the costs of relief to sufferers of natural disasters.

Adultery is No Longer a Criminal Offence

In the case of ***Joseph Shine vs. Union of India Writ Petition (CRIMINAL) No. 194 of 2017 (decided on 27.09.2018),*** while dealing with the constitutional validity of Section 497 of the Indian Penal Code, 1860 ("**IPC**"), the five-judges Constitution bench of the Hon'ble Supreme Court of India ("**Court**") presided by the Hon'ble Chief Justice of India, Dipak Mishra held that adultery is not a crime and struck down 158 years old Section 497 of the IPC which criminalized adultery and considered it as unconstitutional. The writ petition was filed before the Court challenging the constitutional validity of Section 497 of the IPC and Section 198(2) of the Code of Criminal Procedure ("**CrPC**").

In this case, the petitioners raised the following arguments:

1. Section 497 of IPC only provides for punishment for men and does not punish a woman/wife under the provision of adultery, hence it is discriminatory. Also, the act is not regarded to be an offence for accused, if the husband of the married woman consents to her having intercourse with such accused. Consequently, it is an anti-women law.
2. Section 198(2) of CrPC only allowed the husband of adulterous woman to prosecute proceedings of adultery. Thus, the law is not gender neutral and against the Article 14 of the Constitution of India.
3. Section 497 of the IPC is violative of right to privacy under Article 21 of the Constitution of India, in two aspects i.e. dignity of wife and privacy attached to a relationship between two.

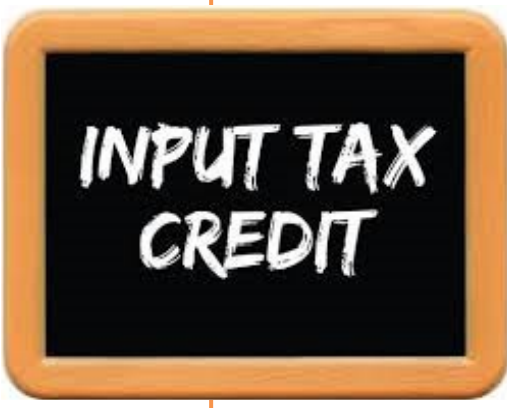
The Hon'ble Apex Court heard the rival contentions and held that:

1. Women must be treated with equality with men. Any discrimination shall invite wrath of the Constitution of India.
2. The provision creates a dent on the individual independent identity of a woman when the emphasis is laid on the connivance or the consent of the husband. Husband is not the master of wife.

1. Section 497 violated a woman's right to dignity, resulting in infringement of Article 21 of the Constitution of India. It was 'unconstitutional' as it violated the right to equality and there was no reason to continue this anymore.
2. However, adultery will be a ground for divorce and if an act of adultery leads the aggrieved spouse to suicide, the adulterous partner could be prosecuted for abetment of suicide under Section 306 of the IPC.

Input Tax Credit Can Be Availed On Demo Cars: AAR

The Authority for Advance Ruling, Kerala (**"AAR"**) in the application of advance ruling filed by **M/s A.M. Motors [KER/10/2018 dated 26.09.2018]** has ruled that a vehicle dealer can avail input tax credit on the purchase of motor car which is used as a demo car. In the instant case, the Applicant uses cars for demonstration purpose tor the prospective customers and after a specific period of time, they are sold off for the book value i.e. the written down value, paying the applicable taxes at that point of time. The current application is filed by the Applicant seeking a clarification about availability of input tax credit on demo cars. The AAR observed that the demo car is an indispensable tool for the promotion of sales by providing trial run to customers and to understand the features of the vehicle. The AAR noted that *"The applicant capitalized the purchase in the books of accounts. The capital goods which are used in the course or furtherance of business, is entitled for input tax credit. As the impugned purchase of demo car is in furtherance of business, the applicant is eligible for input tax credit. Furthermore, this activity does not come under the negative clause, as after a limited period of use as demo car, the cars are sold at the written down book value."* Further, it was held that the availability of input tax credit shall be subject to the provisions of Section 18(6) of the GST Act, which provides that in the case of supply of capital goods on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods determined as value of taxable supply, whichever is higher.



