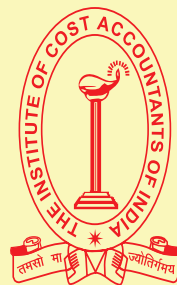


NOVEMBER, 2018

# TAX Bulletin



VOLUME - 28



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

(Statutory Body under an Act of Parliament)

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Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

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“The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.”

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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

*“The more you praise and celebrate your life, the more there is in life to celebrate”*

- *Oprah Winfrey*

Namaskar and Best Wishes..!!

I take this opportunity to announce that the Tax Research Department in association with the Bhubaneswar Chapter of Cost Accountants is going to organise a three day “National Seminar on Taxation”, themed ‘Reformed Taxation System – Catalyst to Sustained Economic Growth’ at Bhubaneswar from 21<sup>st</sup> to 23<sup>rd</sup> December, 2018. The Seminar would be addressing the glaring issues on Taxation in our present Indian Economy. I request active participation of all to make the event a grand success.

I would also like to draw your attention towards the various publications of the Tax Research Department which are now readily available online for your kind reference and perusal. The publication on Works contract and a Compilation of GST Notifications and Circulars for the 1<sup>st</sup> Year of GST are among them.

I would like to end today, by thanking all the resource persons for their contribution and knowledge inputs. The team members of Tax Research Department have put their heart and soul and have dedicated themselves to the work of the department. I congratulate them for their dedication.

Thank You.

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

**CMA Niranjana Mishra**  
Chairman - Taxation Committee  
17<sup>th</sup> November, 2018

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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.  
Please send the articles to

*[trd@icmai.in](mailto:trd@icmai.in) / [research.ad1@icmai.in](mailto:research.ad1@icmai.in)*



## ALL ABOUT THE CONCEPT OF DISTINCT PERSON IN GST

**CA Sachin Kumar Jain**

Senior Partner, Sachin K Jain & Co., Chartered Accountants

### DISTINCT PERSONS BY REFERENCE TO HOW CGST CREDIT OF ONE STATE CANNOT BE USED IN OTHER STATE

1. Under GST a new concept of distinct person is added.
2. According to this concept if a person has obtained or is required to obtain more than one registration, whether in one state or union territory or more than one state or union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act or
3. Where a person who has obtained or is required to obtain registration in a state or union territory in respect of an establishment has an establishment in another state or union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.
4. As per Section 25(2) of the GST Act every person shall obtain one registration per State. Proviso to section 25(2) provides that a person having multiple business verticals may obtain separate registration for each business vertical in the State.
5. Therefore under GST same establishment or offices or branches or godown which are situated outside the state are treated as distinct person and inter-state supply also chargeable under GST i.e. IGST is payable here.
6. Therefore, when two units of the same business have taken different registration, then they will be considered as a distinct entity/ person as per the GST law. The laws relating to filing of returns and other compliance procedures shall apply to both of them separately.
7. Hence, Distinct persons can be :-
  - An establishment in India and an establishment outside India
  - An establishment in one state or a union territory and an establishment in another state or union territory
8. For example, if A (in Bangalore) has branches in Germany and Maharashtra, the branches in Maharashtra and Germany will both be distinct persons/ entities. If A has another component B which is different from A and has obtained a different GST registration, A and B will be distinct entities.
9. The supply stated above is covered under Schedule I of the GST Act and as per this schedule, when a supply is made between distinct persons during the course of business, it is considered as a supply even when there is no consideration. Therefore these transactions are considered as taxable supply. Example- stock transfers made between distinct units, even if without a consideration will be a taxable supply.
10. Another example is suppose a person have an branch office in Delhi and head office in Jaipur, some employees of Delhi join personality grooming services or training services given by the head office in Jaipur than as per distinct person both offices are separate under GST and therefore GST is payable here as per schedule I, but as per section 12(4) place of supply is Jaipur head office and CGST and SGST is charged by Jaipur office under this case and no credit is available to Delhi branch of such CGST in this case.
11. Therefore under the above discussion it is clear to us what is the meaning of distinct persons is and as we know already that under only IGST will be set- off from CGST and SGST but CGST credit of one distinct person cannot be utilized by the other distinct person for paying CGST liability.





## EMPLOYEE - EMPLOYER TRANSACTIONS – RECENT ADVANCE RULING

**CMA M. M. Mishra**  
Sr. Manager (Finance), National Aluminium Company

*“Employees who believe that management is concerned about them as a whole person – not just an employee – are more productive, more satisfied, more fulfilled. Satisfied employees mean satisfied customers, which leads to profitability.”*

said **Anne M. Mulcahy**, former CEO of Xerox Corporation.

But the decision of the Kerala Advance Ruling Authority in its order No. CT/531118-C3 DATED 26/03/2018 is quite contrary to the above concept which wrongly assumes that the employee is getting benefited out of subsidized lunch instead of the employer. Let us analyze this ruling:

M/s. Caltech Polymers Pvt. Ltd., Malappuram has preferred an application for Advance Ruling on whether recovery of food expenses from employees for the canteen service provided by the company comes under the definition of outward supplies and are taxable under Goods & Service Tax.

It was ruled that such canteen service is supply under Sec 7(1) of the GST Act 2017 because of the following provisions under the Act:

1. Supply of food by the Company to its employees being an activity in connection with or incidental to the main business, would definitely be business as per clause (b) of Section 2(17).
2. Since the applicant recovers the cost of food from its employees, there is consideration as defined in Section 2(31) of the GST Act, 2017.
3. Supply of food would be a composite service as defined vide clause 6 of Schedule II

Will the above literal interpretation of the Law without going through the intent of the provisions pass muster? The answer will be an obvious “No”. Let us dissect the above postulation:

Sec 1 (17) (b) of the CGST Act 2017 defines business as any activity or transaction in connection with or incidental or ancillary to the main business activity.

Merriam Webster dictionary defines “In Connection with” as “In relation to something”

*Canteen service has no relation whatsoever with the main business activity*

The same dictionary also defines “Incidental” as “being likely to ensue as a chance or minor consequence”

Canteen services neither ensue as a chance or a consequence of the main business – it is an activity undertaken by the employer at its discretion.

***So canteen service is not business as had been assumed by the Authority***

The cost of the meal is probably Rs 100/- whereas the employer is recovering Rs 30/- which means the employer is bearing a cost of Rs 70/- towards staff expenses which is part of the compensation package of the employee. This he does to keep up the workers’ morale to boost productivity. Besides the Company is

complying with Section 46 of the Factories Act. So there is consideration – but in a reverse direction to what had been assumed by the Authority i.e. the consideration is not paid by employee to employer but by employer to employee. This then follows that ***the real beneficiary of the canteen service is the Company and not the employee for which the Company is bearing a cost of Rs 70/- per meal. So this is supply of service by employee to employee instead of employer to employee which is not supply as per clause 1 of Schedule III of the CGST Act 2017.***

The advance Ruling Authority has also ignored the **Department clarification issued on 10<sup>th</sup> July 2017 through Press Information Bureau** which is reproduced as below:

***“Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows there from that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.”***

*From the above it is clear that the Ruling by the Kerala advance Ruling Authority is grossly erroneous in as much as it has ignored the provisions of the GST Act- both in letter & spirit and hence should not be a precedent in deciding GST liability on various perquisites being paid by the employer to the employee.*

*The direct repercussions of this Advance ruling will be*

- 1. Healthcare services provided by employer will be deemed as service*
- 2. Schools maintained for employees will mean that employer has provided “Education service”*
- 3. Quarters being provided at concessional rent will mean that “Renting Services” have been provided*

*All the above services being exempt vide CGST (RT) notification 12/2017 dated 28.06.17, **the ITC in respect of these services would be denied vide section 17(2) of the CGST Act 2017.***

- 4. Uniforms provided to staff without consideration would amount to sale of Goods as per Clause 2 of Schedule 1 of the CGST Act (Related party Transaction)*



# ALL ABOUT ANTI - PROFITEERING UNDER GST

**Prabhakar K S**  
Proprietor – Shree Tax Chambers

## Introduction

1. In general, profit is an excess of value spent on producing or delivering of goods or services, which is nothing but a pecuniary gain. It is the 'margin' earned after considering both the receipts and payments. In *Bharat Insurance Co. Ltd. v. CIT* [1931] 5 ITC 288 (Lahore), it has been held that the profit means the net proceeds of the concern after deducting the necessary outgoings without which those proceeds could not be earned. *Explanation* to sub-section (3) of Section 8 of the Representation of the Peoples Act, 1951, defines the term 'Profiteering' as making an exorbitant and unjustifiable profit, taking undue advantage of the short supply of necessary commodities. Under GST Regime, the prices of the most of goods and services are gradually coming down. The Constitution of India listed the 'Price Control' in its 'Concurrent List' as 34th among other '52' subjects which mandate the Central and the State Governments to ensure whether the registered taxpayers pass on the benefit of the rate reduction to the end consumers. Accordingly, due anti-profiteering measures (borrowed from Malaysian Model of GST Laws) have been adopted to protect the consumers from errant businesses. The current article is an attempt to know whether National Anti-Profiteering Agency constituted under the said Laws is effectively monitoring the situation, with adequate measures, the trend of industry's favourable orders and issues connected therewith.

## Anti-profiteering measures - In brief

2. Section 171 of the Central GST Act, 2017, says that any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit (ITC) shall be passed on to the recipient by way of commensurate reduction in prices. Further, the Central Government may, on the recommendation of the GST Council, constitute an Authority to examine whether ITC availed by any registered person or the reduction in the tax rate has actually resulted in a reduction in the price of the goods or services or both supplied by him. Rules 122 to 137 under Chapter-XV of the CGST Rules, 2017 deal with the National Anti-Profiteering Authority (*hereinafter 'the Authority'*), its powers, duties and compliance of its Orders. On 16th, November, 2017, the Union Cabinet has approved the establishment of the Authority; currently its nodal office is situated in Connaught Place, New Delhi and State level Screening Committees in 29 States and 3 Union Territories.

## Standing & Technical Committee

3. A four-member Standing Committee and a two-member technical committee, comprising of tax officials of the Centre and the States, have been set-up to receive complaints of undue profiteering by entities under the GST. The Standing Committee will act as a complaint processing machinery and will refer any cases it finds fit for an investigation to the Directorate General of Anti-profiteering (*hereinafter 'DGA'*) [earlier, Directorate General of Safeguards ('DGS')].

## Tenure of the authority

4. As per Rule 137 of the Central GST Rules, 2017, the Authority would cease to exist after two years of its constitution. However, due to constant changes in the tax rates, it is believed that GST Council may extend its term beyond two years.

## Procedure - In brief

5. All applications from interested parties on issues of local nature shall -

1. Be examined by the State level Screening Committee (hereinafter 'SSC') constituted in each State.
2. SSC on being satisfied will forward its recommendations to the Standing Committee (SC) on Anti-profiteering.
3. If the SC is satisfied, it shall refer the matter to the DGA.
4. DGA shall conduct investigation & collect evidence necessary to determine undue profiteering before initiation of the investigation.
5. DGA can seek an opinion of any other agency or statutory authorities in the discharge of his duties if required.
6. DGA shall complete the investigation within a period of 3 months or within such extended period not exceeding a further period of 3 months.
7. The Standing Committee, upon completion of the investigation, shall submit a report along with the relevant records to the Authority.

