

SEPTEMBER, 2019

# TAX Bulletin



VOLUME - 48



**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

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### MISSION STATEMENT

“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.”

### VISION STATEMENT

“The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.”

### Objectives of Taxation Committee:

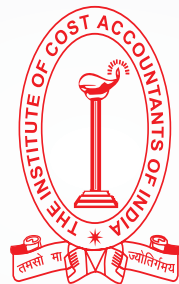
1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stakeholders.

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## FROM THE DESK OF CHAIRMAN – INDIRECT TAXATION COMMITTEE

**T**his time I would start by congratulating the Department for successfully conducting the examination of all the Taxation courses viz. Certificate Course of GST, Advanced Certificate Course on GST, Certificate Course on Return Filing and Certificate Course on TDS, simultaneously all across India. I would like to congratulate the students for their results and wish them luck in their future undertakings.

A webinar has been conducted on 23.08.19 on the topic 'Recent Amendments to GST in the Finance Bill' by CMA Bhogavalli Mallikarjuna Gupta.

Crash Course on GST in College/University is going to start in college in Mysore, Kolkata and Chennai.

During the fortnight number of Seminars have been organised by the Chapters and Regional Councils on GST Annual return etc. Few of them are given below;

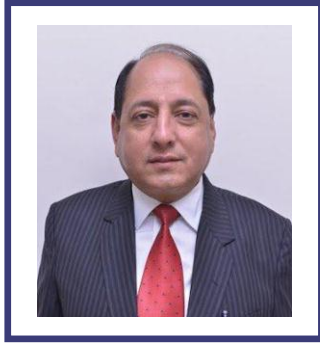
- South Odisha Chapter on 8th September 2019 -Shri Chandra Sekhar Sahu, Hon'ble M. P (LokSabha) Berhampur and Shri Bikram Kumar Panda, Hon'ble MLA, Berhampur graced the occasion as Chief Guests.
- Bhubaneswar Chapter on 12<sup>th</sup> September 2019-Shree Bijay Kumar Kar, Principal Commissioner GST attended the Seminar as Chief Guest, Shree SribashNath, Asst Commissioner as Guest of honour and CMA S P Padhi was the keynote speaker.
- Sreerampore Chapter on 15th September 2019 - CMA Susanta Kumar Saha as Speaker.

Representation to assist in Filling GST Annual Return & GST Audit in Form 9, 9A and 9C has been submitted to Principal Chief Commissioner of Central Tax – Bangalore, Hyderabad, Pune, Bhubaneswar, Ahmedabad, Mumbai and other places.

I have optimistic that these efforts of Indirect Taxation Committee and Tax Research Department would yield fruitful results.

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

**CMA Niranjan Mishra**  
**Chairman, Indirect Taxation Committee**  
**20<sup>th</sup> September 2019**



## FROM THE DESK OF CHAIRMAN – DIRECT TAXATION COMMITTEE

5<sup>th</sup> September is celebrated as **Teachers' Day** to honour Dr Sarvepalli Radhakrishnan. The day is commemorated to stimulate the contribution of teachers to society. To make the **Teachers' Day** memorable, the Institute of Cost Accountants of India, as discussed in the Direct Taxation and Indirect Taxation Committee meetings dated 31.08.2019 and 01.09.2019, decided to observe Direct Taxation month throughout India from 5th September 2019 to 5th October 2019 along with the Regional Councils and Chapters.

Being the arms of the Institute, observance of DTC Month is being taken up by the Chapters and Regional Councils of ICAI in an encouraging way. Uniform theme is being followed all across in this regard i.e 'Income Tax Act and Direct Tax Code – Expectations and Way Ahead'. Further, in all the seminars, emphasis is being given on the merits of the representation submitted by the Institute on inclusion of "Cost Accountants" in the definition of "Accountants" as per Income Tax Act, 1961.

At the same time we are continuing with our rigorous efforts to achieve our goal for including the Cost Accountants in the definition of Accountants under Income Tax Act. But at the same time, it is important to note and understand that inspite of the fact that there is a monopolistic approach of audit mechanism in this domain by a single finance professional fraternity which is on the brink of the reputational loss due to various scams happening in and around corporate sector/ banking sector, still the monopoly of such fraternity continues as they are opposing the matter for widening the definition of Accountant under the Income tax Act by making representations to the Ministry of Finance.

