



BHUJ BRANCH

OF
WESTERN INDIA REGIONAL
COUNCIL OF

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

For Private Circulation Only

JUNE – 2017 NEWSLETTER



**Are you
ready
for
GST?**

THE STRUGGLE
YOU ARE IN
TODAY IS
DEVELOPING
STRENGTH YOU
NEED FOR
TOMMOROW.

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CA Bhavée Thacker

Chairperson's Message

Respected Members,

Please accept my regards.

As I am settling down into the new responsibility that has been entrusted to me, I am beginning to realize how enormous and exciting that responsibility is and how it expects earnest, efficient and enthusiastic efforts from me to live up to that responsibility. I have also realized that to do justice to this responsibility, I need to communicate with all of you on a continuous basis. Such communication will relieve me as well as revitalize me. I intend to use this column as one of the many ways to talk to all of you.

We had quite an eventful last month or month and a half. The month of May started with CA Examinations, which went off well as usual thanks to the efforts put in by the Principal and staff of SMSBM Arts Commerce and BCA College as well as our members who performed duties as coordinator. Prior to that, we did conduct mock test for IPCC and Final Students at the same college. We also had CPT mock test on 11th June which was, for the first time, held at our Branch premises. We are gearing up for CPT Exam for June-2017.

We did get a chance to participate in the GST workshop organised by the Gandhidham Branch. A good number of members from Bhuj attended the event and had a chance to listen to speakers coming from different parts of the country. I take this opportunity to congratulate the Gandhidham Branch for this well managed event. We learned and enjoyed a lot.

Back home, we are going to have a similar two day workshop on GST under the guidance and supervision of the Indirect Taxes Committee of the Institute. We have had an overwhelming response to this event and registration for the same exceeded the planned capacity of the venue well before the last date. We have changed to a bigger venue and have reopened the registration so that none of the interested member or student is denied the chance to participate. Let us hope that the event will be a grand success.

GST gave us one more opportunity to try a new method of learning. We have started two batches of informal learning of GST where interested members meet at the Branch premise and discuss amongst themselves the provisions of GST Acts and Rules. From the reports coming from the participants, the experiment seems to be working nicely and producing results. The approach may also help participating members to shed their reluctance at expressing themselves in front of "others" and in due course we hope to get good number of new local faculties for our future CPE events. The experiment may be extended to cover other areas of interest and we may think in terms of coming out with "intensive study courses" on different technical subjects on similar line of learning by participatory discussion. In this way, perhaps, we may be able to empower our members by making them self sufficient in learning and expression.

Talking about learning and expression, we intend to use this e newsletter as an important instrument towards that end. Our intention is to encourage more and more members to come forward and contribute articles to this publication. I hereby specifically invite each and every member to use this newsletter as a platform to hone up their skill of writing and expression. We are trying to encourage members to try their hand at articles on issues involving interpretation or opinion or discussion. This may go a long way in making members confident about their understanding and expression of technical issues relevant to the profession.

I referred to "communication" earlier in this write up. It goes without saying that communication is almost meaningless unless it is a "two way" communication. I request you to please take every chance to talk to us, to make suggestions, recommendation and more so to draw our attention where we are not living up to your expectation.

Looking forward to hear from you,
Thank you very much.

CA Bhavée Thacker

Chairperson

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SECTION 40a(ia) CONTROVERSY FINALLY LAID TO REST BY THE SUPREME COURT DECISION

CA Neesha R. Patel

Section 40a(ia) Disallowance is attracted irrespective of the fact whether the sums are payable or paid.

The Hon'ble Supreme Court has pronounced a very elaborate judgement in the case of "Ms. Palam gas Services Vs. CIT" on 3rd May, 2017 where the Hon'ble court makes it crystal clear that payable includes the paid also and therefore, the provisions are applicable in all cases whether the TDS is paid or payable.

Introduction.