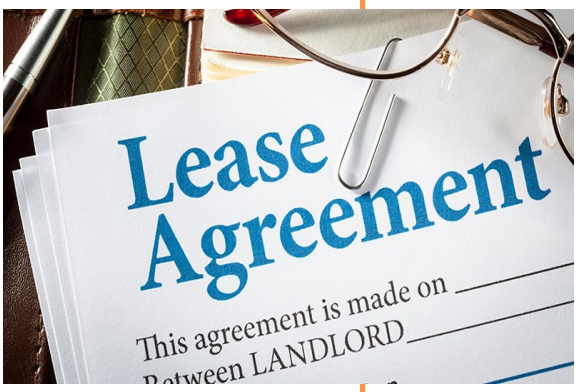
Fashion Show being an Entertainment is Taxable

The Hon'ble High Court of Karnataka (**"Court"**) in the case of ***M/s. Dream Merchants vs. State of Karnataka and The Entertainment Tax Officer (Writ Appeal No.843 of 2018 (T-ET), dated 03.09.2018***, held that a 'fashion show' falls within the expression "entertainment" defined under Section 2(e)(iii) of the Karnataka Entertainment Tax Act, 1958 ("**Act**") and thus, is taxable under the Act. In the instant case, the appellant organised a four day event named "Bangalore Fashion Week" in Bengaluru, Karnataka, comprising of lifestyle parties, after-hour parties, press conferences, fashion shows, and exhibition of designer products/apparels by live models walking on the ramp and on mannequins, and the said event was sponsored by the interest manufacturers or business houses ("**Event**"). The respondents noticed that the appellant had received huge amount by way of sale of tickets and sponsorship fees etc. in relation to the Event and thus, accordingly, issued a notice to the appellant demanding payment of entertainment tax on the amount received by the appellant by way of sale of tickets in the Event. The said notice was challenged by the appellant's counsel on the ground that the appellant was merely an event organizer who had only provided a platform for holding the Event and therefore, the Event cannot be termed as an "entertainment" under Section 2(e)(iii) of the Act with states that, *"Entertainment" with all its grammatical variations and cognate expressions means, any amusement or recreation or any entertainment provided by a multisystem operator or exhibition or performance*

or pageant or a game or sport whether held indoor or outdoor to which persons are admitted on payment" **("Relevant Section")** and thus, cannot be taxed under the Act. Therefore, the basic question which the Court was required to answer was whether the Event can be termed as an 'entertainment' under the Relevant Section. The Court observed that, from a bare perusal of the definition of 'entertainment' provided under the Relevant Section is sufficient to find that the expression has been defined in too wide and broad terms which undoubtedly take within their sweep an event like the one organised by the appellant, namely, a fashion show, which was sponsored by the interested manufacturers or business houses and which comprised of lifestyle parties, after-hour parties, press conferences, and exhibition of designer products/apparels by live models walking on the ramp and on mannequins, and the Event definitely falls within the expressions "exhibition" as also "performance", apart that the Event would also answer to the description of an amusement for recreation and entertainment and even of a pageant. The Court further observed that even if the Event served the business interests of the sponsors, the element of amusement and entertainment naturally woven in the Event cannot be taken out. Thus, the Court held that the Event organised by the appellant clearly answers to the wide definition of "entertainment" provided under the Relevant Section and therefore, is taxable under the Act.