### **Powers - In brief**

6. The Authority has following powers -

1. To summon any person considered necessary to produce a document of evidence under Section 70 of the CGST Act, 2017,
2. To conduct judicial proceedings as provided under the Indian Penal Code,
3. To direct the entity to pass on the benefits to consumers,
4. To impose a penalty,
5. To cancel the registration under the Act.

### **Orders of the Authority**

7. The Authority, after granting an opportunity of hearing to the interested parties, within a period of 3 months from the date of the receipt of the report from the DGA, determines whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient. The Orders of the Authority are appealable in the High court.

### **Penalty**

8. Interestingly, if profiteering is discovered, maximum penalty that can be imposed is residual penalty of Rs. 25,000 under GST Laws.

### **Complaints & status quo**

9. The Authority will take up cases for scrutiny that have a mass impact and where the undue profit of more than Rs. 1 crore has been earned. According to media reports, the Authority is looking into more than 60 complaints. The Authority is in place with Screening Committees in 29 States and 3 Union Territories, complaints or responses are poor so far. From the table given, it is clear that hardly there any complaints from 16 States and Union Territories post GST rate cuts in last November 2017 or even after latest rate cuts in July 2018.

#### ***Sl. No. State-wise complaints registered so far***

- 1 No complaints by Madhya Pradesh, Gujarat, Punjab, Bihar, Himachal Pradesh, Odisha, Jammu & Kashmir, and 8 North Eastern States
- 2 One complaint by Karnataka, Tamil Nadu, West Bengal, Kerala, Jharkhand, Uttarakhand, Haryana, Telangana
- 3 More than one complaint by Rajasthan, Maharashtra, Uttar Pradesh, Delhi and Andhra Pradesh

Interestingly, no single complaint has been received from the State of Gujarat which is one of the biggest manufacturing and trading hubs in the country.

## Whether 'NAA' is effectively monitoring?

**10.** The answer may not be in the 'affirmative'. Surprisingly, Authority's all four Orders have gone in favour of businesses. The Authority & some of its Orders - *In brief*

1. *Dinesh Mohan Bhardwaj v. Vrandavaneshwree Automotive (P.) Ltd.* [2018] 92 taxmann.com 360/67 GST 429 (NAA), in the instant case the aggrieved party, *Dinesh Mohan Bhardwaj (supra)* challenged the reduction in the price of Honda car was not commensurate with the reduction in tax rate post the implementation of GST. However, the Authority, due to non-availment of input tax credit by *Vrandavaneshwree Automotive (P.) Ltd. (supra)* and impact from GST was only 2 per cent, ruled in favour of the respondent.
2. *Kumar Gandharv v. KRBL Ltd.* [2018] 93 taxmann.com 149/67 GST 574 (NAA), in the above-stated case the aggrieved party, Sri. Kumar contended that the benefit of reduction in the tax rate on 'India Gate Basmati Rice' had not been passed on to the consumers' Maximum Retail Price had been increased instead of reducing it. However, after careful consideration of Report submitted by DGA, the Authority ruled in favour of the M/s. KRBL Ltd. stating that 'India Gate Basmati Rice' was not liable for tax prior to implementation of GST. The Authority also considered the issue of increase in production cost, availment of the meager amount as Input Tax Credit.
3. *Abel Space Solutions LLP v. Schindler India (P.) Ltd.* [2018] 94 taxmann.com 163 (NAA), whereas the aggrieved party *Abel Space Solutions LLP (supra)* complained of charging of service tax on the payment made to Schindler India before the implementation of GST but payment made in July when the installation took place. However, in the instant case, elevators were delivered to the aggrieved party before 1<sup>st</sup> July 2017, *i.e.*, 'appointed day for the GST implementation', and, accordingly, the tax had been charged without excluding the pre-GST regime excise duty. In other words, the aggrieved party was charged twice, once on the pre-GST excise duty and subsequently, on the full value of the material used in the lift. It is reported that the aggrieved party itself requested for the withdrawal of complaint citing inadequate understanding of GST provisions. However, the Authority considered the investigative report of the DGA before quashing the petition.
4. *Rishi Gupta v. Flipkart Internet (P.) Ltd.* [2018] 95 taxmann.com 221/68 GST 443 (NAA), the aggrieved party Sri Rishi Gupta alleged that the *Flipkart Internet (P.) Ltd. (supra)* had failed to pass the benefit of 'differential amount' occurred between placing an order and the actual delivery of the item, at 28 and 18 per cent, respectively. The Authority held that the withdrawal of discount did not amount to profiteering as the same was offered from his profit margin by the supplier and did not form part of the base price, therefore, supplier could not be held guilty under Section 171 of the Act. Subsequently, Flipkart issued a refund to the complainant. On the basis of this single complaint, the Authority discovered that respondent alone had around 7,500 similar cases of overcharging GST on account of change in rate between placing an order and delivery. The Authority also directed the respondent to issue the refund for all such cases.

## International practice

**11.** Prior to India, Australia was the very first country to introduce antiprofitteering provisions during 2010, thereafter by Malaysia while replacing its Sales and Service Tax (SST) regime during 2015. Indian Government may take a cue from those countries to make antiprofitteering measures even more effective.

## 12. Latest developments

1. Sought inputs from food chains, telecom and airline operators.

The DGA during last month issued an investigation report on Domino's failure of reducing prices on all its food products. The Authority has also sought an explanation from telecom operator Bharati Airtel, budget airline Indigo whether the prices on its goods and services have been reduced?

2. Voluntary compliance by two prominent businesses.

In the first week of August, 2018, India's two prominent businesses, such as Hindustan Unilever and Nestle have deposited around Rs. 1.6 billion and Rs. 150 million, respectively, into the Government's 'Consumer Welfare Fund' on provisional basis for not passing on rate reduction benefit to end consumers. The said fund will be utilised to promote and protect welfare of the consumers, to create awareness and is operated by the Ministry of Consumer Affairs.

3. Sought pan-Indian Audit of e-Commerce Industry.

The aftermath of Flipkart's 7,500 cases of overcharging GST, the Authority, during the first week of August, 2018 sought a pan-Indian audit of the e-Commerce Industry. On the basis of a single complaint by a consumer from Chennai, the Authority has learned that Flipkart alone had 7,500 similar cases. Chances of tens of thousands of cases on other eplatforms cannot be ruled out. In a response to the Authority, the CBIC has assured that it will take-up special audit in accordance with GST Laws.

4. Authority at Factory doorsteps..!!

In the wake of poor response or no complaints from 17 States, the Authority is planning to approach manufacturers and wholesale dealers' *'suo motu'* instead of formal complaints from the consumers.

5. Consumer Helpline.

In addition to knocking at the doors of manufacturers and wholesale dealers', the Authority has also started a helpline number 011-21400643 which will guide the consumers to register their profiteering complaints, provide information and resolve queries. Aggrieved consumers may call the helpline number between 9:30 am-1 pm and 1:30 pm - 6 pm on all working days. Since not enough profiteering complaints, latest inactivate may go a long way.

### Concluding remarks

13. In 2012 the Hon'ble Delhi Court in *Indraprastha Gas Ltd. v. Petroleum and Natural Gas Regulatory*, (W.P.(C) No. 2034/2012 and CM Nos. 4370/2012 & 5617/2012) rightly held that prices are generally governed or regulated by market forces. It is essentially a clog in the freedom of trade and commerce conferred by the Constitution. However, in such circumstances, restriction on the fundamental right through legislatures only. Further, current anti-profiteering provisions are lacking in providing specific mechanism and guidelines to determine actual profit accruing from the constant rate cuts and thereafter its benefits to the end users. Post all - powerful GST Council's 28th Meeting held on 21st July, 2018, efficiency of the antiprofitteering mechanism is under test where the GST Council has reduced the tax rates on number of goods and services. Clear guidelines are the needs of the hour.

# PROPOSED IMPROVEMENTS IN E-WAY BILL GENERATION

TEAM TRD

## 1. Checking of duplicate generation of e-way bills based on same invoice number-

- The e-way bill system is enabled not to allow the consignor/supplier to generate the duplicate e-way bills based on his one document. Here, the system checks for duplicate based on the consignor GSTIN, document type and document number.
- That is, if the consignor has generated one e-way bill on the particular invoice, then he will not be allowed to generate one more e-way bill on the same invoice number.
- Even the transporter or consignee is not allowed to generate the e-way bill on the same invoice number of that consignor, if already one has been generated by the consignor.
- Similarly, if the transporter or consignee has generated one e-way bill on the consignor's invoice, then any other party (consignor, transporter or consignee) tries to generate the e-way bill, the system will alert that there is already one e-way bill for that invoice, and further it allows him to continue, if he wants.

## 2. CKD/SKD/Lots for movement of Export/Import consignment-

- CKD/SKD/Lots supply type can be used for movement of the big consignment in batches.
- When One 'Tax Invoice' or 'Bill of Entry' is there, but the goods are moved in batches from supplier to recipient with the 'Delivery Challan', then this option can be used. Here, the batch consignment will have 'Delivery Challan' along with copy of the 'Tax Invoice' or 'Bill of Entry' in movement. The last batch will have the 'Delivery Challan' along with original 'Tax Invoice' or 'Bill of Entry'.
- Some exports or imports will be in big consignment and may not be moved in one go from the supplier or to the recipient. Hence, CKD/SKD/Lots supply can be used for this.
- For CKD/SKD/Lots of Export consignment, the 'Bill To' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and shipping address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is moving out from the country.
- For CKD/SKD/Lots of Import consignment, the 'Bill From' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and dispatching address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is entered the country.

## 3. Shipping address in case of export supply type-

- For Export supply type, the 'Bill To' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and shipping address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is moving out from the country.

## 4. Dispatching address in case of import supply type-

- For Import supply, the 'Bill From' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and dispatching address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is entered the country.

## 5. 'Bill To – Ship To' transactions-

- There are four types of 'Bill To – Ship To' transactions. These types depend upon the number of parties involved in the billing and movement of the goods. The following paras explain the same.

I. Regular: - This is a regular or normal transaction, where Billing and goods movement are happening between two parties – consignor and consignee. That is, the Bill and goods movement from consignor to consignee takes place directly.

II. Bill To – Ship To: - In this type of transaction, three parties are involved. Billing takes places between consignor and consignee, but the goods move from consignor to the third party as per the request of the consignee.

III. Bill From – Dispatch From: In this type of transaction also, three parties are involved. Billing takes places between consignor and consignee, but the goods are moved by the consignor from the third party to the consignee.

IV. Combination of both: This is the combination of above two transactions and involves four parties. Billing takes places between consignor and consignee, but the goods are moved by the consignor from the third party to the fourth party, as per the consignee's request.

## 6. Changes in Bulk Generation Tool-

- New columns have been added in the Bulk Generation Tool.