The opposition made by the CA fraternity is also contrary to the approach being followed by the Government and our honourable Prime Minister Shri Narendra Modi ji wherein the culture of competitiveness and transparency is being promoted to be followed across country and rather the Government has also succeeded in enforcing the same in some of the legal domains such as GST, Internal Audit, Tax Return Preparer Amendment Scheme 2018, Certification under Foreign Trade Policy etc and it is not understandable that why Direct Tax is kept as an exception in this case?

The revised Income Tax Act has not been made available in the public domain however it should have come till now. We are continuously chasing the matter with all administrative and political authorities for ensuring the actions but at this point of time, we seek support of every member for taking a strong and effective step. We will request all the members to use their political official connections specifically in relation to the ruling party. We will request our members to spread awareness among members, students through industry

representations so that they can also raise the concerns for this cause in their individual capacities

### Seminars organized in relation to observance of Direct Taxation month are as under-

*-Seminar has been organized by The Erode Chapter on 07.09.2019 on the topic "Tax Audit Report under Income Tax Act".*

*-The Howrah Chapter of ICAI conducted seminar on 14.09.2019 on the Topic: DTC 2019 & GST 2.0 – unrevealed provisions awaiting CMAs contribution in Nation Building.*

*-The Kharagpur Chapter of ICAI conducted seminar on 13.09.2019 at Seminar hall, IIT Kharagpur with CMA Shyamalendu Bhattacharyya, Asst Commissioner of Income Tax, GOI (Retd) as the Chief Guest.*

*-The Serampore Chapter of ICAI conducted a seminar on 15.09.2019 on Topic: Income Tax and Direct Tax Code – Expectations and Way Ahead.*

*-TRD conducted a seminar on 18.09.2019 at the Head Quarters Kolkata, with Shri Rakesh Goyal, Principal Chief Commissioner, Income Tax as Chief Guest.*

Similar Seminars are lined up at Indore-Dewas on 21.09.2019, Ranchi on 22.09.2019, Bhubaneswar on 25.09.2019, Guwahati on 28.09.2019, Jamshedpur on 28.09.2019, Rajpur-Sonarpur on 29.09.2019.

In addition to above, the examination of all the Taxation courses viz. Certificate Course on GST, Advanced Certificate Course on GST, Certificate Course on Return Filing and Certificate Course on TDS, was successfully conducted all across India by the Tax Research Department. In this regard, I would like to congratulate the department for their passion and hard work and wish best of luck to the students for their results and in all their future endeavours.

I am pretty optimistic that with these efforts we can show our strength and come out as the leading and most preferred professionals of our Country serving the Government in all its prospects.

**Jai Hind.**

**CMA Rakesh Bhalla**  
**Chairman, Direct Taxation Committee**  
**20<sup>th</sup> September 2019**

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## ACKNOWLEDGEMENTS

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CMA Anil Sharma	Practicing Cost & Management Accountant
CMA Utpal Kumar Saha	AGM – Indirect Tax, McNally Bharat Engineering Co. Ltd.
CMA Mohd. Saim Aziz	Cost & Management Accountant
Prabhakar K S	Proprietor – Shree Tax Chambers

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### SPECIAL ACKNOWLEDGEMENT

Mr. Dipayan Roy Chaudhuri	-	Graphics & Web Designer
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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 /trd.ad1@icmai.in***





## DEEMED EXPERT AND IMPACT ON EPC POWER BUSINESS

**CMA Utpal Kumar Saha**

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

**A**t the outset of this article we need to understand the basic concept of deemed export under Goods and Services Tax (GST) as well as Foreign Trade Policy (FTP) point of view.

