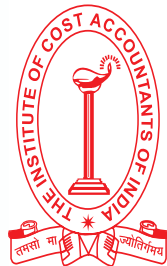


TAX Bulletin

June, 2018 Volume - 17



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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Objectives of Taxation Committee:

1. Preparation of Guidance Note and Analysis of various Tax matters for best Management Accounting Practices for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit suggestions to the Ministry from time to time for the betterment of Economic growth of the Country.
4. Evaluating opportunities for CMAs to make effective value addition to the tax-economy.
5. Designing of Certificate Course on Direct and Indirect Tax for members and stake holders.

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FROM THE DESK OF THE CHAIRMAN

Great things in business are never done by one person. They are done by a team of people.

- **Steve Jobs**

Namaskar and Best Wishes..!!!

Our vision is based on hard work, open communication, a strong emphasis on team work and a high level of responsibility. This visionary culture allows and emphasizes our team not only to adopt the present day challenges but also individual responsibilities to the stakeholders and our institution.

I would like to place on record and appreciate, the Tax Research Department, for compiling the suggestions received from Members, Industry representatives and others for inclusion in the New Direct Tax Law, which has been submitted to the Finance Ministry.

The 1st Batch of Certification Course on GST has been successfully completed at most of the locations. I take this opportunity to thank our Resource Persons, Course co-ordinators, Regional Council / Chapter Co-ordinators in seamlessly moving forward with the course.

Also, the admission to the 2nd Batch has commenced and would continue till the 4th of June, 2018. The learners / students, who have taken admission in the 2nd Batch of Certificate Course on GST, have been provided with the option of switching from online to offline and vice-versa, post registration.

We strive to work harder and honour our commitments in our deliverables and expect the continuing support of all our near and dear ones associated with Tax Research activities to move forward with the objectives of the Tax Research Department.

A handwritten signature in blue ink, appearing to read 'Niranjana Mishra'.

CMA Niranjana Mishra
Chairman - Taxation Committee
4th June, 2018

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TDS PROVISION UNDER GST

CMA S K MISHRA
FCMA, FCA

Tax Deduction at Source (TDS) under GST

TDS is one of the modes/methods to collect tax, under which, certain percentage of amount is deducted by a recipient at the time of making payment to the supplier of taxable goods or services. It acts as a powerful instrument to prevent tax evasion and expands the tax net, as it provides for the creation of an audit trail.

Under the GST regime, section 51 of the CGST Act, 2017 prescribes the authority and procedure for 'Tax Deduction at Source'.

Who is required to Deduct TDS

As per section 51(1), the following class of person shall be required to deduct tax at source @2% (CGST 1% + SGST 1%) on the payment made or credited to the supplier where the total value of supply under a contract exceeds Rs.2,50,000/- excluding GST:

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) Following categories of person has been notified vide Notification No.33/2017-Central Tax Dated 15th Sept 2017 under clause 51(1)(d)

- a) an authority or a board or any other body, -
 - i. set up by an Act of Parliament or a State Legislature; or
 - ii. established by any Government,

with fifty-one percent or more participation by way of equity or control, to carry out any function;

- b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

- c) public sector undertakings

Example: If the supply order placed to a contractor is for Rs.4 lakhs, but payment is made in two installments of Rs.2.3 lakhs & Rs.1.7 lakhs, then TDS to be deducted from

both the payments since law mandates that TDS provision u/s 51 shall be attracted if the contract value exceeds Rs.2.5 lakhs. The value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice

Registration of TDS deductors:

A TDS deductor has to compulsorily register without any threshold limit. The deductor has a privilege of obtaining registration under GST without requiring PAN. He can obtain registration using his Tax Deduction and Collection Account Number (TAN) issued under the Income Tax Act, 1961

Deposit of TDS with the Government:

The amount deducted shall be paid to the Central Government within ten days after the end of the month in which such deduction is made.

TDS Certificate

A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment TDS is deducted), within 5 days of crediting the amount to the Government, failing which the deductor would be liable to pay a late fee of Rs. 100/- per day from the expiry of the 5th day till the certificate is issued.

The deductor shall furnish a TDS certificate in FORM GSTR-7A to the deductee mentioning in it the following:

- (a) contract value
- (b) rate of deduction
- (c) Amount deducted
- (d) Amount paid to the appropriate Government
- (e) Any other particulars as may be prescribed

TDS Return:

The deductor is also required to file a return in Form GSTR-7 within 10 days from the end of the month. If the supplier is unregistered, name of the supplier rather than GSTIN shall be mentioned in the return.

Consequences of non compliance of TDS provisions:

SI No.	Event	Consequence
1	TDS not deducted	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law
2	TDS certificate not issued or delayed beyond the prescribed period of five days	Late fee of Rs. 100/-per day subject to a maximum of Rs. 5000/-
3	TDS deducted but not paid to the Government or paid later than 10th of the succeeding month	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law
4	Late filing of TDS returns	Late fee of Rs. 100/- for every day during which such failure continues, subject to a maximum amount of five thousand rupees

When GST not to be deducted at Sources (TDS)

No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory, which is different from the State, or as the case may be, Union Territory of registration of the recipient.

The above statement can be explained in the following manner:

- Supplier, place of supply and recipient are in the same state. It would be intra-State supply and TDS (Central plus State tax) shall be deducted. It would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.
- Supplier as well as the place of supply are in different states. In such cases, Integrated tax would be levied. TDS to be deducted would be TDS (Integrated tax) and it would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.
- Supplier as well as the place of supply are in State A and the recipient is located in State B.

The supply would be intra-State supply and Central tax and State tax would be levied. In such case, transfer of TDS (Central tax + State tax of State B) to the cash ledger of the supplier (Central tax + State tax of State A) would be difficult. So in such cases, TDS would not be deducted.

Example

Registered dealer of Bhubaneswar has placed supply order to a registered dealer of Bihar for delivery of material to a party in Patna. The supply would be intra-State supply and Central tax and State tax would be levied. In such case, transfer of TDS (Central tax + State tax of Orissa) to the cash ledger of the supplier (Central tax + State tax of Bihar) would be difficult. So in such cases, TDS would not be deducted.

Thus, when both the supplier as well as the place of supply are different from that of the recipient, no tax deduction at source would be made.

TDS PROVISION AT A GLANCE

Particulars	Description
Deductor	Dept. or establishment of Central/State Govt, local authority/board or body in which Govt hold 51% or more Equity, PSU, Societies registered under Societies Registrations Act 1860.
Registration	Separate registration as TDS deductor mandatory
Deductee	Supplier of Taxable goods or services
Rate	2% (CGST+SGST)
Threshold limit	If contract value exceed Rs.2.5 lakhs , on entire value
No TDS	If the state/UT of location of the supplier and place of supply is different from the state/UT of registration of recipient
Payment of TDS	10 th of the Next month
TDS Certificate	Form GSTR-7A to be issued to the deductee within 5 days of crediting the amount to the Government.
Penalty for failure to issue TDS certificate	Rs.100/day from the expiry of the 5th day till the certificate is issued, Maximum Rs.5000/-
Effect in cash ledger	TDS to be credited to electronic cash ledger of the person from whom the amount was deducted after the same is reflected in the return of Deductor
Applicability of other provisions	Section 50(interest), section 54(refund) and Section 73/74 (SCN) equivalently applicable

Note: As per the decision taken in 26th GST Council meeting, the applicability of TDS provision has been deferred till 30.06.2018.