# ORDERS OF ADVANCE RULLING AND ORDERS OF APPELLATE AUTHORITY FOR ADVANCE RULING

## ANDHRA PRADESH

- 1] Where assessee is engaged in manufacture of 'Energy - G premium oil' out of vegetable Fats / oils and it is used in preparation of poultry feed, correct HSN Code of said product is 1518 and it shall be subject to tax at rate of 5 per cent

### **AUTHORITY FOR ADVANCE RULINGS, ANDHRA PRADESH**

**Agarwal Industries (P.) Ltd., In re**

RULING NO. AAR/AP/5(GST)/2018

APPLICATION NO. AAR/1 1/GST/2018 JUNE 8, 2018

## GOA

- 2] Where advance amount was received by real estate developer for sale of villa on or after appointed day prior to issuance of occupancy certificate by local panchyat, such activity is to be considered as part of construction services and GST is applicable on two third of total amount charged for such supply

### **AUTHORITY FOR ADVANCE RULINGS, GOA**

**Quattroporteluxury Homes LLP, In re**

ADVANCE RULING NO. GOA/GAAR/2 OF 2018-19/2270 SEPTEMBER 20, 2018

- 3] Activity of issuance of 'Pollution Under Control' Certificate for vehicles issued is not covered under SAC 9991 and is covered under Residual Entry and, hence, should be taxed at rate of 18 per cent GST

### **AUTHORITY FOR ADVANCE RULINGS, GOA**

**Venkatesh Automobiles, In re**

ADVANCE RULING NO. GOA/GAAR/1 OF 2018-19/2268 SEPTEMBER 20, 2018

- 4] Event Management support services provided in Goa by a Goa concern to a registered person in Maharashtra is governed under section 12(7)(i) of IGST Act; hence, same should be treated as interstate supply of services and IGST at rate of 18 per cent is applicable

### **AUTHORITY FOR ADVANCE RULINGS, GOA**

**Grasshopper Production., In re**

**GOA/GAAR/3 OF 2018-19/2269 SEPTEMBER 20, 2018**

- 5] Activity of building and mounting of body of bus on chassis provided by principal under FOC challan will result in supply of services under HSN 9988 and hence, should be taxed at rate of 18 per cent GST

### **AUTHORITY FOR ADVANCE RULINGS, GOA**

**Automobile Corporation of Goa Ltd., In re**

ADVANCE RULING NO. GOA/GAAR/1 OF 2017-18/2018-19/1929 AUGUST 21, 2018

## GUJARAT

- 6] Product 'Refined bleached deodorized palm stearin' is classifiable under Chapter Heading 1511 with Tariff Item 1511 90 30 in view of Rule 1 and Rule 3(a) of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975

### **AUTHORITY FOR ADVANCE RULINGS, GUJARAT**

**Gokul Agro Resources Ltd., In re**

ADVANCE RULING NO. GUJ/GAAR/R/2018/18 AUGUST 30, 2018

- 7] Product 'Chilly Cutter' made of Stainless Steel is classifiable under Heading 8210 00 00 and not under Heading 7323

### **AUTHORITY FOR ADVANCE RULINGS, GUJARAT**

**Meera Metals, In re**

ADVANCE RULING NO. GUJ/GAAR/R/2018/13 JULY 30, 2018



- 8] Teachers Slate and Students Slate are designed to be used for writing or drawing with slate pen and chalk and are classifiable under Tariff Heading 96.10

**AUTHORITY FOR ADVANCE RULINGS, GUJARAT**

**Raja Slates (P.) Ltd., In re**

ADVANCE RULING NO. GUJ/GAAR/R/2018/12 JULY 30, 2018

- 9] Section 16, read with section 5 of the Integrated Goods and Service Tax Act, 2017 and section 2(m) of SEZ Act, 2005 - Supply - Zero rated supply - General - Supplies made by assessee, a Special Economic Zone (SEZ) co-developer from their hotel located in nonprocessing zone to clients located in SEZ for authorized operations will be treated as zero rated supplies under provisions of Section 16(1) and assessee is liable to pay GST on said services

**AUTHORITY FOR ADVANCE RULINGS, GUJARAT**

**Sapthagiri Hospitality (P.) Ltd., In re**

ADVANCE RULING NO. GUJ/GAAR/RULING/2018/14 JULY 30, 2018

- 10] Activity provided by UCMAS (child development programme to boost brainpower) using abacus does not merit classification under Sl. No. 80 of Notification No. 12/2017-Central Tax (Rate) which exempts services by way of training or coaching in recreational activities relating to arts or culture or sports. The words 'recreational activities' and 'arts' have not been defined in the GST law. As per dictionary meaning, 'art' is the expression or application of human creative skill and imagination, typically in a visual form such as painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power. Improvement of speed and accuracy of calculations or development of mental capabilities, such as, concentration, observation, visualization, imagination and memory cannot be said to fall within the meaning of art', therefore the exemption provided vide Sl. No. 80 of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017 and corresponding Notification Sl. No. 83 of Notification No. 9/2017-Integrated Tax (Rate) issued under IGST Act, 2017 is not admissible

**AUTHORITY FOR ADVANCE RULINGS, GUJARAT**

**Omnisoft Technologies (P.) Ltd., In re**

ADVANCE RULING NO. GUJ/GAAR/R/2018/15 AUGUST 23, 2018

- 11] Blasting activity carried out by assessee is a 'composite supply' of goods and services and shall be covered by Section 2(30) and Section 8(a) of the CGST Act, 2017 and the Gujarat Goods and Services Tax Act, 2017
- In the present case assessee uses explosives in the blasting activity at their client's site. Thus, it would be evident that blasting activity was carried out by the assessee for their client for which the assessee uses explosives. The assessee carries out blasting work with the aid of explosives. Thus, there was deemed supply of explosives as well as the supply of service in the form of the blasting work. Therefore, the situation as narrated by the assessee was a composite supply of goods and services and would be covered by Section 2(30) and Section 8(a) of the CGST Act, 2017 and the GGST Act, 2017.

**AUTHORITY FOR ADVANCE RULINGS GUJARAT**

**Khedut Hat, In re**

ADVANCE RULING NO. GUJ/GAAR/RULING/2018/17 AUGUST 27, 2018

**KARNATAKA**

- 12] Where applicant is a supplier of services in relation to scientific instruments used in research and development/quality control to overseas clients and is engaged in business of promotion and marketing and after sale support services as a composite supply, contract of services supplied was not pure and mere promotion and marketing services and was in nature of facilitating supply of goods, hence would amount to 'intermediary services' for purposes of determination of place of supply of such services. Further, after-sale services provided are not in nature of a composite contract and they are independent from services provided and hence there is no question of determination of what will be principal supply

**AUTHORITY FOR ADVANCE RULINGS, KARNATAKA**

**Toshniwal Brothers (SR) (P.) Ltd., In re**

ADVANCE RULING NO. KAR/ADRG/23/2018 SEPTEMBER 19, 2018

**KERALA**

- 13] Transport of inputs from principal for processing through pipe lines to premises of job worker as well as return of processed goods after job work to principal can't be treated as taxable supply. Thus, activity of applicant of transporting Regasified Liquefied Natural Gas (RLNG), De-Mineralized Water (DM Water), Hydrogen Rich off Gas and Raw water free of cost to another company for manufacture of Hydrogen, Nitrogen and Steam manufactured out of it amounts to job work' as defined under section 2(68) read with section 143 of the

CGST/KSGST Acts and is not taxable under GST Regime

**AUTHORITY FOR ADVANCE RULINGS, KERALA**

**Bharat Petroleum Corporation Ltd., *In re***

ADVANCE RULING NO. KER/21/2018 OCTOBER 20, 2018

- 14] Activity carried out by applicant of processing natural gas and other inputs received from its customer on free of cost basis and manufacturing industrial gases shall fall under the scope of job work' and activity being job work is a provision of service, as input as well as output is owned by principal (customer) and not owned by applicant and falls under serial No. (ii) of HSN 9988 taxable at rate of 18 per cent GST

**AUTHORITY FOR ADVANCE RULINGS, KERALA**

**Prodair Air Products India (P.) Ltd., *In re***

ADVANCE RULING NO. KER/22/2018 OCTOBER 20, 2018

- 15] In case of jointly owned property, where rent is collected together, but divided equally and transferred to respective co-owner, small business exemption provided under section 22 is eligible to co-owners separately; engaging a co-owner to collect and distribute rent among all owners for administrative convenience has no implication on business exemption under section 22 for individual co-owner

**AUTHORITY FOR ADVANCE RULINGS, KERALA**

**Elambrancheri Khaldoon, *In re***

ADVANCE RULING NO. KER/12/2018 SEPTEMBER 19, 2018

- 16] Supply of medicines and allied items like food as advised by doctor/nutritionist provided by hospital through pharmacy to inpatients is part of composite supply of health care treatment and, hence, not separately taxable. Supply of medicines and allied items provided by hospital through pharmacy to out-patients is taxable

**AUTHORITY FOR ADVANCE RULINGS KERALA**

**Ernakulam Medical Centre (P.) Ltd., *In re***

ADVANCE RULING NO. KER/16/2018 SEPTEMBER 19, 2018

- 17] Computers, laptops etc. used by applicant engaged in providing various retail financial services like stock broking, share broking, marketing of initial public offering of companies and mutual funds, corporate advisory services etc. for providing output service would not qualify as inputs for purpose of availing transitional ITC under section 140(2)/140(3) of GST Act. Sub-section (2) of section 140 is specific to point that input tax credit not admissible as under existing law is ineligible to claim input tax credit under GST Act.

**AUTHORITY FOR ADVANCE RULINGS KERALA**

**Geojith Financial Services Ltd., *In re***

ADVANCE RULING NO. KER/13/2018 SEPTEMBER 19, 2018

- 18] Tile adhesive and joint filler manufactured by mixing natural products like silica sand, dolomite powder, cement and chemicals come under category of 'prepared binder' specified under HSN 3824 which is taxable at rate of 18 per cent GST

**AUTHORITY FOR ADVANCE RULINGS KERALA**

**New RV Enterprises., *In re***

ADVANCE RULING NO. KER/19/2018 SEPTEMBER 19, 2018

- 19] Product 'Ada' is something similar in character to 'Vermicelli' and same merits classification under HSN 1902 of 1st Schedule [Sl No. 97 - Seviyan (Vermicelli) of Notification No. 01/2017 - Central Tax (Rate) dated 28-6-2017 and State Government Notification No. 360/2017 attracting 5 per cent GST

**APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA**

**Ramachandran Bror, *In re***

ORDER NO. CT/3368/2018-C3 SEPTEMBER 25, 2018

- 20] 20] Supply of food items to employees for consideration in canteen run by company comes under definition of 'outward supply' and therefore, taxable as supply of service under GST

**APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA**

**Caltech Polymers (P.) Ltd., *In re***

ORDER NO. CT/7726/2018-C3 SEPTEMBER 25, 2018

- 21] Input tax paid by a vehicle dealer on purchase of motor car used for demonstration purpose of customer can be availed as input tax credit on capital goods and set off against output tax payable under GST. Furthermore, this activity does not come under negative clause, as after a limited period of use as demo car, vehicles are sold at written down book value

#### **AUTHORITY FOR ADVANCE RULINGS, KERALA**

**A.M. Motors., *In re***

ADVANCE RULING NO. KER/10/2018 SEPTEMBER 26, 2018

- 22] Free medical instrument supplied with other goods to hospitals, for a specific period constitute composite supply liable to GST under Sr. No. 17(iii) - Heading 9973 as transfer of right to use of any goods for any purpose