Eviction Of Tenant On The Ground Of 'Change Of User'

The division bench of the Hon'ble Supreme Court ("***Court***") comprising of Justice L. Nageswara Rao and Justice Mohan M. Shantanagoudar, in the case of **Ravi Chand Mangla *vs.* Dimpal Solania**, (***Civil Appeal No. 9598 of 2018 decided on 18.08.2018)*** held that in the absence of any negative covenant in the lease agreement restricting the tenant to run business only for the purpose for which premises were let out, the use of the lease premises for any other purpose does not amount to 'change of user for the purpose other than for which the premises was leased'. In this case, according to the landlord, the property was let out for a saw mill. Subsequently, the tenant closed the saw mill and started the work of manufacturing of grills. The landlord filed a suit before the Rent Control Court, for eviction of the tenant under one of the grounds under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, alleging that the tenant has changed the user of the property in dispute. The said contention of the landlord that change of use of land amounts to change of user was rejected by the Rent Control Court. The Appellate Authority and the High Court affirmed this finding by observing that tenant has liberty to run any other business activity apart from the saw mill as per the lease agreement. Thereafter, the matter travelled to the Court. While dealing with the issue, the Court clearly held that since there is no restriction placed in the lease agreement on the tenant to run business relating to saw mill only, the tenant was given the liberty to carry on any business in the leased premises. Therefore, in the absence of any negative covenant of restriction under the agreement, manufacturing of grills does not amount to 'change in user of the premises' other than for which the premises were leased to the tenant.



QUICK TAKEAWAYS

- In the case of **Akansha** ***v. Anupam Mathur Transfer Petition [(Civil) No. 747/2018] dated 25.09.2018*** the Supreme Court waived off the cooling period of 6 months for the divorce as prescribed under Section 13B (2) of the Hindu Marriage Act as both the parties are educated and come to a conscious decision to obtain decree of divorce by mutual consent.
- The Supreme Court in the case of ***Jarnail Singh v Lachhmi Narain [SLP (Civil) No.30621 OF 2011] dated 26.09.2018*** held that the Judgment in M Nagaraj v. Union of India which deals reservation in promotions for the Sc/ST community is not required to be referred to the 7 judge constitutional bench. The M. Nagraj Judgment lays down the criteria for the reservation in promotion of SC/ ST.
- SEBI has notified ***Securities Exchange Board of India (Buy-Back of Securities) Regulations, 2018*** on 11.09.2018. The norms prescribes maximum limit of buy-back as 25% or less of the aggregate paid up capital and free reserves of the Company. Under new norms, a company can't buy -back its securities so as to delist its shares from stock exchange. Norms further prescribes for buy -back through tender offer, buy-back from open market, General obligations for company for buy back procedure.
- The Tripura High Court in the case of **A.** ***Bhowmik v/s A. Roy Barman [CRL A (J) NO.23 OF 2015] dated 06.09.2018*** acquitted a man accused of attempting to commit rape charges observing that it is, at best, a case of "fondling" and the offence does not fall within the scope of Section 376 IPC but it will fall within Section 354 IPC. Justice Arindam Lodh, on an appeal preferred by the accused, observed that the slightest penetration, whichever degree it is, is the essential requirement vis-à-vis sine qua non to attract the provision of Section 376 of IPC.
- The Ministry of Corporate Affairs ("MCA") vide its notification dated 10.09.2018 has notified new Rule 9A of the **Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018** ("**Amendment Rules**"). Pursuant to which, every unlisted public company is required to issue the securities in dematerialized form and facilitate the dematerialisation of all its existing securities in accordance to the Depositories Act, 1996 and regulations made thereunder.
- In the case of ***Ramswaroop Shivhare v. Deputy Commissioner of Income Tax [2018] 98 taxmann.com 89 (Madhya Pradesh) decided on 06.09.2018***, the hon'ble High Court of Madhya Pradesh held that direction for special audit is subjected to approval of Principal Commissioner of Income Tax. Hence, it is the Principal Commissioner who has to apply mind before granting approval for special audit after granting opportunity for hearing to the assessee.
- In the case of ***Velankani Information Systems Ltd. v. Deputy Commissioner of Income Tax [2018] 97 taxmann.com 599 (Bangalore - Trib.) decided on 12.09.2018***, held that payments to banks on account of utilization of credit card facilities would be in nature of bank charges and not in nature of commission within meaning of section 194H of the Income Tax Act, 1961.
- In case of ***Abhijit Iyer Mitra vs. the State Of Odisha & Ors. [Writ Petition Criminal No. 36441/2018, dated 27.09.2018],*** the Hon'ble Supreme Court has restrained the lawyers of the Hon'ble Orissa High Court and subordinate courts from going on strike and asked them to resume work to ensure litigants do not face any impediment in access to justice.
- In the case of ***M/s Uttam Traders Ranghri vs. Tule Ram alias Tula Ram [Criminal Appeal No. 140 of 2018, dated 11.09.2018],*** the Hon'ble Himachal Pradesh High Court has held that even an unregistered partnership firm can maintain a 'Cheque bounce" complaint under Section 138 of the Negotiable Instruments Act.
- In the case of ***Jijrushu N. Bhattacharya v. NP Foods (Franchisee Subway India) [2018] 97 taxmann.com 633 (NAA) dated 27.09.2018*** it was held that where GST on restaurant service was reduced from 18% to 5% and respondent had increased base price of his products to make good loss which had occurred due to denial of ITC post GST rate reduction, allegation of not passing on benefit of rate reduction was not established against respondent and, thus, respondent had not contravened provisions of Section 171 of the CGST Act.