REFUND OF ACCUMULATED INPUT TAX CREDIT ON ACCOUNT OF EXPORTS – GETTING THE MOST OUT OF IT

RAMBABU GONDALA

Superintendent in Central Tax, Rangareddy Commissionerate

Refund Mechanism plays a vital role in any tax administration.. be it a direct tax administration like Income Tax, Wealth Tax or an Indirect Tax Regime like Service tax, Central Excise. The newly introduced Goods and Service Tax is no exception for this. The striking difference between refunds of Income Tax and that of GST is, refunds under the former administration is a onetime affair and not done as a part of business activity, the refund under GST on the other hand is part of business activity, the delay in sanction of any refund, thus, leads to cash crunch. Knowing the fact, the Government of India is making several arrangements for speedy disposal of refund claims and issuing various guidelines from time to time keeping the interest of Tax payers in consideration. In this context, let us discuss the salient features of “Refund of Accumulated Input Tax Credit on Account of Exports”. Let us try to understand the basic concepts with the following illustration.

Mr. Madhavan is an exporter. He is procuring goods domestically and availing Input Tax Credit (ITC) on the items so procured. While exporting goods he has two options viz: exporting goods with payment of IGST under claim for refund and export of goods without payment of IGST under an LUT. In case the first option is chosen, the credit so availed on input can be utilized for payment of IGST and the IGST so paid can be applied as refund. On the other hand of the second option is chosen at the time of export, the goods are to be exported without payment of tax hence ITC so availed will be unutilized and gets accumulated in his electronic credit ledger. Unless such unutilized credit is converted into cash, it affects his profitability adversely which thus leads to cash crunch. Hence, the said provision of refund claim is made available to exporters.

How to claim:

Exporter who wish to avail the facility of refund of unutilized credit on account of exports may apply for the same through his account in GST portal (www.gst.gov.in) and select “the application for refund” option under “Refunds” tab available under “services” menu and he has to choose “Refund of ITC on Export of Goods & Services without Payment of Integrated Tax”.. Once the said refund option is chosen, system would ask for the certain inputs, by filling the same, the exporter will get

the eligible refund amount based on the following formula.

Refund Amount = (Turnover of zero - rated supply of goods + Turnover of zero - rated supply of services) x Net ITC ÷ Adjusted Total Turnover

The amount so arrived by above formula is maximum refund amount the exporter is eligible for

(for detailed meaning of each item described in the above formula, exporters may refer Rule 89(4) of CGST Rules, 2017)

Lets try to understand above jargons with a simple illustration again.

Mr. Madhavan is filing claim for the month of Dec, 2017. He has availed total credit to a tune of 1.00cr and he has exported goods with a value of 3.00cr without payment of tax during the month. In addition he has exported goods with a value of 1.00cr with payment of IGST and he sold certain goods in domestic market to a tune of 1.00cr .Closing balance of accumulated credit as on 31.12.2017 is 0.80cr. Though the application intended to be filed is for the month of Dec, 2017 the application is actually filed on 31.03.2018. Hence as on 31.03.2018 Mr. Madhavan is having a credit balance of 0.50 Cr.

If we adopt the above values for the purpose of refund, the main elements would be like this:

Net ITC (B) = 1 Cr

Turnover of zero rated supply of goods (C) = 3 Cr. (though Mr. Madhavan has exported 4 cr, the value of those goods which are exported without payment of tax should only be taken into consideration)

Turnover of zero rated supply of services (D) = 0

Adjusted Total turnover (E) = 5 Cr (total turnover including domestic sales)

Hence if we adopt those values for the above formula, the maximum refund is

$\{(C+D) \times B\} \div \text{Adjusted Total Turnover} = (3) \times 1 \div 5 = 0.60 \text{ Cr or } 60 \text{ lacs.}$

Wait...it does not mean that Mr. Madhavan is getting a refund of Rs.60 lacs. The value arrived here is only maximum refund. Then what is actual amount Mr. Madhavan would get .It is least of maximum refund amount (0.60Cr), actual credit taken during the month (1.0Cr) and balance of ITC available as on refund application filing date (0.50Cr). Hence, Mr. Madhavan would get 0.50Cr as refund. On submitting the application online, the said amount (0.50Cr) will get debited from credit ledger and an ARN would be issued by the system. Copy of the ARN along with manually filled Refund application in RFD-01A along with supporting documents are to be submitted in the jurisdictional divisional office.

How to get maximum refund:

Most exporters wonder why they are getting less refund despite the fact that the actual ITC availed is much higher. There could be two reasons (i) the proportionate turnover of exports without payment of tax vs total turnover ...higher the ratio higher the refund (ii) it is actual balance available as on application date which plays a major role and not the closing balance of the month for which the application is filed. In the above illustration the refund application is filed for the month of Dec, 2017 and there has been a balance of 0.80 Cr ITC available in his credit ledger, but as on 31.03.2018 - the date, on which application is being made, the credit balance was only 0.50 Cr. Hence, it would be a wise decision to look into the balance before applying for refund, If the balance of ITC is too low and there is a chance of getting more ITC due to purchase of more inputs in subsequent month then wait till such time. Now, department has provided an option to file the refunds for multiple months/quarters keeping the interest of exporters in view. Exporter has to make a paper work separately for a single month or a single quarter and in combination of months before applying for a refund claim online (this facility is expected to be available online soon). By taking these minimum precautions, exporters may increase the refund amounts.



GST ON CONSTRUCTION OF SOLAR POWER SYSTEM/PLANT

CMA UTPAL KUMAR SAHA

AGM – Indirect Tax, McNally Bharat Engineering Co. Ltd.

Recently Authority of Advance Ruling (AAR) in the state of Maharashtra has given an order confirming that construction of solar power system is a works contract and GST Rate would be 18%.

They have passed two orders pertaining to M/s Giriraj Renewables Private Limited and M/s Fermi Solar Farms Private Limited. The orders have been passed after detailed evaluation of all the relevant documents, different case laws of Apex Court and High Courts also. I have tried to make an analysis of one order out of the two orders passed by AAR - Maharashtra.

Analysis of order passed for M/s Giriraj Renewable Private Limited –

The applicant has filed the application for seeking an advance ruling. The main question in this regard was:

- Whether supply of turnkey Engineering, Procurement and Construction (EPC) Contract for construction of a solar power plant wherein both goods and services are supplied can be constructed to be a composite supply in terms of section 2(30) of CGST Act, 2017.

Submission of the Applicant –

1. The applicant has submitted that the main intent of the contract is provision of the solar power generating system which consists of various components such as solar modules, MS structures, inverter transformers, cables, SCADA, transmission line etc. Services like civil foundation are merely incidental to supply of such goods and ancillary part of the contract. Out of the total contract value, service portion is only 10 to 15% and balance is supply of goods. This also substantiates the fact that provision of service is incidental to supply of goods and hence supply of goods is the principal supply and entire contract would be supply of goods. The entire contract is one turnkey EPC contract and qualifies as a composite contract. The principle supply is solar power generating system and should be taxable @5%.

2. Contract does not constitute works contract- *“works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.*

Therefore, in order to determine whether the supply made by the applicant is a works contract, the following points are imperative to understand-

- a. The essence of the contract and intention of the parties. Whether the parties intend to undertake works contract or supply of solar power plant/ generating system; and
 - b. Whether the activity amounting to immovable property to qualify as works contract.
- a. The essence and intention of the parties involved in the contract is clearly supply of solar power plant
 - b. Solar power plant is not an immovable property –

It can be inferred from the various pronouncements of the judicial authorities that where the object is installed/ fastened to the land for better running of the object, and not for the benefit of the land, the object will not be considered as immovable property. Further, it has been held that if fixing of plant to a foundation is only meant to give stability to the plant and where there is no intention to make such plant permanent, the foundation would not change the nature of the plant and make it an immovable property.

