



# BHILAI BRANCH OF CIRC OF ICAI

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## E-NEWSLETTER

Hence, there cannot be a perfect time convenient to both Members in practice and in employment to attend to CPE programs. This year being end of the block year for completing CPE hours, Members are required to complete the required CPE hours before the end of December. Therefore, we at Bhilai Branch are planning to conduct more and more programs to accommodate members to fulfill their CPE credit requirements and request members to register on for the programs at the earliest and it will help us to accommodate more members for each program.

Dear Members,

The busy season of tax audit filing is over, Time has come for other statutory due dates like filing of GSTR 9C (GST Audit) for FY: 2017-18, filing of audit report in the case of International Taxation (Form 3CEB) and other monthly filings. The professionals have to ensure a proper documentation is done for attest functions as per Standards on Auditing and also UDIN has to be generated for all the attest functions

Before signing off my message, I would like to solicit your continued friendly suggestions and co-operations as always in our efforts to serve for the cause of the profession in our Race for relevance, Ready for radical change and Unleashing the potential.

With Best wishes and warm regards,

CA. NITIN RUNGTA

Chairman

Bhilai Branch of CIRC of ICAI

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Many MNC corporates are having December as year end closing and many Members in Industry will get busy in US books closing and consolidation of India subsidiaries with US parent companies in the reporting currency under US GAAP. Lot of work to make Indian books to comply with US GAAP. They will start working for yearend closing from November itself on a very tight delivery schedule.



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## TAX UPDATES

1	Indusind Media & Communications Ltd Vs Commissioner of Customs	Civil Appeal 2498 of 18 dt 27.9.19	15. The facts on record as stated above further disclose that the Department was therefore right in invoking principle under said Note 4 and considering the imported items as part of one apparatus or machine to be classifiable under the heading appropriate to the function. The submission advanced by the Appellant in that behalf therefore has to be rejected. 16. Rule 9(1)(b) of 1988 Rules as quoted above in the decision in Toyota Kirloskar <sup>4</sup> case shows that the value in respect of "materials, components, parts and similar items incorporated in the imported goods" has to be added while determining the transaction value. Said Rule 9 is almost identical to Rule 10 of 2007 Rules. Thus, even if the governing rule is taken to be Rule 9 of 1988 Rules, there would be no difference in the ultimate analysis.
2	Commissioner of Commercial Tax vs R.B.B.R.L. Contractors	Record of Proceedings Petition(s) for Special Leave to Appeal (C) No(s). 5935/2013 dt 27.9.19	SLP Dismissed – Allahabad HC in CTR 272-73/2011 dt 26.4.2011 specified - True it is that the revisional jurisdiction is quite limited and may not be exercised for interfering with the finding of fact but in the present case it is not the finding recorded by the authorities below which is wrong, rather it is the jurisdictional error committed by the authorities in seizing the goods as no case for seizure of the goods was made out. Accordingly, the seizure order is liable to be set aside in exercise of revisional jurisdiction. In view of above, I hold the order of seizure dated 10.2.2011, the order dated 22.2.2011 rejecting the representation under Section 48(7) of the Act and that of the tribunal dated 30.3.2011 to be illegal and without jurisdiction. Once the seizure is held invalid, the issue as to whether the tribunal was justified in directing for release of the goods on deposit of cash security twice the amount of tax leviable in place of 40% of the estimated value of the goods.
3	Superintending Engineer Vs Excise and Taxation Officer	Civil Appeal 8276-77/19 dt 25-10-19	The scheme of the Excise Act is materially different than that of the Himachal Pradesh VAT Act. Thus, the decision in Hongo India Private Limited (supra) also cannot be said to be applicable to interpret the Himachal Pradesh VAT Act. As the revision under the Act of 2005 lies to the High Court, the provisions of section 5 of the Limitation Act are applicable, and there is no express exclusion of the provisions of section 5 of Limitation Act are applicable and there is no express exclusion of the provisions of section 5 and as per section 29(2), unless a special law expressly excludes the provision, section 4 to 24 of the Limitation Act are applicable. When we consider the scheme of the Himachal Pradesh VAT Act, 2005, it is apparent that its scheme is not ousting the provisions of the Limitation Act from its ken which makes principles of section 5 applicable even to an authority in the matter of filing an appeal but for the aid provision the authority would not have the power to condone the delay. By implication also, it is