### **Deemed Export under Goods and Services Tax (GST):**

Deemed export under section 147 of GST Act-

*The Government may, on the recommendation of the Council, notify certain supplies of goods as deemed export, where supplies do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactures in India.*

The basic ingredients are as follows:

- i) Government will notify category of supplies of goods to be as deemed export, based on the recommendations of GST Council;
- ii) Applicable only to supplies of goods which is within India;
- iii) Payment with respect to such supply will be either in Indian rupees or in convertible foreign exchange;
- iv) Goods are to be manufactured in India only;

Now, we look at the definition of the term manufacture under GST law. Section 2(72) of GST law, manufacture means processing of raw materials or inputs in any manner that results in emergence of a new product having a distinct name, character and use the term “manufacturer” shall be constructed accordingly. Supplies of imported goods, which are manufactured outside of India, will not be covered under deemed export.

Till date Government has notified the following supplies of goods as deemed export vide notification no. 48/2017 – CT dated 18-10-2017

- i) Supplies of goods by a registered person against Advance Authorisation;
- ii) Supplies of goods by a registered person against Export Promotion Capital Goods (EPCG) Authorisation;
- iii) Supplies of goods by a registered person to Export Oriented Unit;
- iv) Supply of gold by a Bank or Public Sector Undertaking specified in the Notification No. 50/2017-Cus, dated 30<sup>th</sup> June 2017 against Advance Authorisation

Currently these four categories supply are only deemed export under GST Law.

Now we are focusing these deemed export with Foreign Trade Policy (FTP) 2015-20 point of view also.

Deemed Export under FTP is governed by Chapter 7 of Policy Book. All the category of supply under paragraph 7.02 of FTP will be treated as deemed export. Para 7.02 is reproduced for reference.

### **7.02 Categories of Supply**

*Supply of goods under following categories (a) to (d) by a manufacturer and under categories (e) to (h) by main / sub-contractors shall be regarded as “Deemed Exports”:*

#### **A. Supply by manufacturer:**

*(a) Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement /DFIA;*

*(b) Supply of goods to EOU / STP / EHTP /BTP;*

*(c) Supply of capital goods against EPCG Authorisation;*

*(d) Deleted*

## **B. Supply by main / sub-contractor(s):**

- (e) (i) Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty.
- (ii) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, for which bids have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad.
- (iii) Supplies covered in this paragraph shall be under International Competitive Bidding (ICB) in accordance with procedures of those Agencies /Funds.
- (iv) A list of agencies, covered under this paragraph, for deemed export benefits, is given in Appendix 7A.
- (f) (i) Supply of goods to any project or for any purpose in respect of which the Ministry of Finance, by erstwhile Notification No. 12/2012 –Customs dated 17.3.2012, as amended from time to time, had permitted import of such goods at zero customs duty (with exemption of both BCD and CVD) subject to conditions specified therein and which are continued under the Customs Notification No. 50/2017-Customs dated 30.6.2017 with exemption of zero basic customs duty and subject to conditions mentioned in the said new notification. Benefits of deemed exports shall be available only if the supply is made under procedure of ICB.
- (ii) Supply of goods required for setting up of any mega power project, as specified in the list 31 at Sl. No. 598 of Department of Revenue Notification No. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein, shall be eligible for deemed export benefits provided such mega power project conforms to the threshold generation capacity specified in the above said Notification.
- (iii) For mega power projects, ICB condition would not be mandatory if the requisite quantum of power has been tied up through tariff based competitive bidding or if the project has been awarded through tariff based competitive bidding.
- (g) Supply of goods to United Nations or International organization for their official use or supplied to the projects financed by the said United Nations or an International organization approved by Government of India in pursuance of section 3 of United Nations (Privileges and Immunities Act), 1947. List of such organization and conditions applicable to such supplies is given in the Customs notification no. 84/97-Customs dated 11.11.1997, as amended from time to time. A list of Agencies, covered under this paragraph, is given in Appendix-7B.
- (h) Supply of goods to nuclear power projects provided:
- (i) Such goods are required for setting up of any Nuclear Power Project as specified in the list 32 at Sl. No. 602, Customs notification no. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein.
- (ii) The project should have a capacity of 440 MW or more.
- (iii) A certificate to the effect is required to be issued by an officer not below the rank of Joint Secretary to Government of India, in Department of Atomic Energy.
- (iv) Tender is invited through National competitive bidding (NCB) or through ICB.