Reliance is placed on the judgments delivered by Hon'ble Apex court in the matter of

- i. **Sirpur Paper Mills vs. Collector of Central Excise, Hyderabad (1998) 1 SCC 400 (SC)**
- ii. **Commissioner of Central Excise vs. Solid and Correct Engg. Works & Others (2010) 175 ECR 8 (SC)**

In the instant case the solar power plant supplied by the applicant is commissioned and installed only for the purpose of better functioning only and are capable of removed and transferred from one place to another. Hence, the fact that plant is firmly but not permanently attached to the land and the same is not an immovable property. Reliance is also placed on the Chartered Engineer Certificate which clearly says that solar power plant if required can be shifted to another location and highly movable nature.

The solar power plant is a composite supply only instead of a works contract. It has been highlighted that mounted photovoltaic module (PV Module) comprises around 60% to 70% of the entire solar power plant and rest of the materials / equipment are merely parts or sub-parts. The rate of the PV Module is 5%. Reliance is also placed on Chartered Engineer Certificate which provides that the most critical component is PV Module both in terms of value and functionality. It is clear that PV Modules qualify as a "Principal Supply" and hence whole contract being a composite supply would be taxed at the rate of 5% only.

Observation of the Authority and order thereof-

It is not in a dispute that the contract as a whole is a single contract. The moot question is whether the subject contract will fall under the preview of "**composite contract**" or "**works contract**". Applicant has been contenting that the contract is not a works contract but to be treated as a composite supply.

The contract is not for supply of goods but also for provision of services also and such type of contract commonly understood as works contract under pre GST regime. However, it is equally true that this contract has to be understood from new Goods and Service Tax Laws without set aside the contention of the applicant. Works Contract as defined under in clause 119 of section 2 of CGST as-

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

It can be seen that new definition of works contract is exhaustive one and containing only fourteen (14) specific activities but these activities are in terms of an immovable property only. Earlier under the sales tax/ VAT regime, works contract was defined as activities of building, construction, manufacture, processing, fabrication, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property. Thus, activities in relation to both movable and immovable property were covered earlier VAT/ service tax regime whereas under GST regime it is restricted only to immovable property. The contention of the applicant that transaction of supply of solar power plant (SPP) does not result into an immovable property as the SPP is a movable.

The applicant has to perform all activities from engineering, design, procurement of materials and also perform installation, commissioning of such equipment. The contract of such a nature generally referred to as works contract but we have to decide whether it is works contract in terms of GST Act. Whether such activity is in the nature of immovable property or not, which is the important issue for determination of works contract.

Immovable property has not been defined under GST Act. Section 3 of the General Clauses Act, 1897 does not provide any exhaustive definition of works contract.

Immovable property shall include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. The term "attached to the earth" has not defined under General Clauses Act. But, section 3 of the Transfer of Property Act, 1882 has defined the expression "attached to the earth"-

- a) *rooted in the earth, as in the case of trees and shrubs;*
- b) *imbedded in the earth, as in the case of walls and buildings;*
- c) *attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.*

In the case of Commissioner of Central Excise vs. Solid and Correct Engg. Works & Others,

"24. Applying the above tests to the case at hand, we have no difficulty in holding that the manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons:

- i. **The plants in question are not per se immovable property.**
- ii. **Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.**

- iii. **The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.**
- iv. **The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed.”**

The following general points are very essential to determine the nature of subject contract-

- i) The contract would be to develop 60MWAC/ 81MWDC solar power plant for onward sale of power to its customers. It is a big project and has a permanent location. Such plant would therefore have an inherent element of permanency.
- ii) Output of the project i.e. power would be available to an identified segment of customers. Thus the output element involves the nature of permanency and it would not be possible and prudent to shift base from time to time or locate the plant elsewhere at frequent intervals.
- iii) Such renewable energy project would have an essential element of permanency. The project would be established under Government Rules and Regulations. It would not be moved frequently after obtaining the essential permits and licenses.
- iv) The owner has to obtain necessary approvals and permits required for commissioning and operation of the plant. Such permission has an essential element of permanency.

The applicant has relied on the case law of M/s Solid and Correct Engg. Works. The Hon'ble court has held that the products as movable for the reason that the plant was not intended to be permanent at a given place and the plant can be moved and is indeed moved after road construction or repair for which it's setup is completed. But the present case is not similar to the case as cited by the applicant. Here solar power plant is in the nature of permanency. The applicant has not understood the case law in correct sense. The plant is permanently attached to the earth by civil foundation.

ORDER-

Supply of turnkey Engineering, Procurement and Construction (EPC) Contract for construction of a solar power plant is a "Works Contract" as defined in section 2(119) and not a composite supply as per section 2(30) of the CGST Act.

MISCELLANEOUS FREQUENTLY ASKED QUESTIONS ON GST

Q. 1 - What is the need for Classification under GST?

Ans. There are numerous varieties of goods and services. It is not possible to apply common rates on all goods and services. The only option is to classify the goods on the basis of groups and sub groups and services on the basis of broad descriptions.

Q. 2 - Is HSN Code is mandatory for all the dealers?

Ans. HSN Codes shall not be used mandatorily under the following cases:

- Dealers who have an annual turnover of INR 1.5 Crore
- Dealers registered under the composition scheme of GST are exempted from the usage of HSN Codes

Q. 3 - Whether GST would be payable in case of demand of excise duty made upon finalization of provisional excise assessment in post GST period?

Ans. Demands arising from finalization of provisional assessments under the Central Excise Act, unless recovered under the said Act, shall be recovered as an arrear of tax under GST Act.

Q. 4 - In reference to Section 15 of GST, CTT and STT are statutory levy under Income Tax. Is there any GST tax on another governmental Tax, SEBI Fees and Stamp Duty as per Various State Government rates?

Ans. As per Section 15 the value will be inclusive of all taxes except CGST, SGST, UTGST and IGST. So all taxes will be included in the value for the purpose of GST except where benefit of Pure agent as provided in Rule 33 of CGST Rules, 2017 is availed.

Sec 15 of CGST Act, 2017 - 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

Rule 33 of CGST Rules, 2017 - Value of supply of services in case of pure agent.

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 authorisation 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 supplies 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.

Q. 5 - Whether the job worker (who converts barley into Malt) has to charge GST from the Principal only on the Job Work charges or full value of goods, i.e. (Value of Raw Material + Job Work Charges)?

Ans. The job worker has to pay GST on job work charges only.

Q. 6 - Please clarify on availment of input tax credit of GST paid on trucks, commonly used for G.T.A business, Safex, Multi-modal and packing business?

Ans. No ITC is permitted to GTA engaged in providing GTA services which are under RCM and are treated as exempted supplies in the hand of GTA. However, if GTA is also liable to pay tax under forward charge as supplier, he is not permitted to avail ITC if he is claiming the concessional rate of 5%. If ITC is claimed, the GST rate for GTA in forward charge will be 18%.

Q. 7 - Can a GTA obtain registration for one vertical (Rail, Cargo, Renting, Warehousing etc.) for which tax needs to be paid while not obtaining registration for another vertical (GTA under RCM) on which there is no tax liability.

Ans. No, because the business entity is not engaged exclusively in the supply of services liable to tax under reverse charge mechanism.

Q. 8 - In transport industry, old vehicles, old tyres, scrap material etc, on which no input tax credit (ITC) has been taken, are disposed of after completion of their useful life. As a truck owner disposing of these goods, am I required to pay GST considering that no ITC has been taken at the time of their initial purchases? Would levy of tax in such cases not amount to double taxation, as tax has already been paid at the time of initial purchases?