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			apparent that the provisions of Section 5 of the Limitation Act have not been ousted; they have the play for condoning the limitation under Section 48 of the Act of 2005. Suo motu provision of revisional power is also provided to the Commissioner within 5 years. Thus, the intendment is not to exclude the Limitation Act, We condone the delay in filing of revision.
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### High Court

1	Shri Varalakshmi Company Vs State of Tamil Nadu	WP 15233/19 dt 4.6.19 (Madras HC)	introduction of GST regime on and with effect from 01.07.2017, the petitioner was not entitled to make purchase of High Speed Diesel Oil from other States on concessional rate of tax i.e., at 2% and therefore, the Department's site has been blocked to deny access to the petitioner and other similarly placed persons from downloading 'C' forms.....10. In the light of the narrative supra and in the light of the trajectory, which this matter has taken at the admission stage, it follows as a natural sequitur that the instant writ petition stands allowed. Consequently, necessary action has to be taken by the Revenue/ Department/Respondents forthwith which in any case shall not be more than 5 working days from the date of receipt of copy of this order.
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2	Revenue Bar Association Vs Union of India and Ors	WP 21147, 21148 and 14919/18 dt 20.9.19 (Madras HC)	(i) Section 110(1)(b)(iii) of the CGST Act which states that a Member of the Indian Legal Services, who has held a post not less than Additional Secretary for three years, can be appointed as a Judicial Member in GSTAT, is struck down. (ii) Section 109(3) and 109(9) of the CGST Act, 2017, which prescribes that the tribunal shall consists of one Judicial Member, one Technical Member (Centre) and one Technical Member (State), is struck down. (iii) The argument that Sections 109 & 110 of the CGST Act, 2017 and TNGST Act, 2017 are ultra vires, in so far as exclusion of lawyers from the scope and view for consideration as members of the tribunal, is rejected. However, we recommend that the Parliament must consider to amend section for including lawyers to be eligible to be appointed as Judicial Members to the Appellate Tribunal in view of the issues which are likely to arise for adjudication under the CGST Act and in order to maintain uniformity in various statute.
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3	Himani Munjal W/o Shri Ankush Munjar Vs Union of India	S.B. Criminal Misc. IV Bail Application No. 12077/2019 dt 30.9.19 (Rajasthan HC)	Petitioner has filed this petition under Section 439 Code of Criminal Procedure, 1973 seeking regular bail in Criminal Complaint No. 35/2018 pending before the Court of Chief Metropolitan Magistrate, (Economic Offences) Jaipur Mahanagar, for offences under Sections 132(1)(b),(c)(d),(f),(i) and (1) of Central Goods and Services Tax Act 2017 punishable under Section 132 (1)(i) and (iv) of Central Goods and Services Tax Act 2017 read with Section 132(5) of Central Goods and Services Tax Act 2017.....Learned Standing Counsel for G.S.T. has
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			submitted that all the accused had created 35 fake firms and after making fake entries, had issued invoices involving tax amount of more than 66.81 crores. The firms were misused for evading G.S.T. input taxes by the accused. The fake firms were created in the State of Jammu and Kashmir, West Bengal, Gujarat, Assam, Telangana, Uttar Pradesh and Rajasthan. Keeping in view the seriousness of allegations levelled against the petitioner, no ground for grant of bail to her is made out.
4	Corsan Corviam Construccion S.A Vs: Commissioner of Trade and Taxes	WP(C) 11040/19 dt 18.10.19 (Delhi HC)	4. We, therefore, direct the concerned respondent authority to decide the aforesaid claim of refund of this petitioner in accordance with law, rules, regulations and Government policy applicable to the facts of the present case and keeping in mind the principles propounded by the Hon'ble Supreme Court in Union of India vs. Mafatlal Industries Ltd., 1997 89 ELT 247 (SC) as early as possible and practicable within a period of eight weeks from the receipt of copy of this order passed by this Court.
5	HCL Infosystems Limited Vs State of Rajasthan	Writ 491/17 & Others dt 17.9.19 (Rajasthan HC)	Though there is no bar as such for entertaining the writ petitions at the stage of show cause notice, but it is settled by number of decisions of this Court (the Supreme Court), where writ petitions can be entertained at the show cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. ....the Tax Board has decided in favour of the assessee, apart from penalty, even on the question of tax and interest and subsequently when many other appeals were filed before the Board, a reference on the questions of law involved in these cases has been made to the Full Bench of the Rajasthan Tax Board. This is therefore an additional reason for this Court to refrain from entertaining the writ petition as the Rajasthan Tax Board has yet to take an authoritative view in the matter on the Full Bench reference, We have therefore refrained from examining the arguments on merits made by both parties lest it may prejudice their case before the appellate authority/Tax Board where they can avail the alternate remedy.