One of the classic controversies, lasting for more than a decade, is disallowance for non-deduction/payment of TDS on domestic payments U/s 40a(ia). This section has seen a number of amendments since its enactment by finance Act, 2004 w.e.f. A.Y. 2005-06, which were basically in the nature of softening the harsh provisions of the section and also widening the coverage of the TDS net by way of covering all heads of TDS deductions right from Section 192 to 194. However, a major controversy, which has now been finally, concluded by Hon'ble Apex Court, had been the TDS 'paid' or 'payable'. In order to understand the origin of the whole controversy, it would be relevant to reproduce section 40a(ia) as it was originally enacted :

Disallowance of business expenditure on account of non-deduction of tax on payment to resident-payee [Sec. 40(a)(ia)]

Any interest, commission or brokerage, rent, royalty, fees for professional services, fees for technical services, any amount payable to a resident contractor shall not be allowed as a deduction in the previous year in which the expenses

are incurred, while computing the income chargeable under the head 'Profit and gains of business or profession', if in respect of such expenses:-

- a. Tax has not been deducted, or
- b. After deduction has not been paid on or before the due date mentioned under Sec.139 (1).

However, where in respect of any such sum,-

- a. Tax has been deducted in any subsequent year, or
- b. Has been deducted during the previous year but paid after the due date specified under Sec. 139(1),

such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

The word "Payable" used in this section is subject matter of controversy. This controversy is raised in various cases before ITAI, High Courts and finally the matter reached the Supreme Court.

History of section 40(a)(ia):

Section 40(a)(ia) was introduced in the IT Act, 1961 by the Finance Act, 2004 w.e.f. 01-04-2005. Initially the Finance

Bill 2004 contained the word “amounts credited or paid” but later it was changed to “Payable” in the Finance Act, 2004. Using the word “paid” results in permanent disallowance, which was not the intention of legislation while introducing section 40a(ia).

Some facts which will have bearing on the case of Palam Gas Service Vs. CIT need to be mentioned:

The appellant-assessee is engaged in the business of purchase and sale of LPG cylinders under the name and style of M/s. Palam Gas Service at Palampur. The main contract of the assessee was for carriage of LPG with the Indian Oil Corporation. The assessee had received the total freight payments from the IOC to the tune of Rs.32,04,140/-. Bimla Devi, Sanjay Kumar and Ajay to whom he made the freight payments amounting to Rs. 20,97,689/-. The Assessing officer observed that the assessee had sub-contracted with three persons within the meaning of section 194C of the Act and therefore, was liable to deduct tax at source from the payment of Rs. 20,97,689/-. Due to non deduction of TDS, the said freight expenses were disallowed by the AO as per the provision of section 40(a)(ia) of the Act. The assessee preferred an appeal before the CIT(A) Shimla who had upheld the order of AO. The matter thereafter came up in appeal before the ITAT which too met with the same fate. In further appeal to the Hon'ble high court u/s 260A of the Act, the outcome remained unchanged and accordingly, the assessee preferred

further appeal before the Hon'ble Supreme Court.

The Concept of 'paid' and 'payable':

Grammatically, it may be accepted that the two words, i.e. 'payable' and 'paid' denote different meanings. The Punjab & Haryana High Court, in P.M.S. Diesels & Ors. Rightly remarked that the word 'payable' is, in fact, an antonym of the word 'paid'. At the same time, it took the view that it was not significant to the interpretation of section 40(a)(ia) of the Act.

Analysis of the case:

The issue with respect to disallowance of expenditure under section 40(a)(ia) of the Act when the amount is not 'payable' at the end of the year but 'paid' during the year has been subject matter of debate before the courts. In Palam Gas Service v. CIT, the two judge bench of the Supreme Court has categorically held that the word 'payable' used in Section 40(a)(ia) of the Income Tax Act, would also cover the circumstances where the amount is already paid, but no tax was deducted thereupon. In the instant case, an assessee, who made freight payment without deducting tax at source, was not allowed by the Assessing officer to deduct the said expenditure by invoking Section 40(a)(ia) of the Income Tax Act. The appeals filed against the said order was dismissed by the appellate authorities and the High Court. Before the High Court, the assessee contended that Section 40(a)(ia) would cover only those contingencies where the amount is due and still payable.