Ans. Under section 7 of the CGST Act, 2017 supply includes all forms of supply of goods such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Sale

or disposal of old vehicles, old tyres and scrap material for a consideration would therefore attract GST regardless of whether ITC has been availed or not.

Q. 9 - Whether the Airlines are required to issue invoice to the customers transaction-wise, (i.e. Airway Bill-wise, Ticket Journey-wise) or a consolidated invoice, capturing the details of all individual invoices for a particular entity, can be issued on a monthly or fortnightly basis?

Ans. A single invoice incorporating the details of all the supplies for a particular entity can be issued subject to provisions of section 31 of the CGST Act, 2017. In such a case the ticket issued by the Airlines would not take the character of an invoice.

Section 31(2) of the CGST Act, 2017-

A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which – (a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or (b) tax invoice may not be issued.

Q. 10 - Does the GST treatment on fees for ancillary services in relation to air transport follow that of the underlying air transport service?

Ans. Yes, ancillary services are part of the service of transporting a passenger by air and do not constitute a separate supply of service. In this respect, ancillary services include Page 5 of 5 services that are incidental to the transport of passengers by air (e.g., excess baggage charges, date change charges, un-accompanied minor fees, preferred seat charges, cancellation fees etc.).

Consequently, ancillary services shall be treated within the same category of service as „transport of passengers by air“ and shall attract the same rate of GST as applicable to the transport of passengers by air.

Q. 11 - What is the manner in which Input Service Distributor should distribute the credit where distributor and recipient are business verticals located in the same State?

Ans: The distribution of credit is to be done in following manner:

- CGST and IGST as CGST
- SGST and IGST as SGST

Q. 12 - Please clarify the procedure of availing ITC on Additional Compensation Cess on some products like Tobacco, Coke, and Cigarettes.

Ans. ITC of cess can be used only for payment of cess

Q. 13 - One of the conditions to claim credit is that the receiver has received the goods and or services. Is there any provision for deemed credit in case of transfer of document of title before or during the movement of goods?

Ans. The Explanation to section 16(2) states that it is deemed that the taxable person has received the goods where the goods are delivered by a supplier to a recipient or any other person on the direction of taxable person whether acting as agent or otherwise, before or during movement of goods either by way of transfer of documents of title to goods or otherwise.

Q. 14 - Whether taxes paid on change of interiors of service apartment is eligible for input tax credit?

Ans. The input tax credit is not available on goods or services received by a taxable person for construction of an immovable property on his own account other than plant and machinery even when used in course or furtherance of business. The word “construction” includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalization to the said immovable property. If the cost of interiors is capitalized towards the cost of immovable property, then it forms part of the cost of immovable property (Service apartment) and accordingly taxes paid on change of interiors of service apartment is not eligible for input tax credit.

Q. 15 - What would be input tax eligibility in case where the goods and/or services supplied by a registered taxable person become absolutely exempt?

Ans. As per section 18(9), the registered taxable person who supplies goods and / or services which become absolutely exempt, has to pay an amount equivalent to the input tax credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such exemption. It has also been provided that after payment of the amount on such goods, the balance, if any available in electronic credit ledger would lapse.

GST Registration as Tax Collector at Source (TCS)

1. Who needs to register under GST as a TCS?

Ans: TCS stands for Tax Collected at source. In the GST regime, every e-commerce operator needs to collect 1% under CGST Act and 1% under SGST Act; In case of inter-state transactions, 2% (under IGST Act) on the net values of taxable supplies made through the e-commerce operator.

2. How can register as TDS or TCS?

Ans: The Registration Application for Tax Deductor/Tax Collector can be filed by the applicant directly by themselves. In GST regime, the registration process is online and any person/entity wishing to register will have to access the GST system for the same.

Any person who wishes to get registered as the Tax Deductor/Tax Collector needs to apply in the form prescribed.

3. Are there any preconditions I must fulfil before registering with GST as a TDS or TCS?

Ans: The preconditions are:

1. For Registration as Tax Deductor: Applicant has valid PAN or TAN.
2. For Registration as Tax Collector: Applicant has valid PAN.
3. Applicant must have a valid mobile number.
4. Applicant must have valid E-mail ID.
5. Applicant must have the prescribed documents and information on all mandatory fields as required for registration.
6. Applicant must have a place of business.
7. Applicant must have an authorized signatory with valid details.

4. Do I get registered automatically after submitting the registration application along with the prescribed documents?

Ans: No, your registration application will be processed and approved by the relevant Tax Officer, only then will you be issued the registration certificate and GSTIN.

5. I am an e-commerce operator; registered as a TCS under GST regime. I supply goods to multiple states. Do I need to register in each state?

Ans: Yes, you need to register separately in each state and appoint a person in each state/UT who will be liable to pay GST.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

GOODS AND SERVICES TAX

CENTRAL TAX

Notification No. 24/2018 – Central Tax
Dated: 28.05.2018

As per sub rule (3) of rule 83 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby notifies the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, as the authority to conduct the examination of the GST Practitioners.

F No. 354/52/2018-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

Date: - 7th May 2018

Finance Ministry Clarifies issues to enable availing 8% GST on Affordable Housing

The Department of Revenue's Tax Research Unit (TRU) has recently clarified certain issues raised by Confederation of Real Estate Developers' Associations of India (CREDAI) to enable availing 8% Goods & Services Tax (GST) on affordable housing.

The CREDAI raised three issues before the Tax Research Unit. The First issue was regarding the authenticated

document to be relied upon by the developer to charge concessional rate of GST on Credit Linked Subsidy Scheme (CLSS) housing.

The PLIs (Primary Lending Institutions) are required to provide each borrower/ beneficiary a statement of given subsidy and the adjustment & impact of it on EMI.

The Second issue was regarding the requirement of specific approval/ certificate for residential projects to qualify as infrastructure status. The TRU (Tax Research Unit) clarified that no certificate from any authority was required.

The third issue was related to the mechanism for reversal of already charged GST to a customer who at a later date becomes eligible for CLSS.

TS-196-HC-2018(CHAT)-VAT
Chhattisgarh Government

Dated – 23rd May, 2018

Inter-state trade of high-speed diesel governed by CST Act after GST promulgation

HC allows issuance of Form C for inter-state purchase of high-speed diesel to be used in manufacture of cement, after the promulgation of CGST / SGST Act; Holds that assessee's registration certificate under CST Act r/w CST (Registration and Turnover) Rules continues to be valid for purpose of inter-state trade of high-speed diesel despite migration to GST regime w.e.f. July 1, 2017.

CENTRAL TAX RATE

Notification No. 11/2018-Central Tax (Rate)
Dated: 28.05.2018

This notification is regarding applicability of reverse charge mechanism on central tax for intra state transaction:

Tariff item, sub-heading, heading or Chapter	Description of Goods	Supplier of goods	Recipient of supply
Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person

INTEGRATED TAX RATE

Notification No. 12/2018-Central Tax (Rate)
Dated: 28.05.2018

This notification is regarding applicability of reverse charge mechanism on integrated tax for interstate transaction:

Tariff item, sub-heading, heading or Chapter	Description of Goods	Supplier of goods	Recipient of supply
Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person

Circular No. 45/19/2018-GST

Dated: 30.05.2018

The circular is on the subject of clarifications on refund related issues.