## CESTAT

1	Commissioner, Central Excise, Lucknow Vs Lion Security Guards Services	ST/52960/15 dt 10.1.19 (Allhabad)	The various contracts and agreements entered by the respondents with Nagar Nigam clearly show that the work required to be done by them was the lump-sum work of cleaning for which purpose they were being paid. The workers deployed by them are clearly working on behalf of the assessee himself and they are not under the supervision or control of the service recipient. The Tribunal's decisions in the case of Divya Enterprises and Ritesh Enterprises have considered the identical situations and have held that in the absence of any agreement to utilize the services of an individual, assessee cannot be
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			said to have provided Manpower Recruitment or Supply Agency Services.
2	Gurubani Security Pvt Ltd Vs Principal Additional Director General	STA 50779/19 dt.1.8.19 (Delhi)	Delhi High Court in case of Intercontinental Consultants (supra) has held that for arriving at the gross amount to be charged under Section 67 of the Act, only such amount is required to be included which is attributable towards the services rendered by the appellant, any other element, which is reimbursable in nature, is not required to be included for the purpose of computation of assessable value under Section 67 of the Act, as this decision has been upheld by the Supreme Court, we are of the view that the various statutory deduction the payment made towards salary and wages are, therefore, required to be deducted from the total amount charged by the appellant from the service recipient for the rendition of the service.

### Addl Commissioner Revision Orders

1	Agarwal Induction Furnace Pvt. Ltd	CCT's Ref.No.LII(2)/21 6/2017 dt 28.10.19 CTD ORDER NO. JCO 802	dealer did not filed the relevant delivery challans, consignments or vouchers, trip sheet or log book as the case may be in support of the claimed interstate transfers of M.S.Billets from its business premises in A.P. and further the dealer failed to produce the documentary evidence in support of the dispatch of M.S.Billets from its business premises in A.P. to the business premises of the selling branches located outside the State of A.P. In view of the above, these declarations cannot be treated as valid declarations. In the light of all the above, all the proposals made against the dealer are confirmed. The turnover of Rs.120,92,04,457 is taxed @ 5% under Section 3(a) read with Section 6 and 8(2) of the Act, in the light of the failure of the dealer to prove the dispatch of the goods to other States as branch transfer, which works out to Rs.6,04,60,222. <b>(Appeal is to be filed U/s 18A of CST Act before Tribunal – requires no payment of % disputed tax)</b>
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### ADC Appeal Orders

