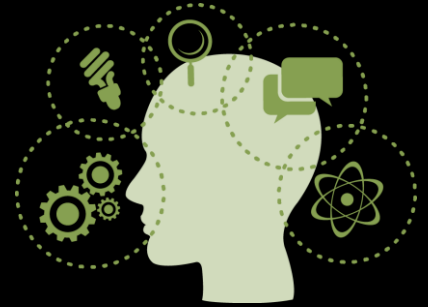


The High Court's decision on Venture Capital Funds (VCF) M/s ICICI Econet Internet and Technology Fund and Others vs. Commissioner Of Central Tax, Bengaluru North



Facts

- VCFs are established as "Trust" and registered with the SEBI as VCFs.
- Several classes of Investors have contributed to the fund.
- The trustee had appointed asset managers to manage the assets.
- Surplus funds were distributed to investors after meeting operational expenses. Certain accounting adjustments were also made.
- Carried Interest paid as return on investment to a specified class of investors, including fund managers.
- Demand confirmed on merits for amount retained towards expenses and carried interest paid.



Parallel analysis of the decision of the Honourable High Court* and the Honourable Tribunal**



Observations of the Tribunal

Principle of Mutuality

- VCFs can be treated as juridical persons for taxation purpose also.
- There is a lack of equal treatment for different classes of contributors.
- Profit motive violates the principle of mutuality.

Value of service

- Amount retained for meeting expenses qualifies as consideration for services of asset management.
- Carried interest paid to a specified class of investors viz. fund manager, is deemed as a "performance fee" and included in consideration.



Observations of the High Court

- **The Finance Act** does not recognise "Trust" as a person.
- The fund acts as a "pass through", where these are consolidated and invested by an investment manager.
- The fund acts as a trustee holding money, belonging to contributors to be invested per the advice of the investment manager.
- The fund does not perform any activity and there is no service to self. The doctrine of mutuality is applicable.
- The "Order of Tribunal" is set aside.

*High Court of Karnataka at Bengaluru

**Honourable CESTAT Bengaluru Bench

Conundrum under the Goods and Services Tax (GST)



Taxability

The GST law recognises "Trust" as a person



GST amendment'

Activities by trusts, societies, etc., for members (and vice versa) for consideration to be treated as "supply"



Deemed separate persons

Person and its members/constituents deemed as two separate persons notwithstanding anything contained in any other law or any order of any court

The potential exposure

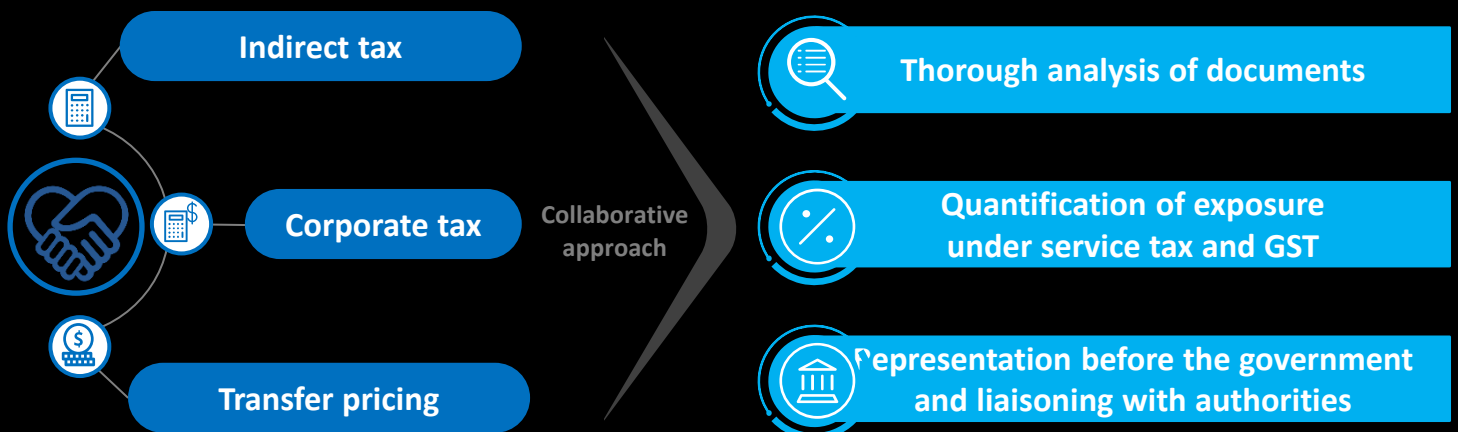
Service tax regime

Recharacterisation of carried interest as performance fee, since its taxability is not discussed the High Court's decision.

GST regime

The fund and fund managers are required to evaluate the exposure under GST.

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