The bench noticed the decisions of the Madras and Calcutta High Courts and the recent Punjab & Haryana High Court wherein these Courts had taken a view that the aforesaid provision would cover even those cases where the amount stands paid. In view of the decision of Punjab & Haryana High Court in the case of P.M.S. Diesels & Ors. It has been observed that the section 40(a)(ia) of the Act covers not only those cases where the amount is payable but also when it is paid. A different view had been taken by the Allahabad High Court in CIT v. Vector Shipping Services (P) Ltd. On reference to the Allahabad High Court's decision in the case of Vector shipping, it would indicate that the High Court, after noticing the fact that since the amounts had already been paid, it straightway concluded, without any discussion, that section 40(a)(ia), of the Act would apply only when the amount is 'payable' and dismissed the appeal of the tax department. After perusing the relevant provisions of the Act, in the case of Palam Gas Service the two-judge bench observed that a composite reading of Sections 194C and 200 of the Income Tax Act would show that not only a person, who is paying to the contractor, is supposed to deduct tax at source on the said payment whether credited in the account or actual payment made, but also deposit that amount to the credit of the Central Government within the stipulated time. All TDS provision under Chapter XVII-B requires a

person to deduct tax at source at the specified rates. The requirement in each section is preceded by the word 'Shall'. The provisions are, therefore, mandatory. There is nothing in any of the sections that would warrant reading the word 'Shall' as 'may'. The point of time at which the deduction is to be made establishes that the provisions are mandatory. This view is also supported by the decision of the Calcutta and Madras High Courts.

Section 40(a)(ia) is applicable irrespective of the method of accounting followed. The purpose of section 40(a)(ia) is to ensure the recovery of tax. There is no indication in the said section that this objective was confined to the recovery of tax from a particular type of taxpayers following a particular accounting practice. Therefore, the intention is to ensure the collection of tax irrespective of the method of accounting followed by the assessee.

Conclusion:

The Supreme Court has put at rest the controversy with respect to applicability of section 40(a)(ia) of the act vis-a-vis amounts paid or payable at the end of year. The supreme Court has referred to all the relevant High Court decisions on this matter and has also looked into the intention behind introduction of Section 40(a)(ia) of the Act. Accordingly, it has been held that the provisions of section 40(a)(ia) of the Act are applicable even if the amounts are paid during the year on which tax has not been deducted.

ROLE OF A CHARTERED ACCOUNTANT UNDER THE REAL ESTATE REGULATION ACT

CA Ruchi Savala

The section links withdrawal from the account to the percentage of completion and permits withdrawal to that extent only. Here, the act brings in Chartered Accountant. Promoter is required to obtain certificate from Chartered Accountant, (along with certificate from Engineer and Architech) stating that the withdrawal is in proportion to the percentage of completion of the project.

Today chartered Accountants can play a pivotal and integral role by being backbone of various organizations not only in finance and accounting, but also acting as its strategists and advisors, locally as well as globally.

RERA has added yet another area of practice for us.

RERA is mandatory for all residential and commercial projects having area of more than 500 sq. mts or more than 8 apartments. The basic purpose for which the act is established is for the safeguard of the interest of house buyers and the real estate developer without compromising on the quality of the projects while meeting the deadlines at the same time. RERA will in short benefit both the parties.

RERA also has provisions for sale of property in effective and transparent manner and also ensures speedy resolution of the dispute.

Earlier the real estate developers used to follow different practices and used to charge either on carpet area or built up or super built up area. Now there will be a consistency as regard to this as project developers will charge on the basis of carpet area only.

Apart from the traditional practice that we know this will be yet another field of practice for CAs.