Representations have been received seeking clarification on certain refund related issues. Clarification has been given on the below mentioned:

1. Claim for refund filed by an Input Service Distributor, a person paying tax under section 10 or a non-resident taxable person.
2. Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit.
3. Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess.
4. Whether bond or Letter of Undertaking (LUT) is required in the case of zero rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods?
5. What is the scope of the restriction imposed by rule 96(10) of the CGST Rules, regarding non-availment of the benefit of notification Nos. 48/2017 - Central Tax dated the 18.10.2017, 40/2017 - Central Tax (Rate) dated 23.10.2017, 41/2017 - Integrated Tax (Rate) dated 23.10.2017, 78/2017 - Customs dated 13.10.2017 or 79/2017 - Customs dated 13.10.2017?

Please click on the link to go through the circular in detail http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_No.45.pdf;jsessionid=A284A286542B030E33D0376114F702AD

CUSTOMS

TARIFF

Notification No. 45/2018 – Customs

Dated: 23.05.2018

Increase in Customs Duty (Standard) on the imports of:

- Walnuts (in shell) per kg – from 30% to 100%
- Protein concentrates and textured protein substances per kg – from 40% to 100%

Notification No. 46/2018 – Customs

Dated: 23.05.2018

This Notification is an amendment to Notification No. 50/2017- Customs, dated the 30th June, 2017. The following shall be amended in the Notification No. 50/2017- Customs

SL. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax
37	1001 19 00 or 1001 99 10	Wheat	30%	-

NON TARIFF

Notification No. 45/2018 – Customs (N.T.)

Dated: 24.05.2018

This notification is regarding Audit regulation in Customs Act, 1962

<http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt45-2018.pdf>

Notification No. 46/2018 – Customs (N.T.)

Dated: 25.05.2018

This Notification is regarding amendment in the rate of duty drawback

Tariff Item	Description of goods	Unit	Drawback rate	Drawback cap per unit in Rs. (₹)
711302	Articles of jewellery and parts thereof made of silver	Kg	2851 per kg of net silver content (.999 purity) in the jewellery	
711401	Articles made of silver	Kg	2851 per kg of net silver content (.999 purity) in the jewellery	

Notification No. 28/2018-Customs (ADD)

Dated: 25.05.2018

This Notification is regarding imposing definitive anti-dumping duty on imports of 'Saturated Fatty Alcohols originating in, or exported from Indonesia, Malaysia and Thailand.

The anti-dumping duty shall be effective for a period of five years from the date of publication of this notification.

F No 390/Misc/390/2017-JC

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

Dated – 15th May 2018

CBIC to fix Monetary Limit of Rs. 2, 50,000 to Dept Appeals

The Budget proposed in February this year provided for effective actions for reducing the burden of litigations.

The Central Board of Indirect Taxes and Customs (CBIC), the apex body of indirect taxes in India has decided to introduce a monetary limit of Rs. 2,50,000 in case of litigations filed by the revenue before the Commissioner (Appeals) in matters relating to excise and service tax laws.

This limit would apply for legacy matters only and would also be applicable to cases currently pending at the level of Commissioner (Appeals) as well," a CBIC missive said.

CIRCULAR

Circular No. 12/2018-Customs

Dated: 25.05.2018

A circular have been issued by CBIC on Sanction of pending IGST refund claims where the records have not been transmitted from the GSTN to DG Systems.

A number of representations have been received from the exporters / trade associations seeking resolution of problems which have hindered sanction of refund of IGST paid on exports.

Representations received from trade / exporters coupled with the analysis of data received from GSTN indicates that the exporters have committed mistakes while filing GSTR-1 and GSTR-3B. It has been observed that the exporters have inadvertently misdeclared IGST paid on export supplies as IGST paid on interstate domestic outward supplies while filing GSTR-3B.

In view of the above following procedure is being prescribed to overcome the problem of refund blockage. This would be an interim solution subject to undertakings/ submission of CA certificates by the exporters as given below and post refund audit scrutiny.

Please click on the link, for detail:

<http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2018/circ12-2018cs.pdf>

SALES TAX

Trade Circular No. 16T of 2018

Commissioner of Sales Tax

Maharashtra Government

Dated – 24th May 2018

Maharashtra Govt. launches online functionality for delayed registration relief under commercial tax laws

Maharashtra Govt. launches online facility for filing and processing of Administrative Relief application (ADM Relief) for unregistered period in case of dealers who obtained registration beyond prescribed time limit upon exceeding threshold under MVAT Act; Extends such facility of ADM Relief to MVAT Act, CST Act, Luxury Tax Act and Entry Tax Act, while pointing out that hitherto, the application was required to be made manually to concerned Jt. Commissioner.

INCOME TAX

Circular No. 12/2018
Kerala Government

Dated – 23rd May, 2018

Kerala Govt. urges dealers to disclose closing inventory; follow AS-II valuation for assessment

Kerala Govt. issues cautionary instructions to all dealers, whether compounded or not, with respect to filing of closing stock of inventory at the end of financial year along with annual return; Explains that, information regarding closing stock is a material factor to arrive at financial result of business; Same methodology needs to be adopted both for compounded as well as non-compounded dealers.

Notification No. 23/2018
Dated: 24.05.2018

Amendment to Income Tax Rules, 2018: Rule No. 11UA-Rule for determination of Fair Market Value.
As per this amendment the [the fair market value of the unquoted equity shares determined by a merchant banker as per the Discounted Free Cash Flow method]

Notification No. 24/2018
Dated: 24.05.2018

As per this Notification provisions of clause (viib) of sub-section (2) of section 56 (where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares)of the Income Tax Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification

This notification shall be deemed to have come into force retrospectively from the 11th April, 2018.

PRESS RELEASE

INDIRECT TAX

28th May 2018

1. It has been reported in certain section of the Press that certain changes have been made in GST law relating to farmers, which will come into force with effect from 1st June, 2018 according to which farmers would be required to take registration and pay GST of 18% when they lease out their land.
2. This news is factually incorrect and misleading. There has been no change in the GST law and taxation relating to farmers since July, 2017, when GST was implemented. Support services to agriculture, forestry, fishing or animal husbandry are exempt from GST. Such exempted support services include renting or leasing of vacant land with or without a structure incidental to its use. Thus, renting or leasing of land by farmers for agriculture, forestry, fishing or animal husbandry on batai (share cropping) or otherwise is exempt from GST.
3. Further, agriculturists are exempted from taking GST registration. Agriculturist has been defined to mean an individual or an HUF who undertakes cultivation of land –
 - a) by own labour
 - b) by the labour of family
 - c) by servants or wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.

24th May, 2018

Subject: Roll out of e-Way Bill system for intra-State movement of goods in the Maharashtra, Manipur and Union Territories (without legislature)

1. As per the decision of the GST Council, e-Way Bill system for inter-State movement of goods has been rolled out from 01st April, 2018. As on 23rd May, 2018, e-Way Bill system for intra-State movement of goods has been rolled out in the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Nagaland, Rajasthan, Sikkim, Telangana, Tripura, Uttarakhand, Uttar Pradesh and Union Territory of Puducherry. E-Way Bills are getting generated successfully and till 23rd May, 2018 more than five crore and thirty lakh e-Way Bills have been successfully generated which includes more than one crore and sixty lakh e-Way Bills for intra- State movement of goods.
2. It is informed that e-Way Bill system for intra-State movement of goods would be implemented **from 25th May, 2018** in the following States / Union Territories:-
 - i. Maharashtra
 - ii. Manipur
 - iii. Andaman & Nicobar Islands
 - iv. Chandigarh
 - v. Dadra & Nagar Haveli
 - vi. Daman & Diu
 - vii. Lakshadweep
3. Twenty seven States / Union Territories would have implemented the e-Way Bill system for intra-State movement of goods with the roll-out of the same on 25th May, 2018. Registration / enrolment on e-Way Bill portal namely <https://www.ewaybillgst.gov.in> may be taken at earliest in the remaining States as well since the same would soon be rolled out in these States also. The system is working smoothly and without any glitches. On an average twelve lakh e-way bills are being generated every day. Trade and industry may approach their respective tax authority for any guidance in this matter. Further, it is informed that trade should get well versed with respect to the provisions of the e-Way Bill rules in order to avoid any difficulty. The provisions of rule 138D of Central / State GST Rules, 2017 may be referred to for any grievance redressal.