Placement of specified medical instruments to hospitals, labs, etc. for use without consideration against an agreement containing minimum purchase obligation of products like reagents, calibrators, disposals etc., for a specific period constitute composite supply. The terms and conditions of the agreement reveal that it is an indivisible contract for supply of instrument and products to be used in the instrument and that service or functionality of equipment is available only when components come together. Hence, supply of instrument and reagent is 'naturally bundled' as supply of goods has no independent existence severed from supply of right to use machine/instrument and becomes a 'composite supply', whereby supply of instrument is the 'principal supply'. The entire transaction is liable to GST under Sr. No. 17(iii) - Heading 9973 as 'transfer of right to use of any goods for any purpose'(whether or not for a specified period) for cash, deferred payment or other consideration

#### **AUTHORITY FOR ADVANCE RULINGS, KERALA**

**Abbott Healthcare (P.) Ltd., *In re***

ADVANCE RULING NO. KER/15/2018 SEPTEMBER 26, 2018

- 23] For supply of works contract awarded by Government, tax rate applicable is 12 per cent GST and sub contracts, if any, awarded will also attract 12 per cent GST but supply of work contract awarded by a company for construction of Biotech lab and administrative block at Life Science Park attracts 18 per cent GST

#### **AUTHORITY FOR ADVANCE RULINGS, KERALA**

**Mary Matha Construction Company, *In re***

ADVANCE RULING NO. KER/14/2018 SEPTEMBER 26, 2018

- 24] It is lawful to structure agreement by fixing land cost after absorbing development charges. Input Tax Credit availed in respect of GST paid on goods and/or services used/consumed for development of land, in respect of plots sold after issuance of Completion Certificate is liable to be reversed on pro rata basis

#### **AUTHORITY FOR ADVANCE RULINGS, KERALA**

**PPD Living Spaces (P.) Ltd., *In re***

ADVANCE RULING NO. KER/20/2018 SEPTEMBER 26, 2018

- 25] Supply of medicines, consumables and implants used in course of providing health care services to in-patients for diagnosis or treatment are naturally bundled and are provided in conjunction with each other and would be considered as 'Composite Supply' and eligible for exemption under category 'health care services'

#### **AUTHORITY FOR ADVANCE RULINGS, KERALA**

**Rajagiri Health Care & Education Trust, *In re***

ADVANCE RULING NO. KER/24/2018 OCTOBER 6, 2018

- 26] Classic Malabar Parota' and Whole Wheat Malabar Parota' are classified under Schedule III of GST Laws, vide Heading 2106 'Food preparations not elsewhere specified or included' and is taxable at rate of 18 per cent GST. Eligibility of exemption from GST vide Notification No.2/2017 - Central Tax / SRO No.361/2017 is applicable only for specific commodity 'Bread branded or otherwise' covered under HSN 1905

- As per Schedule III of GST Laws, vide Heading 2106 'Food preparations not elsewhere specified or included' is taxable 18 per cent GST. There is specific exclusions from this heading, for 'Khakhra, Plain Chapatti or Roti, Idli / Dosa batter, and included under 5 per cent category. Even though 'Chapati' is unleavened flatbread prepared from whole wheat flour or maida, it is specifically included under heading 2106 and reduced the tax rate from 18 per cent to 5 per cent. Therefore the word 'Food Preparations' connotes preparations for use, either directly or after processing such as cooking for human consumption. Therefore all food preparations which are not specifically mentioned in any other entry squarely comes under Heading 2106.

#### **AUTHORITY FOR ADVANCE RULINGS, KERALA**

**Modern Food Enterprises (P.) Ltd., *In re***

ADVANCE RULING NO. KER/23/2018 OCTOBER 12, 2018

- 27] Where applicant converted land given to it on lease rent by Kerala government to Coffee Plantation, quit rent/lease rent paid to Kerala Government on land used for agricultural purpose i.e. Coffee Plantation be classified under HSN 9986 and eligible for exemption under GST

**AUTHORITY FOR ADVANCE RULINGS, KERALA**

**Cochin Plantations Ltd., In re**

ADVANCE RULING NO. KER/11/2018 OCTOBER 20, 2018

- 28] Marine propellers, Rudder set, Stern tube set, Propellers shaft, MS shaft for couplings used as part of fishing vessels, factory ships and other vessels for processing or preserving fishery products are taxable @5% GST.
- All parts of fishing/floating vessels come under the HSN Code 8902 are taxable @5% under Serial No.252 of 1st Schedule.
  - The supply of parts under warranty being without consideration, no GST is payable. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the applicant who undertakes the warranty replacement is not required to reverse the input tax credit on the pans / components replaced.
  - The supplier / manufacturer is eligible to avail the credit of higher input tax paid on purchase of raw materials, even though the manufactured products are taxable at lesser tax rate.

**AUTHORITY FOR ADVANCE RULINGS, KERALA**

**Saraswathi Metal Works, In re**

ADVANCE RULING NO.KER/25/2018 OCTOBER 20, 2018

**MAHARASHTRA**

- 29] Service of supplying food by appellant-outdoor caterer to employees of unit located in Special Economic Zone is not covered under zero rates supplies under section 16 of IGST Act, 2017, as employees can neither be treated as SEZ developer nor as SEZ unit, accordingly, GST will be applicable as per classification of services determined in terms of scheme of classification of services as provided under Notification 11/2017-C.T. (Rate), dated 28-6-2017
- Further, since food is being cooked at one place and being distributed to different locations of companies with whom they have entered into contract, this is also not covered under definition of 'Restaurant services'.

**APPELLATE AUTHORITY FOR ADVANCE RULING, MAHARASHTRA**

**Merit Hospitality Services (P) Ltd., In re**

ORDER NO. MAH/AAAR/SS-RJ/12/2018-19 NOVEMBER 1, 2018

- 30] Where appellant has entered into consultancy agreement with foreign ship owner for supply of Marine Consultancy Services (MCS) consisting of consultancy service and support service, entire gamut of services or activities performed by applicant can be treated as composite supply of intermediary services classified under Service Accounting Code 999799, which is other miscellaneous services, and accounting services under SAC 998222, of which intermediary service is principal supply.

**APPELLATE AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**Five Star Shipping, In re**

ORDER NO. MAH/AAAR/SS-RJ/11/2018-19 OCTOBER 23, 2018

- 31] Whole (sheep/goat) animal carcass in its natural shape in frozen state in different weight and size packed in LDPE bags and such LDPE bags further packed in HDPE bags and then supplied to Army is exempt from tax

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**Monrovia Leasing and Finance (P.) Ltd., In re**

ORDER NO. GST-ARA-20/2017-18/B-83 AUGUST 4, 2018

- 32] Functions of National Skill Development Corporation (NSDC) are in nature of encouraging and supporting private sector in skill development which is also one of its mandate and functions. Apart from this it is also implementing agency for various schemes such as Pradhan Mantri Kaushal Vikas Yojana , Sankalp, Udaan, etc. If services in relation to schemes as mentioned are provided through partner approved by NSDC, then only benefit of Notification as claimed would be applicable to applicant and it would not be applicable in respect of other services relating to skill development provided by applicant. In view of this it is found that NSD programme implemented by NSDC would cover only actual schemes and programmes of skill development that are undertaken by Government through its various ministries, departments, directorates, attached offices and organizations and cannot in any way be construed to be including each and every activity under the sun which enhances skills in one way or other. Thus, educational courses offered by applicant which have been approved by NSDC would not be construed as in relation to National Skill Development Programme implemented by NSDC. The educational courses for which qualification standards/framework i.e. QP/NOS has not been defined by NSDC and will be approved by NSDC as and when the relevant QP/NOS would be defined by NSDC, in the interim period ,though, NSDC has given exceptional approval on such courses, they will not be treated as in relation to National Skill Development Programme implemented by

NSDC. Accordingly benefit of GST exemption as per Notification No. 12 of 2017-Central Tax (Rate), dated 28-6-June 2017 would not be available to applicant

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**IMS Proschool (P.) Ltd., In re**

**ORDER NO.GST-ARA-37/2017-18/B-44 JUNE 5, 2018**

- 33] Supply of Electro Ink along with other consumable is a mixed supply as defined under section 2(74) and is also a continuous supply of goods as defined under section 2(32)
- The applicant was engaged in providing printing supplies to be used in HP's Indigo press machines supplied to customers. The HP Indigo machine was based on a unique digital offset colour technology specially designed to cater printing requirements of large scale print service providers. In this regard, ElectroInk along with consumables were directly imported by applicant from its overseas suppliers at customs port situated in Mumbai wherefrom said goods were cleared on payment of applicable customs duties including IGST.
  - The applicant had contracted with a taxable person registered under GST to be its authorized reseller and distributor of such goods to various customers across India. The terms of contract between applicant and authorized reseller stipulated that supplies would be property of applicant till such time supplies were utilized in presses by customer for effecting prints. Further, electroInk along with consumables were moved by applicant to authorized reseller locations.
  - The applicant had filed instant application seeking an advance ruling in respect of question of classification of ElectroInk supplied along with consumables under GST; and determination of time and value of supply of ElectroInk with consumables under indigo press contract.
  - Supply of ElectroInk which was supplied along with consumables is a mixed supply as defined under section 2(74) and is also a continuous supply of goods as defined under section 2(32).
  - The time of supply of ElectroInk supplied along with consumables under indigo press contract would be earliest date between date of invoice or date of receipt of payment. As regards value of supply of Electro Ink supplied with consumables under Indigo Press Contract would be transactions value as reflected in invoice issued under section 31(4).

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**HP India Sales (P.) Ltd., In re**

**ORDER NO. GST-ARA-38/2017-18/B-45 JUNE 8, 2018**

- 34] Subject contract of extracting water from tube well, passing it through treatment plant of removing unwanted contaminants like Iron and eventually lifting it to overhead tank (In short water treatment scheme) runs on solar power would fall under HSN 9954 and same would attract a tax rate of 12 per cent

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**Membrane Filters (I)(P.) Ltd., In re**

**ORDER NO. GST-ARA-06/2018-19/B-62 JULY 9, 2018**

- 35] Liquidated damages awarded by International Chamber of Commerce qualifies as supply; attract GST

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**North American Coal Corporation India (P.) Ltd., In re**

**ORDER NO. NO.GST-ARA-07/2018-19/B-63 JULY 11, 2018**

- 36] Parts of Marine Distress Signals, EPIRB and SART, SSAS, Marine Chemicals, Navigation and Communication (NAVCOM) Equipment and Life Saving services such as Life raft, Lifeboat and Fire-fighting services including Pyrotechnic Disposal, Electronic Services and Training Services related to Marine Industry imported by assessee that are used in equipments GPS, ECHO SOUNDER, RADAR, ECDIS, Gyroscope, Doppler Speed Log, very high frequency(VHF), Satellite Communication/Fleet Broad band, Ship Security Alert System, Emergency Positioning Indicating radio Beacon, Bridge Navigation Watch Alarm System would liable to GST at rate of 5 per cent (CGST-2.5 per cent and SGST - 2.5 per cent) or IGST at rate of 5 per cent under entry 252 of Schedule 1 of CST Notification No. 01/2017 - Central tax (rate) dated 28-6-2017 as amended and schedule 1 of Notification No.01/2017-Integrated Tax (Rate), dated 28-6-2017 as amended

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**A S Moloobhoy (P.) Ltd., In re**

**ORDER NO. GST-ARA-14/2018-19/B-71 JULY 18, 2018**

- 37] Electric Overhead Travelling Grab Crane supplied for use in waste-to-energy project is classifiable as 'Renewal energy devices and parts for their manufacture' attracting 5 percent levy



**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**Mukand Ltd., In re**

ORDER NO. GST-ARA-18/2018-19/B-77 JULY 30, 2018

- 38] Reactors are apparatus/machinery which are used to purify water and it can be used with various machinery including hand pumps. Thus, reactor is nothing but a filtering or purifying machinery/apparatus for liquids and falls under Heading 8421 2190 attracting 9 per cent CGST and SGST each.