1	Balaji Refrigeration	Appeal VJA-II/01/2019-20 dt.16.10.19 ADC 4598	it is clearly ascertained that the disputed turnovers does not related to sale consideration of any goods, but solely pertaining to pure repair charges of old compressors, therefore the levy by AA cannot be upheld as legitimate and set aside
2	Sri Venkata Lakshmi Traders, Macherla	ADC Order: 4605/19-10-2019, 1)S.No. 63/2019-20 dt. 19.10.19	it is clear that the appellant has to pay proof of payment of 12.5% of the tax assessed by the authority and here the assessing authority has rejected the refund claim of the appellant i.e the assessing authority has rejected excess ITC claimed by the appellant which amounts to raising the demand to that effect and the appellant must pay 12.5% of the disputed amount. Since, the appellant has not paid that amount



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			the appeal filed by the appellant is hereby rejected. <b><u>(Appellant had filed against rejection of refund claim. There is due of tax, interest or penalty. Payment of 12.5% tax or interest or penalty does not arise. Appealable issue arises. The issue may be appealed to Tribunal)</u></b>
3	Kobe Constr Equip	05/2017-18 (NLR) dt 19.10.19 ADC Order No.4650	On overall perusal of the material available in the appeal file and arguments made by the authorized representative of the appellant, it is clear that the vehicle entered the state without advance CST e way bill, but the intention of the provisions of the Act is when the vehicle first enters the state it must be accompanied by advanced CST e way bill. Hence, the arguments of the appellant as well as the authorized representative are not tenable and the appeal is liable to be dismissed <b>(Procedural provisions are to be interpreted with surrounding evidences and explanations. Arguable case exists before APVAT AT)</b>
4	UFO Moviez India Limited	VJA-II/65/2018-19 dt 24.10.19 ADC 4636	it is clear that belated filing of 'F' forms can be accepted only if sufficient cause is established by the appellant, since the appellant has failed to do so in the present case and his request for consideration of accepting 'F' forms after assessment, is found to be not tenable, hence rejected. Thus, the assessment and the levy of tax on interstate branch transfer by the assessing authority does not warrant any interference.
5	Sri Kali Krishna Industries	Order No. 4648 Dt 26.10.19	It is pertinent here to observe that mismatch reports is indicative in nature, but cannot be seen as final to conceive any suppression of turnover/tax. The AA ought to have examined the appellant contentions submitted in response to the show cause notice, which the AA failed to do so. Hence, the determined under declared tax liability by AA, cannot be upheld as bonafide. Therefore, the tax levied basing on mismatch reports is annulled & the appellant contentions are found sustainable with reference to rational arguments and corroborative evidence. Thus, the appeal on this aspect is allowed and the tax so levied is annulled.

