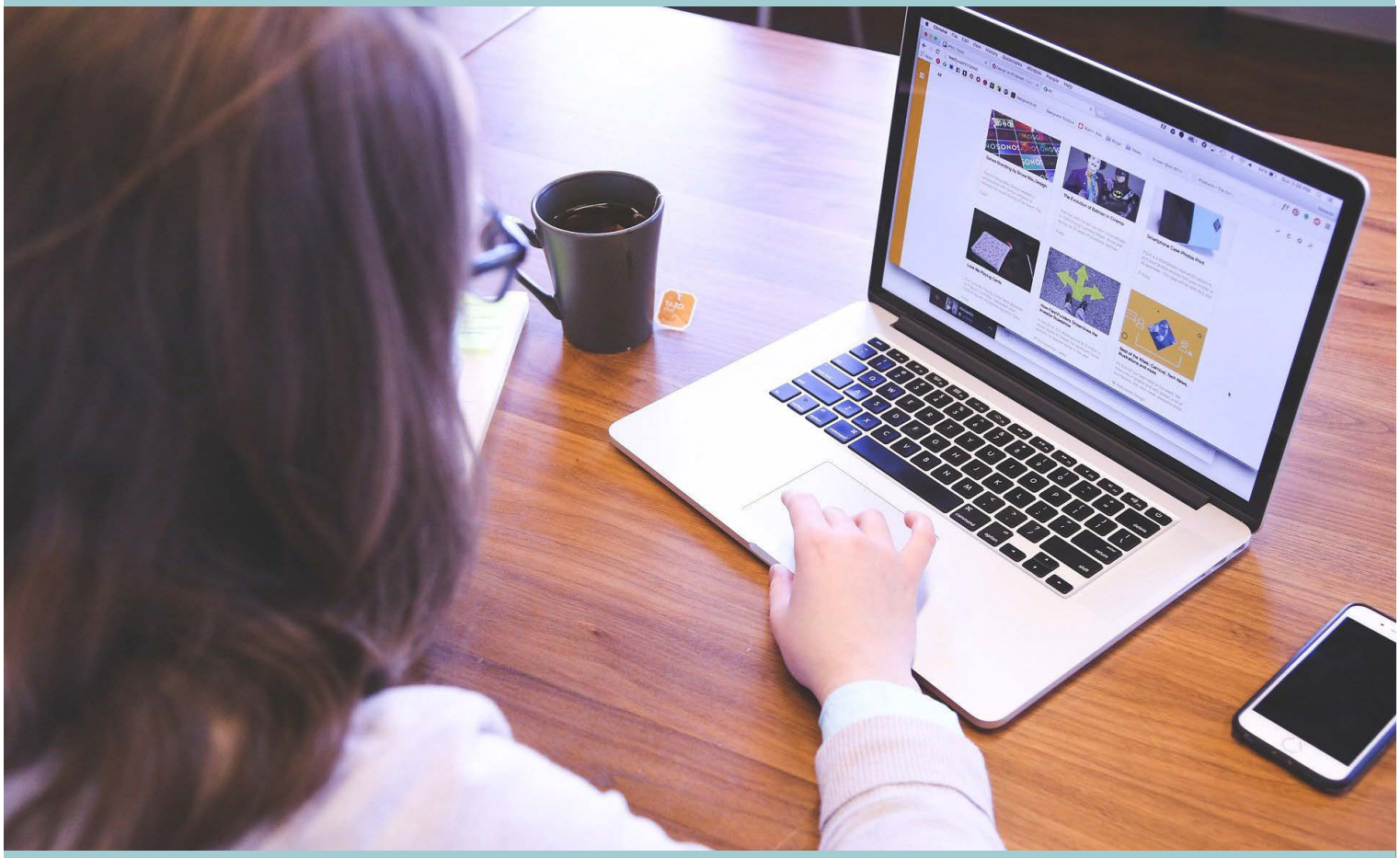
The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