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**Taraltec Solutions (P.) Ltd., In re**

ORDER NO. GST-ARA-47/2017-18/B-54 JUNE 22, 2018

- 39] The applicant is not just providing a supply of service but is also providing a composite supply of Goods i.e. hardware and network equipments, printers, scanners, power equipments, and also imparting training on use of such equipments as per the syllabus prescribed. Thus, it will be incorrect to dub the entire project as a training programme. It is rather a composite supply of goods and services, not naturally but artificially bundled having distinctly separate components with distinct value attributable to each of the components.
- The conditions of Entry No. 72 of the Notification No. 12/2017 have not been fulfilled. Thus, the supply of goods and services as made by the applicant under ICT @ School project is not in compliance of all conditions of exemption as notified under the referred Notification.

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**IL&FS Education & Technology Services Ltd., In re**

ORDER NO. GST-ARA-48/2017-18/B-55 JUNE 25, 2018

- 40] GST would not be leviable on movement of tyre mounted cranes or crawler cranes from one GST registered office of applicant to another registered office of applicant for further supply on hire charges to customers as per clarification issued by the CBEC vide Circular No. 21/ 21/ 2017 - CGST read with Circular No. 1/1 / 2017 - IGST. It is found that movement is only for upkeepment and maintenance purpose, without any further supply to unrelated customers, and not for further supply of crane on hire charges. As such the interstate movement of cranes is neither a supply of goods nor supply of services and consequently no IGST would be applicable on such movement. However, tax is leviable on repairs and maintenance done for such goods

**AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA**

**Sanghvi Movers Ltd., In re**

ORDER NO. GST-ARA-43/2017-18/B-50 JUNE 15, 2018

**MADHYA PRADESH**

- 41] Services received by applicant from vendors for supply of material and erection work would fall under works contract and fall under entry no. (ii) of S. No. 3 of table of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 and applicable rate of tax is 18 percent (9 percent under Central Tax and 9 percent State Tax)
- The applicant-company, wholly owned subsidiary of MPPMCL, was carrying out function of distribution of electricity as entrusted by the Government of Madhya Pradesh. The applicant for the above purpose was also receiving work contract services from vendors for supply and erection work under various projects. The applicant wished to know whether clause (vi)(a) of Sr. No. 3 of table of Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 was applicable on the works contract services received by it, and determination of liability to pay tax.
  - In the instant case, the applicant had awarded work to the successful bidder for supply of minerals and erection respectively. Therefore, the contract entered by the applicant is squarely falls under the works contract and falls under entry no. (ii) of S. No. 3 of table of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 as amended from time to time and corresponding notifications under and MPGST Act, 2017, and applicable rate of tax is 18percent (9percent under Central tax and 9percent State tax).
  - The applicant is not entitled for the benefit of concessional rate of GST at rate of 12 percent (6percent under Central tax and 6percent State tax) for the said projects in terms of Notification No. 24/2017-Central Tax (Rate) dated 21-9-2017, read with Notification No. 31/2017-Central Tax (Rate) dated 13-10-2017.

**AUTHORITY FOR ADVANCE RULINGS, MADHYA PRADESH**

**Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Ltd., In re**

CASE NUMBER 17/2018 SEPTEMBER 18, 2018

- 42] Product 'military malai mithai' is classifiable under heading 2106 as 'Sweetmeat', and chargeable to GST Classification of goods - Military Malai Mithai - Heading 2106 - Product 'military malai mithai' made out of skimmed milk powder, sugar and whey powder as main ingredients with emulsifiers etc put up in small sachet / pouch in semi-liquid (paste) consistency, ready for consumption, is classifiable under heading 2106 as 'sweetmeat',

chargeable to GST.

#### **AUTHORITY FOR ADVANCE RULINGS, MADHYA PRADESH**

**Italian Edibles (P.) Ltd., In re**

ADVANCE RULINGS ORDER NOS. 13/2018, NO. 9/2018 AAR/R-28/41 SEPTEMBER 18, 2018

- 43] MPPGCL has been entrusted with the work of power generation in the State of Madhya Pradesh. Essential and sole work entrusted to MPPGCL by Government of Madhya Pradesh is of electricity (power) generation and MPPGCL has awarded a works contract for construction of 599 residential quarters to Applicant. However, the civil construction of residential quarters is neither the primary work entrusted to MPPGCL nor it has any bearing on the work i.e. power generation by any means. AAR held that since activity of construction does not have any relation to the principal work of power generation entrusted by State Government to MPPGCL, the works contract service of construction of residential quarters would be classifiable under heading 9954 and would attract GST @18% (9% CGST + 9% SGST) in terms of Notification No.11/2017 - CT Rate dtd. 28.06.2017 and corresponding notification under MPGST Act 2017 and not eligible for Concessional rate of 12% GST
- Intention of legislature has been to give Concessional rate to such work which has been entrusted to a Government entity for public interest in general. Any work having direct involvement in the entrusted work i.e. power generation would merit exemption envisaged under Sr. No. 3(vi)(c) of the Notification No.11/2017-CT(Rate) under CGST Act and corresponding notification under MPGST Act 2017, but extrapolating and extending this concessional rate to any or all activities of MPPGCL will not only be unwarranted but also defeat the very purpose of concessional rate.

#### **AUTHORITY FOR ADVANCE RULINGS, MADHYA PRADESH**

**Shreeji Infrastructure India (P.) Ltd., In re**

CASE NUMBER 18/2018 AND ORDERS NO. 15/2018, NO.12/2018/AAR/R-28/39  
OCTOBER 18, 2018

#### **ODISHA**

- 44] In case of applicant engaged in manufacturing of aluminium, inward supplies received by way of management, repair, renovation, alteration or maintenance service or goods received for furnishing residential colony shall not qualify for input tax credit in terms of section 17 (2). Services which are being availed clearly in relation to residential colony shall not qualify for input tax credit. On the other hand services received partly in relation to residential colony and partly in relation to the plant, proportionate ITC to extent relatable to the plant are available whereas services availed in relation to the residential colony shall not qualify for input tax credit in terms of section 17(2)
- In provisions of law as it stands today Establishment of hospitals and maintenance thereof may be for discharging the statutory obligation under ESI Act by employer, but dispensing medical service to employees and others is a supply of service by employer (applicant). Such service being nil rated will fall under exempt supplies. Consequently, inputs and input services received by applicant for dispensing exempt service will not qualify for input tax credit in terms of section 17 (2).
  - However, establishing, maintaining and furnishing guest houses including landscaping by way of gardening or otherwise is neither a perquisite nor a statutory obligation. It is purely for providing accommodation service to guests including employees on tour. This is in fact a business requirement to maintain such facilities and accordingly the applicant is entitled to input tax credit of tax paid on inward supply of input and input services for maintenance of guest house, transit house, and training hostels, but excluding food and beverages provided in such establishments.

#### **AUTHORITY FOR ADVANCE RULINGS, ODISHA**

**National Aluminium Company Ltd., In re**

ORDER NO. 02/ODISHA-AAR/2018-19 SEPTEMBER 28, 2018

#### **PUNJAB**

- 45] In forward contracts in cotton sales, being settled by applicant with other party to contract by way of payment of differential of forward rate and prevailing market rate on settlement date, same would be falling within purview of 'securities' as defined in section 2(101) of CGST Act, 2017 and would therefore not be chargeable to GST
- When such forward contracts are settled by way of payment of differential of forward rate and rate fixed by applicant using his discretion, such rate being different than market price of cotton on date of settlement, same would not be falling within purview of 'securities'.
  - When forward contracts in cotton purchase are settled by way of payment of differential of forward rate and prevailing market rate on settlement date, same would be falling within purview of 'securities'.

**AUTHORITY FOR ADVANCE RULINGS, PUNJAB**

**Louis Dreyfus Co. India (P.) Ltd., In re**

ORDER NO. AAR/PUNJAB/18/246-51 OCTOBER 1, 2018

- 46] Lab Manual published by applicant which comprised of a bulk of instructional /educational printed material as per syllabus of educational board and which also contained some blank pages for students to practice or write, would be classified under GST Tariff heading 4901 as printed books which carry a Nil rate of tax
- The applicant industry was manufacturing lab manuals called 'books' printed /published in accordance with specified syllabus issued by CBSE for class VI to class XI which was written by authors as per prescription by Educational Boards.
  - The applicant had submitted an application for advance ruling seeking to know whether 'lab manual' which also contained, apart from chapter wise printed material and printed question and answers, some blank sheets/papers for exercise by students, would be classified under GST Tariff heading 4901 as 'printed books' which carried nil rate of tax or would it be classified under GST Tariff heading 4820 which attracted tax at rate of 12 per cent (CGST + SGST) under description 'Laboratory Notebooks'.
  - Lab Manual being published by applicant which comprises of a bulk of instructional/educational printed material as per syllabus of educational board and which also contains some blank pages for students to practice or write, would be classified under GST Tariff heading 4901 as printed books which currently carry a Nil rate of tax.

**AUTHORITY FOR ADVANCE RULINGS, PUNJAB**

**Evergreen Publication (India ) Ltd., In re**

ORDER NO. AAR/GST/PB/004/2018 AUGUST 13, 2018

- 47] Activity of applicant of providing complementary cricket match tickets free of charge to some persons would be considered as supply of service as per provisions of both section 7(1)(a) and 7(1)(d) and would, therefore be leviable to tax as per provisions of section 9 of CGST Act, 2017 and parallel section 9 in Punjab GST Act, 2017; Since all tickets supplied by applicant including complementary tickets would be taxable, applicant would clearly be eligible for claim of Input Tax Credit as per provisions of section 16 of CGST Act, 2017

**AUTHORITY FOR ADVANCE RULINGS, PUNJAB**

**K.P.H. Dream Cricket (P.) Ltd., In re**

ORDER NO. AAR/GST/PB/002 AUGUST 20, 2018

**RAJASTHAN**

- 48] Ramming Mass which is a Refractory Material and is used in lining of induction furnaces is classifiable under HSN code 3816 and would attract 18% rate of tax under GST (9% CGST + 9% SGST)

**AUTHORITY FOR ADVANCE RULINGS, RAJASTHAN**

**Raghav Productivity Enhancers Ltd., In re**

ADVANCE RULING NO. RAJ/AAR/2018-19/15 SEPTEMBER 1, 2018

- 49] Where applicant is engaged as a concessionaire and PWD has granted concession to construct, operate and maintain (COM) twolining/intermediate laning of sections of highway project during construction period, applicant is rendering taxable services during construction of roads which is liable to tax; hence, they are entitled to claim full ITC under provisions of section 16(1) of CGST Act, 2017
- Applicant is entitled to claim ITC on supplies of goods and services or both procured for use in outward supply of operation and maintenance (O & M) service purpose as they are paying GST on 100 per cent of amount received on account of O & M of project.