The Act requires every real estate project to be registered with the Real

Estate Regulatory Authority. This requirement is there by virtue of Section 3. Subsequently, section 4 talks about the application for registration to such authority for registration of real estate project. Subsection (2) of section 4 lists the documents that are required to be attached with the application for registration. The subsection specifies in total twelve enclosures (a) to (l). Sub clause (l) requires the promoter to make four declarations by way of affidavit. One of such declarations (at sub clause (D)), requires the promoter to declare that seventy percent of the amount realized from the allottees shall be deposited in a separate bank account. Promoter is also required to declare that such amount shall be used only for the purpose of covering the cost of construction and land. The section further goes on to place certain restrictions on the withdrawals from such bank account. The section links withdrawal from the account to the percentage of completion and permits withdrawal to that extent only. Here, the act brings in Chartered Accountant. Promoter is required to obtain certificate from Chartered Accountant, (along with certificate from Engineer and Architech) stating that the withdrawal is in proportion to the percentage of completion of the project. The withdrawal is permitted only after such certificate is obtained and furnished. It appears that such a certificate will be required at the time of each of the withdrawal. So, every

time the promoter seeks to withdraw from such account, he will have to approach a chartered account and request him to issue a certificate to such effect. The form and the manner in which such certificate is to be issued may find a place in the rules or other such pronouncement that may be promulgated in due course.

This very section goes on to cast a responsibility on the promoter to get his accounts audited by a Chartered Accountant. This audit is envisaged on annual basis that is for every financial year. Promoter is to get the accounts audited within six months after the end of the financial year. The plain reading of the section conveys that the audit assignment will cover certification of the statement of account by a Chartered Accountant. In addition to this certification of Statements of Accounts, the words of the section specifically require two more "verifications" from the Chartered Accountant. The section requires the Chartered Accountant to verify the utilization of the amount collected for the project. The Chartered Accountant needs to certify that the amounts collected for the project have been utilized for that project only. The second verification is with reference to the compliance to the restriction placed on the withdrawal from the specially maintained account. Chartered Accountant needs to verify that the withdrawals from such account are in compliance with, in proportion to, the percentage of completion of the project. While the section does talk about the scope of the annual audit assignment in some detail, the form and manner in which it is to be carried out may also be dealt with, in greater detail, through rules or other relevant pronouncement.

The acts formed generally have certain procedure to resolve the disputes which occur due to its implementation. Likewise, there is a provision under the RERA also to solve the disputes occurring due to the provisions of the Act.

Sections 43 to 58 talk about powers and limitations of the members of the appellate tribunal. The appropriate govt. of each state or union territory shall establish Appellate Tribunal which shall consist of a chairperson and minimum of 2 whole time members having expert knowledge of this field to deal with the disputes occurring from it. They shall have the prescribed qualification and be appointed for a tenure of 5 years.

Section 56 brings in the role of chartered accountant holding certificate of practice to represent the case before the appellate tribunal or any such other authority. The appeal can be filed within a specified time frame as provided in the Act. Such appeals shall be dealt with as expeditiously as possible trying it not to delay beyond 60 days of receipt of the appeal. The members of the tribunal will be learned and experienced and as per the qualifications provided in the Act.

Section 44 which brings Appellate Tribunal into picture - Just like the Appellate Tribunals of the Income Tax Act, an Appellate Tribunal will also be set in each state and union territory under RERA by the appropriate govt.

Any person or government or aggrieved person shall prefer an appeal to the appellate tribunal within a period of 60 days with the prescribed fees. The appellate Tribunal will give both the parties an opportunity of being heard, call for the records and

will do speedy disposal of appeals within a period of sixty days from the date of receipt of the appeal.

RERA being a new act and recognizing the skills of Chartered

Accountants, they have given Chartered Accountants an eminent role in RERA towards protecting the rights of promoters and the house buyers.

DIFFERENT VARIANTS OF SUPPLY AND ITS RELEVANCE UNDER GST REGIME

CA Deep Koradia

Here, an attempt is being made to initiate a discussion as to the manner in which each of the concept associated with the supply may be understood and how each such concept may be related to various liabilities and rights under the act. It may please be noted that the idea of this article is primarily to initiate a discussion which may lead to a collective decision as to the intention of the legislature and its implication on the taxpayers and professionals.

GST, the most talked about concept of the day poses such questions, answers to which are difficult to get. This is equally true for the concept of SUPPLY under the GST regime. As the concept of supply is the backbone of the entire scheme of the GST mechanism, the confusion on this concept makes each and every stake holder nervous.