KNOWLEDGE CENTRE

FAQs on Companies Act, 2013 ("Act")

Q. 1. What is the purpose behind enactment of the Act?
Ans. The purpose of the Act is to consolidate and amend the law relating to companies. The Act has totally replaced the Companies Act, 1956. However, some provisions of the Act are still needs to be notified by the concerned ministry and till the time of notification, the corresponding sections of the Companies Act, 1956 shall remain in force.

Q. 2. What is the meaning of company, on which the Act is applicable?
Ans. The term 'company' is defined as a company incorporated under this Act or under any previous company law. Therefore, the Act is applicable only on the companies which are incorporated under the Act, the Companies Act, 1956 and other previous Indian companies act.

Q. 3. What are the different kinds of companies that can be incorporated under the Act?
Ans. As per the Act, private limited company, public limited company, one person company, Section 8 company (Not for profit) and producer company can be incorporated.

Q. 4. What is the meaning and concept of one person company?
Ans. One person company is a company which can be incorporated with minimum and maximum one person as a member and with minimum one director & maximum fifteen directors.

Q. 5. Whether any company can be incorporated without a registered office?
Ans. A company may be incorporated without having a registered office address by providing an address for correspondence in the incorporation form. However, as per Section 12 of the Act, the company should have a registered office within thirty days of its incorporation .

Q. 6. What is the minimum and maximum number of members and directors in a private company and a public company?
Ans. In a private company, minimum 2 members and maximum 200 members are required. In a public company, minimum 7 members are required, however, there is no upper ceiling limit for the same. Further, in a private company, minimum 2 directors and maximum 15 directors can be appointed. In a public company, minimum 3 directors and maximum 15 directors can be appointed.

Q. 7. What is the nature of resolution that is required to alter memorandum of association of a company?
Ans. As per the Act, special resolution of members is required for altering memorandum of association of a company. However, to alter the capital clause of memorandum of association, an ordinary resolution would suffice.

Q. 8. What is the meaning of private placement of securities?
Ans. Private placement means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement. Further, whenever any company issues securities on preferential allotment, it has to follow the procedure given under private placement.

Q. 9. Whether a company can issue Securities at a discount?
Ans. As per the Act, a company is prohibited from issuing securities at a discount.

Q. 10. Whether an individual can be appointed as a director without having Director Identification Number ("DIN")?
Ans. As per the Act, no individual can be appointed as a director without having DIN.

EDITORIAL

GST on Personal Guarantee by Directors for Loan of Company

- By Pooja Taparia, Chartered Accountant

In general trade parlance, directors of the company executes personal guarantee for term loan and cash credit facilities enjoyed by the company from various Banks and NBFCs. If a claim is made under the guarantee, the director will be liable to pay the company's debt and, if he does not do so, the bank (or other beneficiary of the guarantee) will be able to take him to court and ultimately enforce a judgment debt against his assets. If the director does not have sufficient assets to cover the debt, he may be made bankrupt. In addition to the effect on his credit rating and the difficulty of obtaining financial services, insurance and so on, an un-discharged bankrupt may not act as company director without leave of the court. Thus, here issue arises that whether the personal guarantee given by the whole-time director will be taxable under GST regime?