**AUTHORITY FOR ADVANCE RULINGS, RAJASTHAN**

**Nagaur Mukangarh Highways (P.) Ltd., In re**

ADVANCE RULING NO. RAJ/AAR/2018-19/17 OCTOBER 11, 2018

- 50] Where nature of work is of erection, procurement and commissioning of solar generating system, same falls under ambit 'works contract services' (SAC 9954) of Notification No. 11/2017 Central Tax (Rate), dated 28-6-2017 and shall attract 18 per cent rate of tax under IGST Act, or 9 per cent each under CGST and SGST Acts, aggregating to 18 per cent

**AUTHORITY FOR ADVANCE RULINGS RAJASTHAN**

**Frizo India (P.) Ltd., In re**

ADVANCE RULING NO. RAJ/AAR/2018-19/19 SEPTEMBER 24, 2018



## TELANGANA

- 51] Chicken intestine waste' is classifiable under HSN Code - 0505, and the rate of tax is 2.5 per cent CGST and 2.5 per cent SGST

### **AUTHORITY FOR ADVANCE RULINGS, TELANGANA**

**Susheela Agrovet, In re**

TSAAR ORDER NO. 9 AND A.R. COM. NO. 15 OF 2018 JULY 20, 2018

- 52] Coir products (except coir mattresses) are chargeable to 6% CGST + 6% SGST as per schedule II to Notification No. 1/2017 Central Tax (Rate), dated 28.6.2017 as amended
- Whereas "Mattress supports; articles of bedding and similar furnishing (for example, Mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered [other than coir products (except coir mattresses), products wholly made of quilted textile materials and cotton quilts]" are chargeable to 9% CGST + 9% SGST as per schedule III to Notification No.1/2017 Central Tax (Rate), dated 28.6.2017 as amended.

### **AUTHORITY FOR ADVANCE RULINGS, TELANGANA**

**Victory Comfort Products, In re**

TSAAR ORDER NO. 8 OF 2018 JULY 20, 2018

- 53] Real estate development company and its directors separately owning adjoining lands amalgamate their parcels for getting benefit of enhanced floor space index and area, common areas and facilities on condition that construction cost of additional floor area shall be paid by directors to company, pooling of land would not constitute a supply under CGST/TGST Act, 2017, while activity undertaken by company with respect to share belonging to directors is a supply of service and value of construction service supplied by company to directors, being related persons, shall be 110 per cent of cost of provisions of said service; vesting of constructed portion upon directors cannot be treated as an independent supply as neither any service nor any consideration has been received by owner-company for vesting of constructed portion to directors

### **AUTHORITY FOR ADVANCE RULINGS, TELANGANA**

**Gowra Ventures (P.) Ltd., In re TSAAR**

ORDER NO. 11/2018 JULY 26, 2018

- 54] The supply of printing service to 'educational institutions' for conducting of examinations are eligible for exemption under entry No.66 of Notification No. 12/2017- Central Tax (Rate) dt. 28.6.2017
- The supply of 'Printing of cheque books'(where the paper is being supplied by the banks) are classifiable under heading 9988 and attracts GST @ 5% (2.5% CGST + 2.5% SGST).
  - The supply of cheque books(where the printing paper and inks are being borne by the applicants) are classifiable under heading 4907 of GST Tariff as goods and would not attract any GST as they are exempted supply in terms of Serial No 118 to the Notification No.02/2017-Central Tax (Rate) dated 28.06.2017.
  - The supply of Aadhaar Cards are classifiable under heading 9989 of GST Tariff and attracts GST @ 12% ( 6% CGST + 6% SGST) in terms of S.No.27 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended.
  - The printing and supply of Polyvinyl chloride cards (PVC) are classifiable under heading 3920 of GST Tariff and attracts 18% GST (9%CGST + 9%SGST) in terms of S.No. 106 of Schedule III of Notification No.1/2017- Central Tax (Rate) dated 28-6- 2017.

### **AUTHORITY FOR ADVANCE RULINGS, TELANGANA**

**K L Hi-tech Secure Print Ltd., In re**

TSAAR ORDER NO. 10 OF 2018 JULY 26, 2018

## TAMIL NADU

- 55] Applicant engaged in business of letting out property and receiving rental income is eligible to take credit of CGST and SGST charged by property consultant for providing real estate services in renting of property, subject to conditions as per section 16, 17 and 18 of CGST and SGST Act

### **AUTHORITY FOR ADVANCE RULINGS, TAMILNADU**

**Adwitya Spaces (P.) Ltd., In re**

ORDER NO. 13/AAR/2018 SEPTEMBER 27, 2018

- 56] Coir pith in its raw form whether in loose powder or compressed into blocks form without any addition of chemicals supplied by applicant are taxable at 2.5 per cent CGST as per Sl. No. 215 of Schedule I of Notification No. 1/2017-C.T. (Rate), dated 28-6-2017 as amended and at 2.5 per cent SGST as per Sl. No. 215 of Schedule I of GO. (Ms) No. 62 dated 29-6-2017 No. II (2)/CTR/532 (d-4)/2017

**AUTHORITY FOR ADVANCE RULINGS, TAMIL NADU**

**Jeena Exports, In re**

ORDER NO. 15/AAR/2018 SEPTEMBER 27, 2018

- 57] Non-woven fabric bags called as Rice Bags falls under HSN 6305 33 00 and applicable rate for such bags of value not exceeding Rs. 1000 per piece is 2.5 per cent CGST as per S. No. 224 of Schedule I of Notification No. 1/2017-C.T. (Rate), dated 28-6-2017 and 2.5 per cent SGST as per S. No. 224 of Schedule I of G.P. (Ms) No. 62, dated 29-6-2017 No. II(2)/CTR/532(D-4)/2017

**AUTHORITY FOR ADVANCE RULINGS, TAMILNADU**

**Kanniwadi Nagarajan Sharmila, In re**

ORDER NO. 12/AAR/2018 SEPTEMBER 27, 2018

- 58] Plastic made Agricultural Seedling Trays are classifiable under CTH 3926 90 99 and the applicable tax rate is 9 per cent CGST as per Sl. No. 111 of Schedule III of Notification No. 01/2017-C.T. (Rate), dated 28-6-2017 as amended and is 9 per cent SGST as per Sl. No. 111 of Schedule III of G.O. (Ms) No. 62, dated 29-6-2017 No. II (2)/CTR/532 (d-4)/2017 as amended

**AUTHORITY FOR ADVANCE RULINGS, TAMILNADU**

**Saro Enterprises, In re**

ORDER NO. 16/AAR/2018 SEPTEMBER 27, 2018

- 59] Where RBI has permitted German-company to establish a liaison office as they are engaged in trading of clothing and textiles and operates clothes-shops and markets, and liaison activities undertaken by applicant were strictly in line with condition specified by RBI permission letter, same do not amount to supply under CGST and SGST Act and it is not liable to pay CGST, SGST or IGST, as applicable, nor is it required to get itself Registered under GST for liaison activities

**AUTHORITY FOR ADVANCE RULINGS, TAMIL NADU**

**Takko Holding GmbH, In re**

ORDER NO. 14/AAR/2018 SEPTEMBER 27, 2018

- 60] Electrical wiring Harness manufactured by applicant for applications in Anti-skid Braking Systems in heavy vehicles falls under HSN Tariff Item No. 8544 30 00 for which the rate prescribed is 14 per cent CGST under Sl. No. 161 of Schedule IV of Notification No. 01/2017-C.T. (Rate), dated 28-6-2017 and 14 per cent SGST from Sl. No. 161 of Schedule IV of GO. (Ms) No. 62, dated 29-6-2017 No. II(2)/CTR/532 (d-4)/2017 for period from 1-7-2017 to 14-11-2017 and from 15-11-2017, rate of tax is 9 per cent CGST under Sl. No. 395 of Schedule III of Notification No. 01/2017-C.T. (Rate), dated 28-6-2017 and 9 per cent SGST under Sl. No. 395 of Schedule III of GO. (Ms) No. 62, dated 29-6-2017 No.II(1)/CTR/532(d-4)/2017; rate of CGST and SGST at 9 per cent each is applicable to above product only with effect from 15-11-2017

**AUTHORITY FOR ADVANCE RULINGS, TAMILNADU**

**WABCO India Ltd., In re**

ORDER NO. 10/AAR/2018 SEPTEMBER 27, 2018

**UTTARAKHAND**

- 61] Abhivahan Shulk is different from toll tax and is covered under service code 9997 and to be treated as other services and is liable for GST. The applicant is liable to pay GST at rate of 18 per cent as on date on same under reverse charge in terms of Serial No. 5 of Notification No. 13 of 2017 - Central Tax (Rate) dated 28-6-2017

**AUTHORITY FOR ADVANCE RULINGS UTTARAKHAND**

**Purewal Stone Crusher., In re**

RULING NO.08/2018-19 SEPTEMBER 11, 2018

**UTTAR PRADESH**

- 62] GST is not applicable on upfront amount payable in respect of services by way of granting of long-term lease of thirty years or more for plots catering to public healthcare, if conditions as mentioned at Serial No. 41 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 are satisfied

**AUTHORITY FOR ADVANCE RULINGS, UTTAR PRADESH**

**Yamuna Expressway Industrial Development Authority, In re**

ORDER NO. 9 JUNE 6, 2018

# TAX UPDATES, NOTIFICATIONS AND CIRCULARS

## INDIRECT TAX

### CENTRAL TAX

**Notification No. - 61/2018 – Central Tax**

**Date - 5th November 2018**

#### IS TDS APPLICABLE FOR SUPPLY OF GOODS & SERVICE FROM ONE PSU TO OTHER PSU

Central Government makes amendments in the Notification No. 50/2018-Central Tax, dated the 13<sup>th</sup> September, 2018.

*Amendment* - Nothing in this Notification shall apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from the 1st day of October, 2018.

## CGST CIRCULARS

**Circular No. 73/47/2018**

**Date - 5th November 2018**

#### WHETHER DEL-CREDER AGENT (DCA) IS TERMED AS AGENT UNDER GST

##### *Issues regarding differentiation of DCA from other agents*

- In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal.
- DCA guarantees the payment to the supplier.
- Where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer)
- As a result, commission paid to the DCA may be relatively higher than that paid to a normal agent.
- In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date.
- This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

Concerns have been expressed regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself.

##### *Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?*

*Whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios: Yes/No based on circumstances.*

- a) In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent.
- b) In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.

*Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act? - NO*

In such a scenario following activities are taking place:

1. Supply of goods from supplier (principal) to recipient;
2. Supply of agency services from DCA to the supplier or the recipient or both;
3. Supply of extension of loan services by the DCA to the recipient.

It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. Furthermore, vide notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.

***Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not? - YES***

In such a scenario following activities are taking place:

1. Supply of goods by the supplier (principal) to the DCA;
2. Further supply of goods by the DCA to the recipient;
3. Supply of agency services by the DCA to the supplier or the recipient or both;
4. Extension of credit by the DCA to the recipient.

It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasized that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. Therefore, the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d) of the CGST Act.