Press Release

Central Tax, GST Delhi East Commissionerate arrested a Shahdara based father son-duo on 22.05.2018 in case of fraudulent issuance of Input Tax Credit invoices involving evasion of approximately Rs. 28 Crores relating to Copper industry. It is the first case of arrest in Delhi, under the new tax regime that came into force on 1st July, 2017.

(ii) Searches were conducted at several places during which various incriminating documents and evidence were found. Investigation that followed revealed involvement of the father and son. Both were arrested under Section 69 (1) of CGST Act and Hon'ble CMM, Patiala House remanded them to judicial custody for 14 days.

(iii) As per Section 132 of the CGST Act, issuance of an invoice or bill without supply of goods and wrongful availment or utilization of input tax credit is a *cognizable and non-bailable* offence if the amount involved is over Rs 5 Crores.

(iv) Further investigations are underway and the quantum of evasion is likely to go up. Officers are not ruling out the possibility existence of several other fake firms as the investigation moves ahead.

DIRECT TAX

New Delhi, 22nd May, 2018

Extension of time of the Task Force for drafting a New Direct Tax Legislation

A Task Force was constituted by the Government in November, 2017 to review the existing Income-tax Act, 1961 and to draft a new direct tax law in consonance with economic needs of the country. It was required to submit its report to the Government within six months.

The Government has extended the term of said Task Force by a period of three months.

New Delhi, 28th May, 2018

Stakeholder engagement by the Task Force drafting the new Direct Tax Law

1. Consequent to constitution of the Task Force to review the existing Income- tax Act, 1961 and to draft a new direct tax law in consonance with economic needs of the country, suggestions and feedback from the stakeholders and the general public were invited through e-mail at rewriting-itact@gov.in latest by April 2, 2018 in the format provided on the departmental website www.incometaxindia.gov.in.
2. The Term of the Task Force has been extended by a period of three months. Accordingly, the date for sending suggestions/ feedback is extended to June 15, 2018.

JUDGEMENTS

INDIRECT TAX

Entire Value of Works Contract Service Including Freight and Transportation is subject to 18% GST

EMC Ltd. vs. West Bengal Authority for Advance Ruling
Case No.-07 of 2018
Date of Advance Ruling: 11th May 2018

Fact of the Case

- 1) EMC LTD. who supplies materials & allied services is the applicant in the present case
- 2) The applicant obtained contracts from M/S Power Grid Corporation of India.
- 3) The contracts were divided into two- one for supply of materials at ex-factory price and other for supply of allied services like survey and erection of towers, testing and commissioning of transmission lines, which also included inland/local transportation, in-transit insurance, loading/unloading for delivery of materials and storage of them at the contractee's site.
- 4) The Contractee refused to pay GST on the price for inland/local transportation, in-transit insurance, and loading/unloading.
- 5) The applicant has sought a ruling from the Authority for Advance Ruling on whether he is liable to pay tax on such freight bills, raised on the Contractee as per the rate schedule annexed to the Second Contract.
- 6) The applicant claimed that he is not a Goods Transport Agency (GTA) or engage in the insurance business.
- 7) He argued that his service to the Contractee for inland/local transportation, the applicant argues, was exempt under the GST Act.

Decision of the Case

- 1) The Authority found that the applicant was the recipient of transport & insurance services and not a supplier.
- 2) It further noted that the First Contract could not be executed independently of the Second Contract. It found that there was interdependence of both the contracts.
- 3) Supply of the goods & the allied services were not separately enforceable. The price components of both the first and the second contracts including that of transportation, in transit insurance etc. are to be clubbed together to arrive at the value of components supply of Works Contract Service. The rate of GST will be @ 18% for the entire value of works contract service.

Petitioner Entitled to C-Form under GST in respect of High Speed Diesel as Central Government did not notify it under GST (Chhattisgarh High Court)

Shree Raipur Cement Plant vs. State of Chhattisgarh-Finance Department, Union of India- Ministry of Finance
Writ Petition (T) No.83 of 2018
Order Date: 18th May, 2018

Fact of the Case

- 1) Here the assessee is a registered company under the Central sales Tax (CST) Act.
- 2) The assessee manufactures cement from mining limestone. For using the mining equipments, the petitioner requires high speed diesel.
- 3) The petitioner company was permitted to purchase goods in the course of inter-state trade at the rate specified.
- 4) With the introduction of of CGST Act 2017, the petitioner has also been registered under the CGST Act 2017 .However from the introduction of CGST, the revenue stopped issuing "C" Form to the petitioner.
- 5) If the registered dealer fails to produce "C" Form from the state then do not provide "C" Form to supplier or seller of another state. AS a result the registered dealer is being exposed to high tax rate imposable on the Inter-State goods purchased. It will lead to increase in the cost of goods being purchased.
- 6) The Counsel for the petitioner argued that high speed diesel has also been brought specifically within the definition of goods under CST Act 1956. so the petitioner is entitled for issuance of "C" Form under the CST Act 1956.
- 7) The Counsel for the respondents contended that the petitioner has registered under the CGST Act 2017 w.e.f 1.7.2017. Therefore the registration under CST Act 1956 of the petitioner would automatically cancelled.

Decision of the Case

- 1) The learned justice of Division Bench observed that the petitioner was having a valid registration certificate that enabled him to avail "C" Form.
- 2) The petitioner's registration certificate under CST Act 1956 is still valid for the goods defined in sec – 2(d) of CST Act 1956 including high speed diesel. So the petitioner is entitled for issuance of "C" Form for inter-state purchase or sale of high speed diesel against the said "C" Form.

Measure of Levy of Tax won't be controlled by Nature of Levy (Supreme Court)

Commissioner of Central Excise, Indore vs. M/S Grasim Industries Ltd.
Civil Appeal No.3159 of 2004
Date – 11th May 2018

Fact of the Case

- 1) The assessee is the manufacturer of dissolved industrial gases liquid chlorine, and other allied products in the present case. The assessee supplied the above to its customers through tonner, cylinders, paper cones, and bags etc.
- 2) The assessee charged the customer certain amounts under different heads i.e packing charges, wear and tear charges, facility charges, service charges, delivery and collection charges, rental charges, repair and testing charges etc.
- 3) The question arised whether the charges realized by the assessee was liable to be charged levy of duty in terms of section 4 of Central Excise Act.

Decision of the Case

- 1) The bench comprising of four honorable justices noted that the price charged for manufactured article at the stage when the article enters into the stream of trade or transaction value for the computation of excise duty payable will always be unquestionable and beyond any confliction.
 - 2) The price charged at the stage of clearance including manufacturing cost, manufacturing profit & certain other expenses which makes the products suitable for sale will be levied properly according to nature & character.
 - 3) The bench further observed that so long a reasonable nexus is discernible between the measure and the nature of the levy both Section 3 and 4 of the Customs Excise Act, 1944 would operate in their respective fields.
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GST not leviable on Sale of 'Going Concern

M/S. Rajashri Foods Pvt. Ltd. vs. Karnataka Advance Ruling Authority
KAR ADRG 06/2018
Date – 23rd April,2018

Fact of the Case

- 1) The applicant, M/s Rajashri Foods Pvt Ltd wanted to sell one of its units along with fixed and current assets as well as liabilities, including bank loans, for a lump sum consideration.
- 2) The question raised before the authority was whether the transaction is subject to GST or not.