Under the GST regime, the levy is on 'supply' either of goods or services or both. Thus, for levy of GST on the service provided by a director by giving a personal guarantee for a loan raised by a company, there must be a 'supply'. To determine 'supply' under GST, we shall have to examine whether the present transaction falls under 'goods' or 'services'. Section 2(52) of the CGST Act, defines 'Goods' and states that it means every kind of movable property. Further, Section 2(102) of the CGST Act defines 'services' and states that anything other than goods is service. It is evident that personal guarantee does not fall in the ambit of 'goods' under GST, since a guarantee is not a movable property, rather, it is incorporeal and does not fit any qualifications laid down by the definition. Thus, the said transaction will be considered as service and GST will be charged on said supply of service transaction. The personal guarantee can also be said to be a service based on a judgement of the Delhi High Court in the case of Controls & Switchgear Contactors Limited vs. DCIT.[1]

Next it has to be determined whether the said service of providing personal guarantee falls under the term 'supply' under the GST regime. The term 'supply' has been defined under Section 7 of the CGST Act. As per the said section supply includes all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business. However, there is no element of consideration paid to the directors for the guarantee given, whether monetary or otherwise. But, the definition of supply in Section 7(1)(c) of the CGST Act also includes the activities that have been specified in Schedule I of the CGST Act, even if those services are supplied without a consideration. Entry 2 of the said Schedule I includes the supply of goods or services or both between two or more 'related persons', when it is made in the course of furtherance of business. The term 'related persons' has been defined in the explanation to Section 15 of the CGST Act. The definition provides for various relationships in which the persons involved would be considered as 'related persons', and one of these also includes the situation where the persons are employer and employee. Thus, the Company and its directors are related persons as per the GST law.

Further, it is necessary to ascertain whether the transaction of providing personal guarantee is in the course or furtherance of the business of the director. The term 'business' is defined under Section 2(17) of the CGST Act. The inclusive definition of the term 'business' covers 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. Thus, the guarantee provided by the directors, is done in the course of furtherance of business of the Company. Hence, the transaction qualifies as 'supply' even when done without consideration.

---

[1][(2014) 269 CTR (Del) 44]

However, it is to be noted that Section 7(2)(a) specifies that the activities listed in Schedule III of the CGST Act would not be considered as a 'supply'. This Schedule contains a list of activities that have been excluded from the scope of supply. Entry 1 thereof lists services done by an employee to the employer '*in the course of or in relation to his employment*' as one of the services that would not be considered as a 'supply' as per the definition. Thus, if the personal guarantee is given during the employment as per the terms of employment, then the same can be said to be in the course of employment and qualifies under Schedule III as an activity that shall not be treated as a supply under the definition of supply under Section 7. Therefore, the personal guarantee executed by the director for term loan or cash credit facilities enjoyed by the Company shall not be chargeable to GST, if it is in the nature of a service provided by an employee to an employer in the course of or in relation to the employment.

Chir Amrit Legal LLP
Jaipur | Mumbai | Delhi
www.chiramritlaw.com

WE ARE ON THE WEB

www.chiramritlaw.com

For any queries regarding '**THE NEWSLETTER**', please get in touch with us at:
newsletter@chiramritlaw.com

DISCLAIMER

The views expressed and the information provided in this newsletter are of general nature and are not intended to address the circumstances of any particular individual or entity. Further, the above content should neither be regarded as comprehensive nor sufficient for making decisions. No one should act on the information or views provided in this publication without appropriate professional advice. It should be noted that no assurance is given for any loss arising from any actions taken or to be taken or not taken by anyone based on this publication.

Jaipur- 6th Floor, 'Unique Destination', Opp. Times of India, Tonk Road, Jaipur - 302 015
Off: +91-141-4044500

Surat– 202, 2nd Floor, SNS Square, Opp. Reliance Market, Vesu Main Road, Vesu, Surat—395007