If we read the different Acts and Rules (under the GST regime) that are available, we shall find that a number of prefixes have been assigned to the word “supply” and it is this multiplicity that is the main cause for confusion.

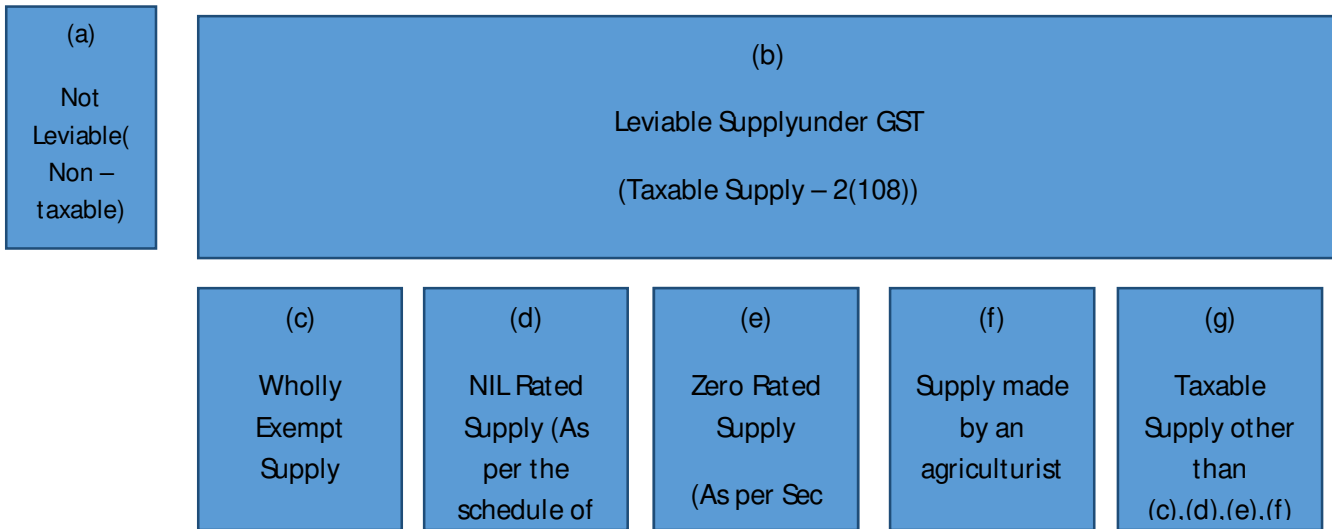
Here, an attempt is being made to initiate a discussion as to the manner in which each of the concept associated with the supply may be understood and how each such concept may be related to various liabilities and rights under the act. It may please be noted that the idea of this article is primarily to initiate a discussion which may lead to a collective decision as to the intention of the legislature and its implication on the taxpayers and professionals.

Under the GST regime, Supply can be classified in various categories. However, this classification is not directly provided at any single place in the law. We are categorizing it for the sake of our understanding. The Question is, why are we required to make such a classification? Because at various places in the law the treatment of “something” is to be done is based on the classification of the supply. This point may be illustrated in a better way if we consider the following questions;

- 1) For Which supply, I need to OR need not take registration?
- 2) For Which supply, I can claim ITC and for which outward supply I need to reverse the ITC?
- 3) For Which Supply, I can opt for composition?
- 4) For Which Supply, I need to take registration irrespective of the threshold limit benefit?

Let's take a look at chart and its definitions first of all.

SUPPLY



Definitions:

(a) Non-taxable Supply - 2(78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act

(b) Taxable Supply - 2(108) “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act

(c) Wholly Exempt Supply – Sec 11 – Exemption by notification wholly or partly.

(d) Nil Rated Supply – Supply falling under Nil Category under Schedule of Rate.