### Advance Rulings given in 2019

1	NMDC Limited Chattisgarh	STC/AAR/09/2018 dt 22.2.19	The ruling so sought by the Applicant is accordingly answered as under:- i. The royalty paid by M/s NMDC in respect of mining lease is classifiable under sub heading 997337 ; 'Licensing services for the right to use minerals including its exploration and evaluation' (covered under entry no. 17 of Notification No. 11/2017(Rate), dated 28.06.2017, attracting GST at the same rate as applicable for the supply of like goods involving transfer of title in goods, under reverse charge basis. ii. The contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET), by M/s NMDC as per MMDR
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			Act, 1957 are liable to GST, under reverse charge basis.
2	Novodit Agorwol, Rojendro prosod word,	STC/AARI 01201B dt 26.3.19	In confirmation to the views expressed by the applicant, they (applicant) are required to charge GST upon M/s Shree Roipur Cement. C.G on the total amount including the cost of diesel i.e. on the total freight amount inclusive of the cost of diesel so provided by the service recipient i.e. M/s Shree Roipur Cement.
3	Ramnath Bhimsen Charitable Trust	STC/AAR/tu/2 0L8 dt 2.3.19	The activity of providing accommodation services by the applicant in their hostel for which the applicant is collecting an amount below the threshold limit of Rs. 1000/- per day and no other charges are being collected for providing other allied facilities / services therein viz, canteen food, parking space for vehicles, coaching, library, entertainment etc. merits exemption as stipulated under Notification No. L2/2017-State Tax (Rate) No. F-10-43120t7/CT/V(80), Naya Raipur, Dated: 28.06.2017 under Serial No. 14, Chapter 9963. This amount received for such supply by the applicant falling under tariff heading 9963 qualifies being treated as nil rate tax exempted supply.
4	Chief Electrical Engineer, Goa	GOA/GAAR/8 of 2018-19 /1025 dt 18.7.19	1. The applicant Chief Electrical Engineer, Goa is liable to pay CGST @ 9% & SGST @ 9% on various works/activity undertaken by them except on hiring of the vehicles. 2. The applicant is liable to pay CGST @ 2.5% & SGST @ 2.5% or CGST @ 6% & SGST @ 6% on hiring of vehicles subject to the conditions specified in Notification No. 20/2017-Central Tax(Rate), dated. 22-8-17
5	Syngenta Bioscience Private Limited	GOA/GAAR/9 of 2018-19 /1456 dt 29.8.19	<b>Technical Testing Services</b> The service provided by applicant doesn't fall within definition of export of service as defined by section 2(6) of the IGST Act, 2017 The applicant is liable to pay CGST and SGST on aforesaid service
6	Sewerage & Infrastructural Development Corporation of Goa Ltd.	GOA/GAAR/10 of 2018-19 /1456 dt 30.9.19	1. The services provided by the applicant appears to fall in the list of services enumerated under serial no. 6 of the 12th Schedule of Article 243W of the Indian Constitution, thus qualifying the admissibility criteria. 2. Supervision fees received towards such services provided by the applicant qualify as 'Pure services (excluding works contract service or other composite supplies involving supply of any goods)' provided to a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat or Municipality under Article 243G or Article 243W of the Constitution of India and are exempted from CGST under Sl. No.3 of the Notification No. 12/2017-Central Tax (Rate) dated 28-6-17 as amended and from SGST under Notification No. 38/1/2017- Fin(R&C)(12/2017-Rate) dated 30/06/2017 as amended. 3. The applicant falls under the definition of Governmental Authority or Government Entity clause (16) of section 2 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and



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			amended vide Notification No.32/2017 Central Tax (Rate) dated 13/10/2017.
7	Aditya Birla Nuvo Limited	GUJ/GAAR/R/2018/05 dt 4.3.19	<p>Question: Whether the Ex works plus freight and insurance to be treated as composite supplies?</p> <p>Answer: Yes, supply of principal goods/services alongwith freight and insurance is a composite supply as defined under section 2(30) of the Central Goods and Service Tax Act, 2017</p> <p>Question2: Whether showing and charging freight and insurance portion separately in invoice would attract GST.</p> <p>Answer: GST is chargeable. There cannot be different type of treatments of tax liability on supply of different goods/services naturally bundled together. Question3: If as per (2) above, no GST is chargeable, whether they can have two different type of treatments i.e. in one case GST is being paid on freight (since all other state electricity boards have agreed to pay GST on freight and insurance portion) and in other case of PG, GST on freight being contended/not paid.</p> <p>Answer: not applicable as GST is chargeable.</p> <p>Question 4: One of the inclusions specified in section 15(2) which is to be added to the transaction value under GST is: "Incidental expenses, such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or as the case may be supply of services" Whether above inclusion rule encompasses payment of Freight and insurance which is being reimbursed by the buyer (not on an actual cost basis but on pre-contracted fixed freight per unit of the product). The arranging of delivery of goods is the responsibility of supplier and accordingly transportation &amp; insurance (anything done before delivery of goods) being arranged by supplier. The actual freight cost incurred by supplier varies with pre contracted price with buyer.</p> <p>Answer: Where the value of freight as per pre contracted fixed freight per unit of product is different from the actual cost, the higher of the two value shall be included in the value of composite supply.</p>
8	Dholera Industrial City Development Project Ltd.	GUJ/GAAR/R/2019/06 dated 4-03-19	<p>Question-1: Whether applicant can claim benefits available to Government Entity?</p> <p>Ans: Answered in affirmative.</p> <p>Question-2: Whether applicant is eligible to claim ITC of GST charged by contractors?</p> <p>Ans: Clause (c) of Section-17(5) of CGST Act, 2017 and GGST Act, 2017 provides the eligibility of input tax credit in case of works contract service where it is an input service for further supply of works contract service. Considering the extent of business of construction &amp; erection, maintenance, repair to be conducted by the applicant, the eligibility for input tax credit can only be decided after ensuring that the further</p>