Decision of the Case

- 1) The AAR said that as per a government notification, any transfer of a going concern constitutes a 'supply of service' and 'nil' tax rate will apply to it.
 - 2) A going concern is a concept of accounting and applies to the business of the company as a whole. Transfer of a going concern means the transfer of a running business which is capable of being carried on by the purchaser as an independent business.
 - 3) Transfer or a going concern means the transfer of a running business which is capable of being carried on by the purchaser as an independent business. Such transfer of the business as a whole will comprise comprehensive transfer or immovable property, goods and transfer of unexecuted orders, employees, goodwill etc.
 - 4) In the instant case, the Applicant has not furnished any documentary evidence to establish that the Applicant is a going concern except their admission that it is an ongoing business and the transaction proposes to transfer all the assets and liabilities to the new owner. It implies that the business will continue in the new hands with regularity and a nature of permanency," the Authority said.
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DIRECT TAX

Section 269SS Restricting Cash Transaction not applicable to Capital contributed by Partner in Partnership Firm (ITAT Kolkata)

ITO vs. M/s. Dayamayee Marble & Granite

ITA No. 162/Kol/2017

Date of Pronouncement – 15th May 2018

Fact of the Case

- 1) The assessee, a partnership firm, is engaged in the business of trading in marbles and granites. The assessee had received an amount of Rs.12 lacs in cash from its partner towards capital contribution the said partner in the assessee firm.
- 2) The Assessing Officer (A.O) observed that as the capital contribution received by the firm from the partner was equivalent to loan or deposit and as the receipts were in the nature of cash. The A.O levied penalty u/s 271D of the Income Tax Act, 1961.
- 3) On appeal, the Commissioner of Income Tax (Appeals) (CIT(A)) observed that introduction of capital contributed by the partner in the partnership firm does not fall under the ambit of loan or deposit within the meaning of section 269SS of the Income Tax Act,1961.
- 4) The CIT(A) also noted that the assessee firm also had treated the receipt of Rs.12,00,000/- from the partner as capital introduced by the said partner. Accordingly, he deleted the penalty levied u/s 271D of the Act.
- 5) Being aggrieved, Revenue appealed before the ITAT.

Decision of the Case

- 1) The Bench of ITAT comprising of Learned Judicial Members observed the capital contributed by the partners in the partnership firm does not tantamount to loan or deposit as per section 269SS of the Act.
 - 2) So the learned Judicial Members of the ITAT Bench justified the order of the Learned CIT (A) and dismissed the appeal of Revenue.
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Requirement of servicing notice to all legal representatives of deceased assessee for initiation of re-assessment proceedings against deceased person (Agra tribunal)

Facts of the Case:

- a) Deceased-assessee was survived by two sons and one daughter as her Legal Representatives (LRs). After expiry of assessee, proceedings were initiated against her under section 148.

- b) Assessing Officer (AO) issued notice to only one son 'P' who participated in reassessment proceedings. Subsequently, 'P' raised an objection before CIT (A) that since notice was not served on all legal representatives, reassessment proceedings were invalid.
- c) CIT(A) rejected said objection holding that once 'P' voluntarily participated in reassessment proceedings, he could not take a stand at appellate stage that notice was not served upon all legal heirs. Aggrieved-assessee filed the instant appeal before the Tribunal.

Decision of the Case

1. Rights and interests of all LRs in estate of deceased couldn't be taken away without giving them a proper opportunity of defending their rights and interests, in accordance with natural justice principle of audi alterem partem.
 2. Therefore, initiation of reassessment proceedings, in absence of service of notices under section 148 on all LRs of deceased assessee was bad-in law, being void ab initio
-

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
10 th June, 2018	GSTR 1 for the month of May, 2018 (for persons with Turnover above 1.5 Crore)
20 th June, 2018	GSTR 3B for May, 2018
20 th June, 2018	GSTR 5, for the month of May, 2018 (for Non Resident taxable person)
20 th June, 2018	GSTR 5A, for the month of May, 2018 (for OIDAR)
30 th June, 2018	GST TRAN-2

DIRECT TAX CALENDAR - JUNE, 2018

07.06.2018:

- Due date for deposit of Tax deducted/collected for the month of May, 2018. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

14.06.2018:

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA & section 194-I Bin the month of April, 2018

15.06.2018:

- Due date for furnishing of Form 24G by an office of the Government where TDS for the month of May, 2018 has been paid without the production of a challan
- Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2018
- First instalment of advance tax for the assessment year 2019-20
- Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during 2017-18

29.06.2018:

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA & section 194-IB in the month of April, 2018
- Due date for e-filing of a statement (in Form No. 3CEK) by an eligible investment fund under section 9A in respect of its activities in financial year 2017-18.

30.06.2018:

- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA & Section 194-IB in the month of May, 2018
- Return in respect of securities transaction tax for the financial year 2017-18
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending March 31, 2018
- Statement to be furnished (in Form No. 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2017-18
- Report by an approved institution/public sector company under Section 35AC(4)/(5) for the year ending March 31, 2018
- Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2017-18. This statement is required to be furnished to the unit holders in form No. 64B [As prescribed under Rule 12CA inserted by the Income-tax (First Amendment) Rules, 2015, w.e.f. 19-1-2015.]

WEBINAR CALENDAR 1st To 15th JUNE, 2018

Sl. No	Date	Time	Topic of the Webinar	Name of the Faculty
1.	11.06.2018 (Monday)	4:00 - 5:00 PM	Assessment and Appeal under GST scenario	CMA. Vishwanath Bhat