(e) Zero Rated Supply - defined under IGST - 2(23) “zero-rated supply” shall have the meaning assigned to it in section 16;

Sec 16 IGST

(1) “Zero rated supply” means any of the following supplies of goods or services or both, namely:—

- or
- (a) Export of goods or services or both;
 - (b) Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

(f) Supply Made by an agriculturist as per Sec 23 (b)

(g) Taxable Supply other than c,d,e,f

Exempt Supply - 2(47)- “exempt supply” means supply of any goods or services or

both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Means, as per our chart, **Exempt Supply is combination of (a),(c),(d)**

[“Wholly Exempt Supply” and “Exempt Supply” are different terms]

Having understood the different concepts of supply, let us try and deal with the first two questions that we posed to ourselves. The first question relates to the liability to get registered and the second relates to the availability of Input Tax Credit. The remaining two questions (composition and registration irrespective of threshold) are not taken up in this article due to space constraints.

1) Registration:
Sections 22 to 30 deal with registration. We are touching only those portion of the registration which have something in to understand in relation to classification of supply. The general rule is if Turnover exceeds **20Lacs of taxable supply** then one need to take registration.

However, exception to this is sec. 23 person not liable to take registration is

- a) Person engaged **exclusively** in the supply of good and/or services that are **not liable to tax OR wholly exempt**
- b) An agriculturist

So, in a nut-shell,

- If supply not leviable under the act [sec 9(1) &(2)] – Not required to registered as the same is not taxable supply. – **(a) in chart**
- If person is not exclusively supplying goods/services which are **not liable to TaxOR** Supply is **wholly exempt** - Not required to registered – **(c) and (d) in chart**
- If person is an agriculturist, he is not required to take registration to the extent he is supplying goods out of cultivation of land – **(f) in chart**

2) Input Tax Credit:

Section 17 (1),(2),(3) deals with restricting ITC for exempted Supply. 17(1) is not allowing any ITC if the use of the goods or services is not for business. 17(2) and (3) is allowing credit only to taxable supply including zero rated supply and restricting to Exempted Supply.

Exempted supply is defined under sec 2(47) and for the purpose of restriction

credit, it also includes Turnover of RCM, Transaction in securities, Sale of land (except where land value is included in taxable supply as per Schedule II para 5 sub clause (b)).

So, in a nut-shell,

- **ITC available** for taxable supply as per **(g)** in the chart and **zero rated supply (e)** in the chart
- ITC is not available for exempted supply **(a),(c),(d) in the chart** and also not available for - **Turnover of RCM, Transaction in securities, Sale of land (except where land value is included in taxable supply as per Schedule II para 5 sub clause (b)).**
- If the taxable person is engaged in taxable and exempted supply then **ITC need to be reversed** as per **rule 7** of ITC rule.

UPCOMING EVENTS

CA Day Celebration – 1st July, 2017

EXPRESSION OF GRATITUDE

ALL CENTER COORDINATORS FOR

1. IPCC & FINAL EXAMINATION MAY- 2017
2. CPT MOCK TEST JUNE- 2017 SERIES-1 & SERIES-2



**BIG THANK YOU
TO**

ALL THE SUB COMMITTEE MEMBERS AND YOUNG MEMBERS WHO WERE BACKBONE IN MAKING OUR TWO DAYS GST WORKSHOP A SUCCESS STORY.

- | | |
|-----------------------|------------------------|
| 1. CA JAGRUT ANJARIA | 11. CA OJAS MEHTA |
| 2. CA UMANG THAKKER | 12. CA KAPIL THACKER |
| 3. CA APURVA SHAH | 13. CA JIGAR THACKER |
| 4. CA DEEP KORADIYA | 14. CA NIKUNJ DHOLAKIA |
| 5. CA ABHISHEK SHAH | 15. CA KETAN SOLANKI |
| 6. CA HEM MAKANI | 16. CA RITESH RAGANI |
| 7. CA RICHA SHAH | 17. CA VIPUL VORA |
| 8. CA PRIYA SHETH | 18. PANKAJ VELANI |
| 9. CA DEEPA SHAH | 19. MAHADEV CHAWADA |
| 10. CA RADHIKA BHINDE | 20. JUNED SUMARA |

AND MANY OTHERS.

GALLERY





Two Days Workshop on GST

Shri Muktmivan Swamibapa Arts & Commerce College, Bhuj.









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