Kozhikode Branch of SIRC e-newsletter

English Monthly | For private circulation only

Volume-II | Issue-8 | September, 2021 | Pages : 15



INDEX

Chairman's Message 2

Case Law

Bhadreshkumar Rameshchandra Dave 4

Activities - September, 2021 12

Upcoming Programmes - October, 2021 15

Editorial Board

Editor : CA. ARUN SUBRAMANIAN

Sub Editor : CA. SURYA NARAYANAN

Disclaimer:

The Kozhikode branch of SIRC of ICAI is not in any way responsible for the result of any action taken on the basis of the articles and advertisement, if any, published in the e-Newsletter. The views and opinions expressed or implied in the branch e-Newsletter are those of the authors and do not necessarily reflect those of Kozhikode Branch of SIRC of ICAI.

Chairman's Message

Dear Professional Colleague,

Hope this message finds you Safe, Strong & Healthy and your family and all your nears and dears are keeping safe!

Warm wishes for Teachers Day to everyone. Let us express our deepest gratitude to all teachers who helped us reaching these great heights and also being teachers now to our beloved article students.

Friends! Forthcoming months of October and November will be hectic months, as many of us will be busy with filing Income Tax returns and Tax audit reports. Let us all gear up our resources to meet these time bound assignments and ensure that the same is completed within the time lines.

In the Month of August Kozhikode Branch organized seminar on GST, & other young members empowerment programs. On the professional front we held a number of programs for the members including two National conferences for the members. Our Direct tax National conference was well appreciated having more than 300 plus participants inaugurated by Padmashree TN Manoharan sir. Now slowly and steadily the cases are coming down and the lockdown is opening gradually this is again the time to take utmost care without any negligence.

We are also conducting regular batches of Information Technology, Orientation Course, Advanced-MCS & IT organized for students so that attempt of students will not be late & they can take their exams on time. I express my sincere thanks to all members & students for their untiring support & overwhelming response provided by attending the organized activities.

In the upcoming events branch has planned to conduct more sports & educational activities in the Month of October for benefit of members & students. I request all to participate on the same.

With this the kozhikode branch is also committed to serve the CA Members and CA Students with respect to their continued professional education and related matters. I would also request the readers of this article to come and participate by writing articles for our newsletter. Also, the whole team of kozhikode branch is committed to the betterment of the professional and encourage you to please take active participation in all the events, activities of the chapter.

Hope that this pandemic made us all re-evaluate our life and assess our priorities and served as a reminder of how precious life is and appreciate the small things in life.

Stay Safe and Healthy.

Wishing you all a Happy Tax Audit Season..

We wish you all a happy and safe times ahead....

BHADRESHKUMAR RAMESHCHANDRA DAVE

(AAR - GUJURAT) 2021 ITL(GST) 7

Bhadreshkumar Rameshchandra Dave, In re
AUTHORITY FOR ADVANCE RULINGS, GUJARAT
SANJAY SAXENA AND MOHIT AGRAWAL, MEMBER
ADVANCE RULING NO. GUJ/GAAR/R/96/2020
DATED - 14-10- 2020
Bhadreshkumar R. Dave for the Applicant.

RULING

1. BhadreshKumar Rameshchandra Dave, Plot No. 2363/1a, Rhumba Sai Baba Park, Ring Road, Subhash Nagar, Bhavnagar is a proprietorship company having a GSTIN: 24AAKHB2992Q1ZP, filed an application for Advance Ruling under section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. M/s. BhadreshKumar Rameshchandra Dave, an applicant is a service provider and intends to work as a Pure Agent for a company which will be the recipient of the labour supply services satisfying below listed conditions:

(i) the applicant intend to work as a pure agent of the company that will be the recipient of the labour supply service, they will make the payment to the third parties (labour) for the labour supply service procured, as the contract for labour service made by the third parties is between third party and the company that will receive the service;

(ii) the company that will receive labour supply service uses the services so procured by the applicant in their capacity as a pure agent of the company receiving the supply;

(iii) the company receiving labour supply service is liable to make payment to third parties (labour).