Please note: One CEP hour awarded for attending each webinar

WEBINAR ATTENDANCE OCT, 2017 to MAY, 2018

Sl No	Date	Topic of the Webinar	Name of the Faculty	Participation
1	12.10.17 (Thursday)	Hassle free Filing of GSTRs	CMA. Vishwanth Bhat	256
2	16.10.2017 (Monday)	GST Co-operative Housing Societies	CMA (Dr.) Ashish P Thatte	225
3	25.10.17 (Wednesday)	Composition Scheme	CMA Prerna Mall	285
4	27.10.17 (Friday)	GST - Impact on Real Estate Sector	CMA B Mallikarjuna Gupta	268
5	09.11.17 (Thursday)	GST - Impact on Manufacturing Sector	CMA. Ashish Bhavsar	256
6	14.11.2017 (Tuesday)	Opportunities for Cost Accountants under GST	CMA. Vivek Laddha	235
7	21.11.2017 (Tuesday)	Recent Amendments under GST - Impact and implications	CMA Chiranjib Das	462
8	23.11.2017 (Thursday)	Input Tax Credit	CMA.S.P.Padhi	451
9	28.11.2017 (Tuesday)	Books of Accounts under GST scenario	CMA. Vishwanath Bhat	446
10	01.12.2017 (Friday)	GST Impact on ERP & Accounting Packages	CMA B Mallikarjuna Gupta	416
11	06.12.2017 (Wednesday)	GST and Cost Audit: A step towards Tax Governance	CMA Navneet Kumar Jain	451
12	19.12.2017 (Tuesday)	GST - Valuation Rules & Invoice Rules	CMA Ashish Bhavsar	500
13	22.12.2017 (Friday)	T D S is not tedious	CMA. Vishwanath Bhat	500
14	28.12.2017 (Thursday)	Anti - Profiteering	CMA Sanjay Bhargave	500
15	03.01.2018 (Wednesday)	Documentation in GST	CMA B Mallikarjuna Gupta	425
16	10.01.2018 (Wednesday)	Transfer pricing	CMA Chiranjib Das	490
17	17.01.2018 (Wednesday)	E-Way Bill and Logistic Industry under GST	CMA Anil Sharma	474
18	30.01.2018 (Tuesday)	Place of Supply	CMA B Mallikarjuna Gupta	251
19	02.02.2018 (Friday)	Budget - Highlights on Taxes	CMA. Vishwanath Bhat	500
20	05.02.2018 (Monday)	Recent Changes in GST - Budget/25 th Council Meeting	CMA B Mallikarjuna Gupta	500
21	09.02.2018 (Friday)	Refunds and Budgetary Support" under GST	CMA Anil Sharma	472
22	21.02.2018 (Wednesday)	Opportunities for Cost Accountants under "Presumptive Taxation"	CMA. Vishwanath Bhat	388
23	09.03.2018 (Friday)	GST - Works Contract and Builders	CMA Vivek Laddha	363
24	21.03.2018 (Wednesday)	Valuation in GST	CMA B Mallikarjuna Gupta	435
25	27.03.2018 (Tuesday)	GST for E-commerce with live cases.	CMA Vivek Laddha	500
26	06.04.2018 (Friday)	Income from House property & related issues	CMA. Vishwanath Bhat	495
27	12.04.2018 (Thursday)	Profits and Gains of Business or Profession	CMA Satish.R	491
28	20.04.2018 (Friday)	Transfer Pricing – Rules and Procedures	CMA Mritunjay Acharjee	301*
29	24.04.2018 (Tuesday)	Impact of GST on Financial Services	CMA B Mallikarjuna Gupta	480
30	08.05.2018 (Tuesday)	Audit under GST Laws	CMA. Vishwanath Bhat	493
31	14.05.2018 (Monday)	Treatment of GTA under GST	CMA Vivek Laddha	452
32	22.05.2018 (Tuesday)	Advance Ruling in GST	CMA B Mallikarjuna Gupta	500

*issue as faculty arrived late, new link was created.

GST CERTIFICATE COURSE

Course Eligibility

- Qualified Cost & Management Accountants
- Other Professionals (CS, CA, MBA, M.Com, Engineers, Lawyers, etc)
- Executives from Industries
- GST Practitioners
- Recently Qualified CMAs and Final Pursuing Students of the Institute

Course Duration, Fees, Examination and other Modalities

Details	Classroom Learning/Offline Mode	Online Classes
Course Duration	72 hours (to be conducted on Quarterly basis)	72 Hours
Classes	Class room sessions on Saturday - 2 Hrs & Sunday - 4Hrs	Internet Connection is required and classes can be attended from your place.
Assessment:	Online mode (Assessment to be conducted in the last week of the following month of every quarter)	Online mode (Assessment to be conducted in the last week of the following month of every quarter)
Course Fee:	Rs. 10,000 + GST *	Rs. 10,000 + GST *
Examination Fee	Rs. 1,000 + GST	Rs. 1,000 + GST
Award of Certificate	Candidates with at least 70% attendance in the classes and also passing the online examination with at least 50% Marks will be awarded a Certificate by the Institute	Candidates with at least 70% attendance in the classes and also passing the online examination with at least 50% Marks will be awarded a Certificate by the Institute
Date of Registration	23.04.2018 – 04.06.2018	23.04.2018 – 04.06.2018
Study Materials & Model Question Bank to be provided to all participants. Experienced faculties from Industry and practice		

Places

Locations	Classroom Learning	Online Classes
North	<ul style="list-style-type: none"> ✓ Delhi ✓ Faridabad ✓ Gurgaon ✓ Udaipur ✓ Noida ✓ Chandigarh ✓ Jammu ✓ Jaipur ✓ Lucknow ✓ Dehradun 	From anywhere in India
South	<ul style="list-style-type: none"> ✓ Chennai ✓ Cochin ✓ Visakhapatnam ✓ Vijayawada ✓ Mysore ✓ Bangalore ✓ Thiruvananthapuram ✓ Hyderabad ✓ Madurai ✓ Coimbatore 	From anywhere in India
East	<ul style="list-style-type: none"> ✓ Kolkata ✓ Durgapur 	From anywhere in India

	<ul style="list-style-type: none"> ✓ Asansol ✓ Berhampur ✓ Rourkela ✓ Patna ✓ Ranchi ✓ Bhubaneswar ✓ Agartala ✓ Guwahati 	
West	<ul style="list-style-type: none"> ✓ Mumbai ✓ Pune ✓ Navi Mumbai ✓ Surat ✓ Nagpur ✓ Nasik ✓ Raipur ✓ Bhopal ✓ Ahmedabad ✓ Panaji ✓ Vapi 	From anywhere in India

* Other Criteria

- Minimum batch size: 20; Maximum 40; - Per Location for Classroom Session
- Classroom Batches will be started subject to fulfilling the minimum batch size
- **20% discount for the Members and Final Pursuing Students of the Institute**
- Special Discount for Corporates:
 - **If Number of employees registered for the course are between 5 to 10 - 15%**
 - **If Number of employees registered for the course are more than 10 - 20%**

Course Contents

1. Constitutional Background of GST, Concepts of GST & Definitions in GST.
2. Taxable event, Time of Supply and Place of Supply, Composite & mixed supply, non taxable supply, exempt supply, works contract, exempted supply.
3. Classification, HSN,SAC
4. Valuation under GST, Valuation rule
5. Input Tax Credit
6. Basic Procedures- Registration, Invoice, Bill of supply, E way Bills etc.
7. Records and Returns
8. Zero Rated Supplies , Imports and Exports
9. Payment and Refunds
10. Assessment
11. Audit
12. Demands
13. Adjudication and appeal
14. Penalties and Prosecutions
15. Advance Ruling
16. Job Work
17. Anti profiteering
18. Miscellaneous Provisions
19. Case studies on specific Chapters involving real life scenarios

Online Assessment for 1st Batch: June, 2018

Special Crash Course for the Corporates - For details contact: trd@icmai.in

TAXATION COMMITTEE - PLAN OF ACTION

Proposed Action Plan:

1. Train the trainers' program - capacity building of the practicing members of the Institute and others on PAN India basis to equip them on Registration, record maintenance, Filing of different returns and other matters.
2. Carry out webinars for the Capacity Building of Members of the Institute - Trainers in the locality to facilitate the traders/ registered dealers on various practical aspects.
3. Conducting Seminars in association with the Trade associations/ Traders/ Chambers of Commerce at different locations on practical issues/aspects associated with GST.
4. Conducting workshop on industry specific issues with Chambers of Commerce, CREDAI, Jewellers Association, Hotel and Restaurant Association, Bankers' Association and other agencies to resolve their issues instantly.
5. Forwarding suggestions and issues on GST to the Government after getting feedback from various stake holders.
6. Extending Certificate Course on GST for corporate and Trade Bodies.

Disclaimer:

The Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, users should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in these documents does not cover every situation and is not intended to replace the law or change its meaning.

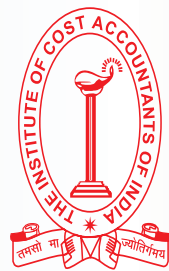
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