**Circular No. 74/47/2018  
Date - 5th November 2018**

**TEA BOARD OF INDIA IS LIABLE TO COLLECT TCS @ 0.50% CSGT & 0.50% SGST ..... (1%) - YES**

Tea Board of India, the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of electronic commerce operator liable to collect Tax at Source (hereinafter referred to as, "TCS") in accordance with the provisions of section 52 of the Central Goods and Service Tax Act, 2017.

- The participants in the said auction are the sellers i.e. the tea producers and auctioneers who carry out the auction on behalf of such sellers and buyers.
- It has been represented that the buyers in the said auction make payment of a consolidated amount to an escrow Account maintained by the Tea Board.
- The said consolidated amount is towards the value of the tea, the selling and buying brokerages charged by the auctioneers and also the amount charged by the Tea Board from sellers, auctioneers and buyers.
- Thereafter, Tea Board pays to the sellers (i.e. tea producers), from the said escrow account, for the supply of goods made by them (i.e. tea) and to the auctioneers for the supply of services made by them (i.e. brokerage).
- Under no circumstances, the payment is made by the Tea Board to the auctioneers on account of supply of goods i.e., tea sold at auction.

Representation has been received from Tea Board, seeking clarification whether they should collect TCS under section 52 of the CGST Act from the sellers of tea (i.e. the tea producers), or from the auctioneers of tea or from both.

it is clarified that TCS at the notified rate shall be collected by Tea Board respectively from the –

- (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
- (ii) auctioneers on the net value of supply of services (i.e. brokerage).

for the purpose of uniformity in the implementation of the Act.

## CUSTOMS

### TARIFF

**Notification No. – 77/2018**  
**Date - 1st November 2018**

*Seeks to further postpone the implementation of increased customs duty on specified imports originating in USA from 2nd November, 2018 to 17th December, 2018*

The Central Government makes amendments in the Notification No. 50/2017-Customs, dated the 30th June, 2017.

In the said notification, in the third proviso for the words and figures “2<sup>nd</sup> day of November, 2018”, the words and figures “17<sup>th</sup> day of December, 2018” shall be substituted.

### NON TARIFF

**Notification No. – 90/2018**  
**Date – 1st November 2018**

*Exchange Rates Notification No.90/2018-Custom (NT) dated 1.11.2018*

CBIC determines that the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa which has been activated from 2nd November, 2018 relating to imported and export goods.

For more details, please follow –

<http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt90-2018.pdf;jsessionid=A4F5C535B6775EE3E6E8072D4BFB4E76>

**Notification No. – 91/2018**  
**Date – 5th November 2018**

*Seeks to further postpone the implementation of increased customs duty on specified imports originating in USA from 2nd November, 2018 to 17th December, 2018*

Central Government directs that the powers exercisable by the Central Board of Indirect Taxes and Customs under sub-section (1) of section 5 of the Customs Act, 1962, shall also be exercised by the Principal Chief Commissioner or Chief Commissioner of Customs for the purposes assigning the cases for adjudication of show cause notices issued under the provisions of the said Act or rules, regulations made there under, within his jurisdiction.

**Notification No. -92/2018**  
**Date-15th November 2018**

**Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Sliver- Reg.**

The Central Board of Indirect Taxes & Customs, makes the amendments in the Notification No. 36/2001 Customs (N.T.), dated the 3rd August, 2001.

For more details - <http://www.cbic.gov.in/resources/htdocs-cbec/customs/csact/notifications/notfns-2018/csnt2018/csnt922018.pdf;jsessionid=6EFF6395D99EC7A98EBB25E7819F7336>

**Notification No. -93/2018**  
**Date-15th November 2018**

**Exchange Rates Notification No.93/2018-Custom(NT) dated 15.11.2018**

The Central Board of Indirect Taxes and Customs determines that the rate of exchange of conversion of each of the foreign currencies .

For more details - <http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2018/csnt2018/csnt93-2018.pdf;jsessionid=C9D3C19691D4BCD99B562E569D9BC596>.

**ANTI - DUMPING**

**Notification No. -55/2018**  
**Date-15th November 2018**

**Seeks to further postpone the implementation of increased customs duty on specified imports originating in USA from 2nd November, 2018 to 17th December, 2018**

The designated authority had recommended imposition of the anti-dumping duty on O Acid originating in or exported from subject country to review the matter of Anti-Dumping Duty on import of O-Acid, falling under Chapter 29 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from China PR and imported into India.

For more details, please follow - <http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-add2018/csadd55-2018.pdf>

# PRESS RELEASE

## INDIRECT TAX

### PRESS RELEASE

**Date – 8.11.2018**

There are concerns being raised about growing pendency of GST Refunds. Exporters are reassured that there is no letup in the sanction of GST refunds. The disposal rate is consistently improving month-on month. As on 31st October, 2018, total GST refunds to the tune of Rs 82,775 crore have been disposed by CBIC and State authorities out of the total refund claims of Rs 88,175 crore received so far. Thus, the disposal rate of 93.8 % has been achieved as on 31.10.2018. The pending GST refund claims amounting to Rs 5,400 crore are being expeditiously processed so as to provide relief to eligible exporters. Refund claims without any deficiency are being cleared expeditiously.

In case of IGST refunds, about 93.27 % (Rs 42,935 crore) of the total IGST refund claims (Rs. 46,032 crore) transmitted to Customs from GSTN as on 31st October, 2018 have already been disposed. The remaining claims amounting to Rs. 3,096 crores are held up on account of various deficiencies which have been communicated to exporters for remedial action.

In the case of RFD-01A (ITC Refund) claims, out of the total refund claims of Rs. 42,145 Crore the pendency as on 31st October, 2018 is Rs 159 Crore with Centre and Rs 2,146 crore with States. Provisional/final order has been issued in case of refunds amounting to Rs. 34,602 Crore. In claims amounting to Rs. 5,239 Crore, deficiency memos have been issued by respective GST authorities.

Efforts are being made continuously to clear all the pending refund claims, where ever requisite information is provided and found eligible. Co-operation of the exporter community is solicited to ensure that they respond to the deficiency memos and errors communicated by Centre and State GST as well as Customs Authorities and also exercise due diligence while filing GSTR 1 and GSTR 3B returns as well as Shipping Bills.

## PRESS RELEASE

**Date – 9.11.2018**

### Advisory to UIN Entities claiming GST Refunds

The GST Act provides for allotting a Unique Identification Number (UIN) to Consulates, Embassies and other UN Organizations to enable such entities to claim refund of GST paid. One of the conditions for claiming this refund is to file invoice level data in their FORM GSTR-11 on the common portal. There are common discrepancies which have been noticed by GST Authorities while processing refund applications.

FORM GSTR-11 under Rule 82 of the CGST Rules, 2017 mandates reporting “Place of Supply” for every invoice on which refund is applied for. Many UIN entities while filling invoice data have been reporting their place of supply as the State where they are registered instead of the place of supply as reflected in the invoice.

For example, it was observed that Embassies registered in Delhi have been consistently declaring their place of supply as “New Delhi” even on hotel service consumed in the State of Maharashtra for which the place of supply is Maharashtra.

It may be noted that under the GST law, place of supply determines the chargeability of CGST / SGST or IGST tax on an invoice. Generally, except few exceptions, if the location of the supplier and the place of supply are in the same State then CGST + SGST is charged on an invoice and if the location of the supplier and the place of supply are in separate States then IGST is charged.

Therefore, it is advised that while reporting the “place of supply” and charging of CGST / SGST or IGST on an invoice, the details shall be exactly as per the details mentioned in the invoice issued by the supplier of goods or services. Wrong reporting of invoice level data in FORM GSTR-11 or in the statement of invoice submitted may lead to delay in processing / rejection of refund claims.



## **DIRECT TAX**

### **PRESS RELEASE**

**Date – 2.11.2018**

#### **Indian Advance Pricing Agreement regime moves forward with signing of more UAPAs and BAPAs by CBDT**

The Central Board of Direct Taxes (CBDT) has entered into 5 more Unilateral Advance Pricing Agreements (UAPAs) and 1 Bilateral APA during the month of October, 2018. Further, the CBDT had also entered into 3 UAPAs and 3 BAPAs in the months of August and September, 2018. With the signing of these Agreements, the total number of APAs entered into by the CBDT has gone up to 244, which includes 220 UAPAs and 24 BAPAs. It is noteworthy that one of the UAPAs signed in October is a renewal application and the same has been concluded in a time span of only 7 months.

The BAPAs entered into during the last three months were with the following treaty partners:-

- Australia – 2
- Switzerland – 2

The BAPAs and UAPAs entered into during the last three months pertain to various sectors and sub-sectors of the economy like publishing, production of electronic goods, automobile ancillary manufacturing, banking, IT/ITeS, textiles, telecommunications, food & beverages, etc.

The international transactions covered in all these agreements, inter alia, include the following, -

- provision of software development services
- provision of back office (ITeS) support services
- export/import of raw materials, journals, etc
- payment of royalty
- advertising, marketing and sales promotion (AMP) expenses incurred
- provision of marketing support services
- distribution of finished goods
- corporate management and business support services
- payment of guarantee fee

The progress of the APA scheme strengthens the Government's resolve of fostering a non-adversarial tax regime. The Indian APA programme has been appreciated nationally and internationally for being

able to address complex transfer pricing issues in a fair and transparent manner.



# JUDGEMENTS

## **INDIRECT TAX**

### **18% GST applicable to Job Work Service to Foreign Customer: AAR**

#### **M/s Synthite Industries vs. AAR Andhra Pradesh**

Case No. – AAR/13(GST)/2018

Date – 20.08.2018

#### **Fact of the Case**

1. M/s Synthite Industries is the applicant in the present case.
2. It entered into a contract with foreign company as Job Worker for processing of tea. Raw material /packing material and all other things are supplied by the foreign company & after completion of processing work it will be exported to the principal.
3. The applicant sought for a ruling on whether the process of providing job work service to foreign customer is taxable under GST.
4. The authority referred to section 2(68) of CGST Act 2017 that Job Work means the treatment /process undertaken by a person on goods belonging to another registered person. The ownership of goods is not transferred to the job worker but it remains with the principal.

#### **Decision of the Case**

The Bench held that the process of providing “Job Work” service to the foreign customer is taxable under the Andhra Pradesh GST Act @ 18%.

### **Commission Agents dealing in sale and purchase of Tobacco Leaves exempted from GST: AAR**

#### **M/S Jayalakshmi Tobacco COMPANY vs. AAR ANDHRA PRADESH**

Order no. – 03/aar/ap/gst/2018

DATE - 4.04.2018

#### **Fact of the Case**

1. The applicant is a commission agent dealing with tobacco leaves including other business activities.

2. The application was made to determine the applicability of the Goods and Services Tax (GST) on sale of tobacco leaves received from farmers made by the Commission Agent.
3. The rate of tax on services provided by a commission agent for sale or purchase of agricultural produce, etc, is NIL vide notification no. 11/2017 dt. 28.08.2017.
4. Further it refers to “Services in in Wholesale Trade” is included in “Services to Commission Agent”.