(iv) the company authorizes the applicant (pure agent) to make payment on their behalf.

(v) the company which is recipient of supply knows that the labour services for which payment has been made by the applicant shall be provided by the third parties (labour);

(vi) the payment made by the applicant on behalf of the Company which is recipient of labour supply services has been separately indicated in the invoice issued by the applicant to the recipient of the service; applicant will issue two separate invoices as under :

(a) Invoice No. 1: with description "Bill for reimbursement of Salary payment made on behalf of company to the third parties (labour) for the month as per attached list".

(b) Invoice No. 2 : with description "Bill for service and consultation for the month"

(vii) the applicant recover from the company which is recipient of labor supply service only such amount that has been paid by them to the third parties (labour); and

(viii) the labour service procured by applicant from the third parties as a pure agent of the company which is recipient of labor supply service are in addition to the services applicant provide on their own account.

3. Accordingly, an applicant sought advance ruling on the following question :

What will be the applicable GST rate for the activity carried out by the applicant?.

Personal Hearing

4. The authorized representative of the company appeared on behalf of the company and reiterated the submission already made in the application filed with the Authority of Advance Ruling. We the member requested the authorised signatory to submit the copy of contract and Invoice, if any issued in respect of the service provided to the applicant.

Findings and Discussion

5. We have considered the submissions made by the Applicant in their application for advance

ruling as well as the additional submissions made by authorised signatory, during the personal hearing proceedings on 24-09-2020 before this authority. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

6. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

7. We have gone through the facts of the case and all the relevant documents submitted by the party. We have gone through the submissions made by the applicant and it is observed that applicant intend to work as a pure agent of the company that will be the recipient of the labor supply service; that they will make payment to the third party (labour) for the labor supply service procured by the company as such the contract for labor service is between third party and the company that will receive the labor service; they will act as a pure agent of the company; the company authorizes applicant to as a pure agent; the company receiving the labor supply service is liable to make payment to the third parties (labor); that the payment will be made by the applicant on behalf of the company to the third party i.e. labor and the same amount has been indicated separately in the Invoice issued by them to the company; that they will issue two types of Invoice

   1. Bill for reimbursement of salary payment made to the labour on behalf of the company.

   2. Bill for service and consultation fees for the month.

   Accordingly, the moot question before us is to decide whether the applicant covers within the ambit of conditions defined to be a pure agent under CGST Act/Rules for providing service to the company or otherwise.

7. To answer the said question we need to refer the Section 15 of CGST Act, 2017, vide which value of taxable supply is defined and Rule 33 of CGST Rules, 2017 regarding value of services in case of supply of service as a pure agent.

Section 15 of CGST Act, 2017 is read as under:

Value of taxable supply

15. (1) The value of a supply of goods or services or both shall be the transaction value, which

is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

As per Rule 33 of CGST Rules, 2017 the expenditure or cost incurred by a supplier, as a pure agent of the recipient of the supply shall be excluded from the value of supply. However, such exclusion of expenditure incurred as a pure agent is possible where the conditions are required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier. The relevant rule is reproduced as below.

Rule 33 of the Central Goods and Services Tax Rules states as under :

"33. Value of supply of services in case of pure agent. - Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely :-

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplier procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. - For the purposes of this rule, the expression "pure agent" means a person who -

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."

7.1 In view of the above, a pure agent is one who, whilst making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies

from the recipient of the main supply. While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent. The service provider as pure agent can be excluded from the value of taxable service subject to the condition that all the conditions specified in the Rule are satisfied.

Further, "pure agent" has been defined to mean a person who :

(a) Enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service.

(b) Neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service.

(c) Does not use such goods or services so procured, and

(d) Receives only the actual amount incurred to procure such goods or services.