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			<p>supply of works contract service is made by the applicant on a case to case basis.</p> <p>Question-3: Whether applicant is liable to collect GST on amount recovered from contractors on account of breach of conditions specified in the contract.</p> <p>Ans: Answered in affirmative.</p> <p>Question-4: Whether applicant is liable to collect GST on amount recovered from contractors on account of not achieving milestone ?</p> <p>Ans: Answered in affirmative.</p> <p>Question-5: Whether applicant is liable to collect GST on interest amount received for deferring the liquidated damages recovered from contractors? Ans: Answered in affirmative.</p>
9	Hindustan Coca-Cola Beverages Private Limited	GUJ/GAAR/R/07/2019 dated 30-03-19	<p>The product 'Fanta Fruity Orange' manufactured and supplied by M/s. Hindustan Coca-Cola Beverages Private Limited (GSTIN 24AAACH3005M1ZX) is classifiable under Tariff Item 2202 99 90 and Goods and Service Tax rate of 18% (CGST 9% + GGST 9%) is applicable to the said product as per Sl. No. 24A of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017.</p>
10	Jayesh Anilkumar Dalal.	GUJ/GAAR/R/08/2019 dt 1.5.19	<p>Question: Whether or not my supply of services in the nature as mentioned in point 12(B) above, provided to Local Authorities, Urban Development Authority, Dist. Panchayat R&amp;B Div, and other Government Departments which are entrusted with the functions mentioned under article 243G and 243W of the Constitution of India can be termed as —Pure ServicesI as referred in 1. Sl. No. 3 – (Chapter 99) of Table mentioned in Notification No. 12/2017 – Central Tax (Rate) Dated 28/06/2017 and accordingly eligible for exemption from Central Goods and Service Tax, 2. Sl. No. 3 – (Chapter 99) of Table mentioned in Notification No. 12/2017 – (Gujarat) State Tax (Rate) Dated 30/06/2017 and accordingly eligible for exemption from Gujarat Goods and Service Tax. Answer: The services provided by the Applicant, Shri Jayesh Anilkumar Dalal, (GSTIN: 24AAVPD9061B1Z5) may be termed as —Pure ServicesI provided they fulfill the following conditions: i) It excludes works contract service ii) It excludes other composite supplies involving supply of any goods iii) It is supply of services without involving any supply of goods The services provided by the applicant is eligible for the exemption from Goods and Service Tax as per Sl. No. 3 – (Chapter 99) of Table mentioned in Notification No. 12/2017 –Central Tax (Rate) dated 28/06/2017 and as per Sl. No. 3 – (Chapter 99) of Table mentioned in Notification No. 12/2017 – (Gujarat) State Tax (Rate) dated 30/06/2017 if they are pure services and are provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity to a Panchayat under article in relation to any function entrusted to a Panchayat under article</p>



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			243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
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## UPCOMING EVENTS OF BHILAI BRANCH OF CIRC OF ICAI

- 05.11.2019 : HALF DAY SEMINAR ON “SABKA VISHWAS LEGACY DISPUTE RESOLUTION SCHEME”
- 07.11.2019 : WOMENS NATIONAL CONFERENCE
- 15.11.2019 : LIVE WEBCAST ON ISSUES AND RESOLUTIONS IN FORM 9 & 9C
- 16.11.2019&  
17.11.2019 : TWO DAYS NATIONAL CONFERENCE
- 30.11.2019 : HALF DAY SEMINAR ON GSTR 9 & 9C