#### **Decision of the Case**

1. The learned judges of the bench explained that the entry listed in serial no. 5 attracting 18% rate refers to a service of Commission agent.
2. On other hand serial no. 24 refers to “Commission Agent dealing in sale and purchase of agricultural produce” which attracts Nil rate of GST.
3. Hence in the present case the second reference is applicable i.e Nil rate of tax is applicable.

### **GST payable on Toll Reimbursements: AAR**

#### **Premier Vigilance & Security Pvt Ltd vs. AAR WEST BENGAL**

Case no. -23 of 2018

Date-10.08.2018

#### **Fact of the Case**

1. In the instant case, the applicant Premier Vigilance & Security Pvt Ltd.
2. The company provides security and transportation services to banks for ferrying cash in customized cash vans. The applicant is to pay GST under rule 33 from the value of supply.
3. But the bank pays only actual toll & paying charges as per agreement. Bank does not authorize it as a “Pure Agent” or acknowledge toll as their own liability.

#### **Decision of the Case**

1. AAR observed the applicant, being the owner of the vehicles, is the recipient of the

- service provisioned tolls. The applicant is the beneficiary and liable to pay the toll.
- The Authority noted that though there is no GST on toll when someone pays the toll and recovers it from a company or dealer as a part of services, such reimbursement will be a part of the value of supply and hence liable to GST.
  - It was said that the Toll charges paid are not, therefore, to be excluded from the value of supply under Rule 33. GST shall, therefore, be payable at the applicable rate on the entire value of the supply, including toll charges paid.

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**Kerala HC orders to take Photographs of Goods since Issue was Misclassification**

**A SYED ALI FATHIMA VS. THE ASSISTANT STATE TAX OFFICER & OTHERS**

Case NO. -36047 OF 2018

DATE-5.11.2018

**Fact of the Case**

- Before the High Court, the petitioner urged that she is ready to take release of the goods on execution of Bank Guarantee.
- However, the petitioner submitted that since dispute is regarding the misclassification, photographs shall be taken before the release of the goods.
- At the time of allowing the petition, the honorable Justice said that the writ petition is disposed off with the following direction.
  - Photographs and negatives shall be taken with regard to the nature of the goods.
  - Goods shall be released on furnishing Bank Guarantee, applicable to the petitioner.

**Decision of the Case**

While ordering the release of goods seized by the State Goods and Services Tax (GST) department, the Kerala High Court imposed a direction that since the dispute was on the misclassification of the goods, the department should take the photographs of the goods to know the nature of the same.

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**DIRECT TAX**

**Assessment can't be made on Dead Entity: ITAT**

**DCIT vs. NDC Telecommunications pvt. Ltd.**

Case No. – 3011/Del/2015

Date – 16.10.2018

**Fact of the Case**

- In the present case NDC Telecommunication Pvt Ltd. is the assessee.
- The A.O issued notice to the assessee under section 148 in connection with loss incurred of Rs. 7 Crores.
- The assessee made some arguments against the wrongfully issued notice by assessing officer before CIT(A).
- The assessee placed various decisions of Honorable Court that re-assessment of non-existence company cannot be done.

**Decision of the Case**

- In the opinion of the Bench, re-assessment of non-existence Company that is dissolved company in the present situation is void ab-initio.
- The learned Bench rejected the order of A.O & passed the order in favour of the assessee.

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**Beneficiaries not Taxable for Fund invested by Trust in Swiss Bank: ITAT**

**Deepak b shah vs. ACIT Mumbai**

Case No. – 6065 /Mum/2014

Date -30.10.2018

**Fact of the Case**

- In the present case the Income Tax Department sought to tax fund lying in a Swiss bank account as “Unaccounted Income” in the hands of two residents of Mumbai.
- The appellants maintained account in Swiss Bank stated that they had no contribution in the said account as because the said account is a discretionary Trust Account.
- The A.O imposed tax by adding the balance maintained in Swiss Bank to the income of the said appellants.

### **Decision of the Case**

1. The discretionary trust did not made any distribution of fund to the beneficiaries.
2. The appellants did not make any contribution to the said account.
3. So the Tribunal held that since the Swiss Bank account was owned & operated by an offshore discretionary trust in which two individuals are named as beneficiaries ,the income could not be taxed in their hands unless & until the funds were distributed by the Trust.

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### **Reason to Suspect' can't be a reason to Re-open Assessment: ITAT**

#### **Urvish B. Mehta vs. I.T.O**

Case No. – 2259/MUM/2016

Date -10.10.2018

#### **Fact of the Case**

1. Urvish B. Mehta is the assessee in the present case.
2. During the Assessment proceedings, the assessing officer concluded that assessee has received some bogus purchase entries from thirteen parties and not making any purchase of actual goods or service.
3. The case was re-opened under section 147 of the Act pursuant to the notice under section 148.
4. The assessee contested the issue of re-opening the assessment under section 147 before the A.O.
5. Considering the contentions of the assessee, the A.O framed assessment & makes addition under section 69C.
6. Being aggrieved the assessee appealed to Tribunal and reproduced the name of 13 parties from whom the purchase is done.
7. Assessee also stated that A.O issued notice depending upon some information received from DGIT only.
8. Assessee also argued that without having gone through enquiry the A.O issued such notice.

### **Decision of the Case**

The Mumbai Bench of ITAT quashed the order of A.O regarding re-opening of assessment since “the reason to suspect” cannot be ground of reason to re-open assessment.

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### **Assessee can't be Penalized for Wrong Statement given by Payee, ITAT Indore Bench**

#### **Shri Anil Khandelwal vs. ITO**

Case No. - 299/IND/2016

Date- 12.10.2018

#### **Fact of the Case**

1. In instant case Assessee is an individual engaged in the business of transport booking.
2. The Assessee filed his return of Income & as per instruction of Apex Level ,A.O examined the applicability of provision under section 194C regarding the payment to truck operator.
3. Not being convinced with submission of assessee , the A.O disallowed under section 40(a)(ia) the non deduction of TDS under section 194C.
4. Being aggrieved the assessee made detailed submission before CIT(A) who retained the disallowance and matter carried to Tribunal.
5. The counsel for assessee submitted that truck owners had given the form no. 151 and did not mentioned about the ownership of three trucks. For this reason tax was not deducted at source.
6. On behalf of the assessee, the Counsel also added that the form 151 received from alleged payee is in bonafide manner with a belief that the same was genuine & correct. It also argued that wrong declaration given by payee and invalid form cannot be a ground for levying tax on assessee.

#### **Decision of the Case**

1. The bench heard the rival submission and perused the documents on record.
2. The bench also observed that the tax was levied due to submission of wrong declaration by the payee.
3. The division bench of the Indore ITAT ruled that assessee cannot be penalized merely based on wrong statement given by payee.

# TAX COMPLIANCE CALENDAR AT A GLANCE

## GST CALENDAR

Date	Return Type
20 <sup>th</sup> November, 2018	GSTR 5 – Summary of outward taxable supplies and tax payable by Non Resident Taxable person.
20 <sup>th</sup> November, 2018	GSTR 5A - Summary of outward taxable supplies and tax payable by OIDAR
20 <sup>th</sup> November, 2018	GSTR 3B for the month of October, 2018
10 <sup>th</sup> December, 2018	GSTR 7 - Return for authorities deducting tax at source. Return for the Month of November, 2018
10 <sup>th</sup> December, 2018	GSTR 8 - Details of supplies effected through e-commerce operator and the amount of tax collected. Return for the Month of November, 2018
13 <sup>th</sup> December, 2018	GSTR 6 - Return for Input Service Distributor for the Month of November, 2018
31 <sup>st</sup> December, 2018	Extension of Due date for GSTR-3B only for newly migrated taxpayers for months July 2017 to Nov 2018.
31 <sup>st</sup> December, 2018	Extension of Due date for GSTR-1 in case of taxpayers with turnover above Rs 1.5 crores in previous FY or Current FY: Newly migrated taxpayers: for months from July 2017 to November 2018.
31 <sup>st</sup> December, 2018	GSTR 1 – In case of taxpayers with turnover upto Rs 1.5 crores in previous FY or Current FY: Newly migrated taxpayers: for Quarters from July 2017 to November 2018
31 <sup>st</sup> December, 2018	GSTR – 9. Annual Return

## DIRECT TAX CALENDAR - NOVEMBER, 2018

### 07.11.2018

- Due date for deposit of Tax deducted/collected for the month of October, 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.

### 14.11.2018

- Due date for issue of TDS Certificate for tax deducted under section 194-IA and section 194-IB in the month of September, 2018.

### 15.11.2018

- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2018.
- Due date for furnishing of Form 24G by an office of the Government where TDS for the month of October, 2018 has been paid without the production of a challan.

### 30.11.2018

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA and section 194-IB in the month of October, 2018
- Annual return of income for the assessment year 2018-19 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s).
- Audit report under section 44AB for the assessment year 2018-19 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E.
- Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction.
- Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2017-18.
- Country-By-Country Report in Form No. 3CEAD by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2016-17.
- Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during 2017-18.
- Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2017-18) to units holders.
- Due date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA.
- Due date to exercise option of safe harbour rules for specified domestic transaction by furnishing Form 3CEFB.
- Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2017-18. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A.
- Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager.
- Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on November 30, 2018).
- Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(2) (if the assessee is required to submit return of income on November 30, 2018).
- Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company has any international/specified domestic transaction].
- Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is November 30, 2018).
- Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2017-18 and of foreign tax deducted or paid on such income in Form no. 67. (if due date of submission of return of income is November 30, 2018).

## DIRECT TAX CALENDAR - DECEMBER, 2018

**07.12.2018**

- Due date for deposit of Tax deducted/collected for the month of November, 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

**15.12.2018**

- Due date for furnishing of Form 24G by an office of the Government where TDS for the month of November, 2018 has been paid without the production of a challan.
- Third installment of advance tax for the assessment year 2019-20.
- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IB in the month of October, 2018.

**30.12.2018**

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB in the month of November, 2018.

## WEBINAR CALENDAR 15<sup>th</sup> TO 30<sup>th</sup> NOVEMBER, 2018

Sl. No	Date	Time	Topic of the Webinar	Name of the Faculty
1.	26.11.2018 (Monday)	4:00 - 5:00 PM	Accounts & Records under GST and Role of GST Auditor	CMA Vivek Laddha

**Please Note:** One CEP hour awarded for attending each webinar

## TAXATION COMMITTEE - PLAN OF ACTION

### Proposed Action Plan:

1. Publication and Circulation of E-bulletin for the awareness of stakeholders, members, traders, Chambers of Commerce, Universities.
2. Publication of Handbooks on Taxation related topics for knowledge updation of stakeholders.
3. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
4. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
5. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
6. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
7. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country
8. Extending 3<sup>rd</sup> Batch of Certificate Course on GST after successfully carrying the 2 Batches of Certificate Course on GST.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

### Disclaimer:

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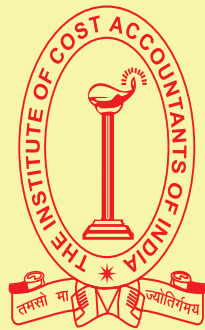
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### Contact Details:

Tax Research Department  
12, Sudder Street, Kolkata - 700016

Phone: +91 33 40364875/ +91 33 40364782/ +91 33 40364721/ +91 33 40364711

E-mail: [trd@icmai.in](mailto:trd@icmai.in)



# THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

[www.icmai.in](http://www.icmai.in)

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

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