7.2 Only when all the four criteria as specified above are satisfied, a person can be considered as a pure agent. To decide whether the applicant satisfied all the four conditions we refer the agreement and invoice submitted by the applicant. The relevant extract of the agreement are as under:

The heading of the contract is **"AGREEMNT FOR LABOUR CONTRACT"**

Whereas the contractor being desirous of performing the work of supplying labour to company have submitted the offer and whereas the contractor agreed to perform the duties described the following terms and conditions, now this deed witnessed the parties hereunder do mutually agrees as follows:-

DESCRIPTION OF WORK

1. The contractor shall supply labour in each shift (All the three) as per the requirement of the organization.
2. The contractor shall be paid at 17000.00 on the total bill raised by him for each worker supplied by him per day.
3. The labour employed by the contractor shall follow the safety norms strictly including prohibiting smoking inside the premises.

9. SUBLETTING FUNCTION: The contractor shall not sublet or transfer the whole or part of the functions under this agreement to any other person, firm or company without the previous approval

of the company.

10. RESPONSIBILITIES UNDER VARIOUS ACTS: The contractor shall engage all persons employed by him in all respects and assume responsibilities under the Factories Act, 1948. The workman's Compensation Act, 1923 Contract Labour (Regulation and Abolition) Act 1970, Employees State Insurance Act and Employees Provident Funds Act, 1952 and other similar enactment in respect of such personnel. The contractor shall indemnify the company against all claims. In the event of the company having to pay any amount due to non-observation of the various provisions under the Act, the contractor shall be liable to reimburse the aforesaid amount to the company.

7.3 On going through the said terms and conditions of the agreement, it is observed that the applicant has entered into an agreement with the company for supply of labour and in the clause "Description of Work" of the agreement, it is clearly mentioned that, contractor shall supply labour in each shift (All the three) as per the requirement of the organization; contractor shall be paid at 17000.00 on the total bill raised by him for each worker supplied by him per day and the labour employed by the contractor shall follow the safety norms strictly including prohibiting smoking inside the premises. These terms and conditions clearly indicate that the applicant is engaged in the service of supply of labour. The agreement also provides that the contractor engages all persons in all respects and assumes responsibilities under various Acts, viz. the Factories Act, 1948, The workman's Compensation Act, 1923, Contract Labour (Regulation and Abolition) Act 1970, Employees State Insurance Act and Employees Provident Funds Act, 1952 etc. Further, it also provides that the contractor has indemnified the recipient against all claims and that in the event of the recipient having to pay any amount due to non-observation of the various provisions under the Act, the contractor shall be liable to reimburse the aforesaid amount to the company.

8. Further, we refer the sample copies of the Invoices submitted by the applicant and it is noticed that they have mentioned the particular as "Charges for manpower supply during the month' and charged GST @18% (CGST- 9% + SGST-9%).

9. In view of the above discussion, it is observed that the applicant does not satisfy any one of the conditions mentioned in the Rule 33 of CGST Rules, 2017 which are required for acting as a "pure agent". Hence we conclude that the applicant cannot be categorized as a "pure agent" as such he is engaged in the supply of labour service. The supply of labour service is taxable under GST Act/Rules, therefore applicant is liable to pay Goods and Service Tax on the supply of said service provided.

10. Now, to decide the applicable rate of GST for service of supply of labour we have to determine

the classification of the Service provided by the applicant. Regarding the classification of service Annexure to the Notification No. 11/2017- Central Tax (Rate) dated 28-6-2017 have been referred. The Annexure attached to the Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 has defined the Service Accounting Code for each type of services, details of the following services, which are relevant to the transaction of the applicant is as under:

400	Heading 9985		Support services
401	Group 99851		Employment services including personnel search, referral service and labour supply service
402		998511	Executive or retained personnel search services
403		998512	Permanent placement services, other than executive search services
404		998513	Contract staffing services
405		998514	Temporary staffing services
406		998515	Long-term staffing (pay rolling) services
407		998516	Temporary staffing-to-permanent placement services
408		998517	Co-employment staffing services
409		998519	Other employment and labour supply services nowhere else classified

10.1 From the above, it is seen that the nature of service provided by the application is covered under the Service Accounting Code 998519 - Other employment and labour supply services nowhere else classified.

11. Regarding the rate of tax applicable on the above supply Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 is referred and found that the entries related to SAC 9985 are as under:

23	Heading 9985 (Support services)	(i) Supply of tour operators services. Explanation.- "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.	2.5	1. Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)] 2. The bill issued for supply of this service indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.
		(i) Support services other than (i) above	9	-

The Service provided by the applicant merit classification under SAC 998519 and applicable rate of GST would be covered under entry No. 23 of Notification No. 11/2017. Accordingly, applicable rate of GST for the Service provided by the applicant would be 18% (CGST-9% +SGST-9%) in terms of Sr. No. 23 of Notification No. 11/2017-CT (Rate) dated 28-6-2017.

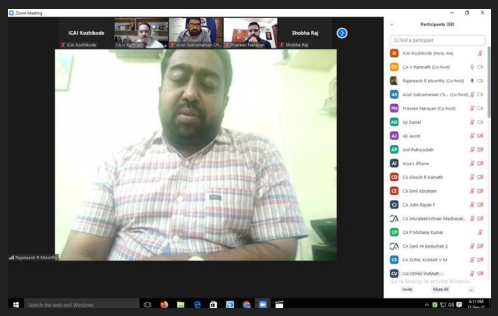
12. In view of the above discussion we pass the following Ruling:

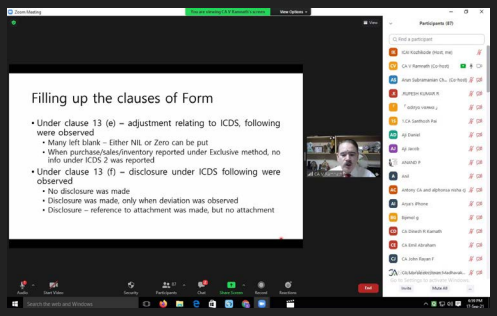
RULING

Question: What will be the applicable GST rate for the activity carried out by the applicant?

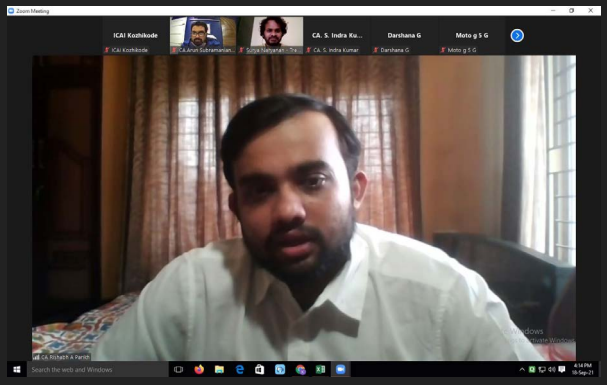
Answer : In view of the above discussion GST rate for the activity carried out by the applicant i.e. supply of labour would be 18% (CGST-9% +SGST-9%) in terms of Sr. No. 23 of Notification No. 11/2017-CT (Rate) dated 28-6-2017.

ACTIVITIES - SEPTEMBER, 2021

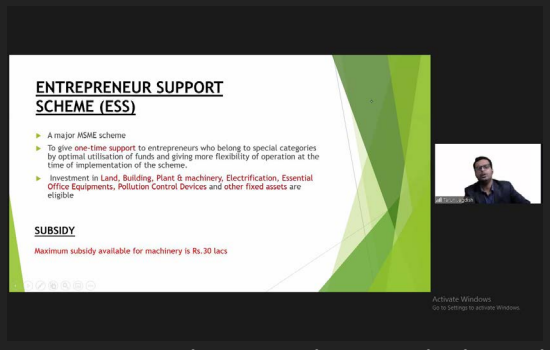




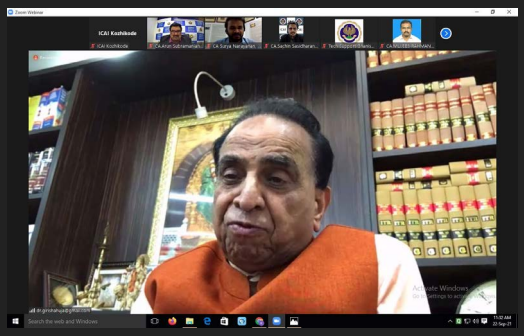
Seminar on Common Errors found In Tax Audit
Speaker **- CA. Ramnath, Coimbatore - 17.09.2021**



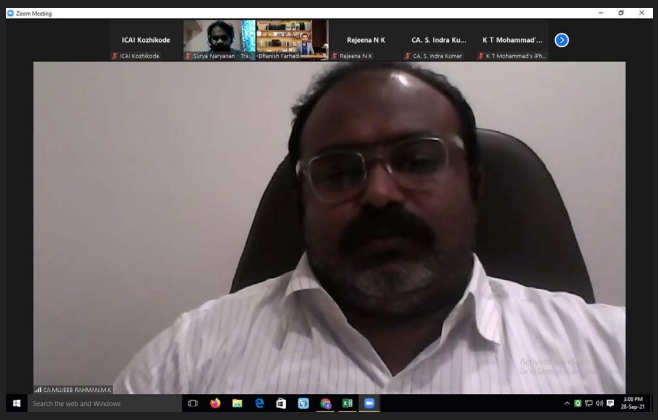
Seminar on GST-Upcoming Litigations
Speaker **- CA. Rishab - 18.09.2021**

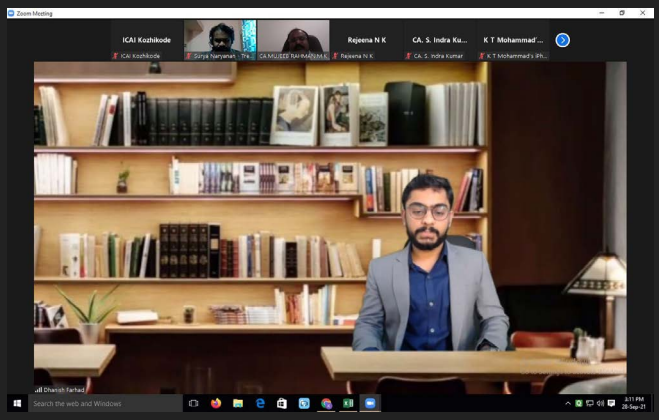


Joint VCM in association with Calicut Chamber of Commerce Investor Awareness programme for professionals, entrepreneurs and the public *Topic* - SME Benifits and Government Grants for MSME *Speaker* - CA. Tarun Jagdish, Calicut - 22.09.2021



Three day Virtual National Conference organised by Direct Tax committee hosted by Kozhikode Branch of SIRC *Speakers* - CA. Dr. Girish Ahuja, New Delhi, CA. G. Ramaswamy , Past President ICAI, CA. Naveen Khariwal, Bangalore - 22.09.2021 to 24.09.2021





Seminar on Managing through Crisis - Advice Pandemic Strategies to your Clients
***Speaker* - CA. Danish Farhad - 28.09.2021**

Upcoming Programmes - October, 2021

October

2
Gandhi Jayanti
- Distribution of Vegitable Grow bags to members,
- Swatchh Bharth Abhiyan initiative for cleaning Institute premises

11
Seminar
Topic - Trust & GST Audit

12
Workshop
Topic - Valuation & Insolvency Act

12 &13
Residential Seminar at Kashmir

22
Seminar
Topic - Crypto Currency

26
Seminar
Topic - Audit Quality Maturity Model
Speaker - CA. M P Vijay Kumar

30
Seminar
Topic - ICFR and SA on Reporting
CA. Hemand

Contributions to e-newsletter

Contributions in the form of articles, poems, jokes, travelogues etc. are invited from members for consideration in the monthly e-Newsletter. Interested members may email their contribution to *icaikoznewsletter@gmail.com* along with name, membership number and mobile number.