Under foreign trade policy, category A supply made by a manufacturer and category B supply by a contractor/ sub-contractor will be treated as deemed export.

However, under GST law only specific four categories of supply will be treated as deemed export. Interestingly, a particular supply is deemed export under Foreign Trade Policy, it may not be a deemed export under GST. There is a disparity between the two policies.

<b>Deemed Export as per GST</b>	<b>Deemed Export as per FTP 2015-20</b>	<b>Points of Similarity</b>
The Government may, on the recommendation of the Council, notify certain supplies of goods as deemed export, where supplies do	Transactions in which goods supplied do not leave country, and payment is received either in India rupees or in free foreign exchange. Supply of as	i) Goods do not leave India ii) Payment will be either in rupees or in convertible foreign exchange

not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactures in India	mentioned in paragraph 7.02 below shall be regarded ad Deemed Export provided goods are manufactured in India.	iii) Goods are manufactured in India
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### Impact of change of definition of deemed export under GST and big setback to EPC Power industry-

Earlier, under Central Excise Regime, supply of goods to a mega power project by a contractor or sub-contractor is exempted from Excise duty. As a result supplies of goods are only suffered CST or VAT and Entry Tax in some of the States. As a result there is a saving nearly 10% to 14% of the goods supplied to Mega Power Project. With the introduction of GST, supply of goods to mega power project is not a deemed export. Now, all supply of goods to Mega Power Projects is levied under GST at the rate almost 18%.

A comparative chart is prepared to demonstrate the effective tax rates in pre GST and post GST -

SI No	Nature of Transaction	Tax Categories	Rates	Effective Rates
1	Local Sale (Movement of goods within the State) - VAT Sale	Central Excise	0%	5% to 14.5%
		VAT	5% to 14.5%	
2	CST Sale u/s 3(a) of CST Act, 1956	Central Excise	0%	3% to 10%
		CST	2%	
		Entry Tax (a few States)	1% to 8%	
3	CST Sale u/s 3(b) of CST Act, 1956 (commonly known as Sale in Transit)	Central Excise	0%	1% to 8%
		CST	0%	
		Entry Tax (a few States)	1% to 8%	
4	Intra State/Inter State	GST	18% to 28%	18% to 28%

Earlier, Excise Duty was exempted, CST @2%/ 0%, VAT @5%/14.5% and Entry Tax in some of the States ranging from 1% to 8%. Effectively contractors were paying 1% to 14.5% tax on supply of goods to Mega Power Project. Such benefit has been withdrawn and GST in most of the goods is under 18% tax bracket and as a result project authority has to face some incremental cost to the ongoing projects. This would also badly impact the cash flow of the contractors. In some cases project authority has denied to set off the incremental cost to the contractors as the contractual period is completed and hence any increase of taxation would in the hands of the contractors. As a result EPC contractors mostly in power sector facing substantial cash flow issues. Government may rethink section 147 and bring back supplies under category B of para 7.02 of FTP under Deemed Export category in order to minimize the project cost and provide a better level playing field to the EPC Contractors.

### Claim of Refund under Deemed export -

Deemed export is subject to levy of GST. Refund of GST may be claimed either by supplier of goods or by recipient of goods, as the case may be. Third proviso to rule 89 specify the claim of refund either by the recipient or by the supplier of deemed export.

Notification 49/2017 - CT, dated 18-10-2017 also lays down the list of evidences

- i) An acknowledgement by the jurisdictional tax officer of the Advance Authorisation Holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said authorization Holder or Export Promotion Capital Goods holder, or a copy of tax invoice under which such supplies have been received by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
- ii) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
- iii) An undertaking by the recipient of deemed export supplies that he shall not claim the refund of such supplies and the supplier may claim the refund.



## SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019 – NEW BEGINNING?

**CMA Mohd. Saim Aziz**  
Cost & Management Accountant

### Introduction:

“As may be appreciated, this scheme is a bold endeavour to unlock baggage relating to the legacy taxes viz. Central excise and Service Tax that have been subsumed under GST and allow business to make a new beginning, and **focus on GST**. Therefore, it is incumbent upon all officers and staff of CBIC to partner with the trade and industry to make this Scheme a grand success” – reads para 2 of the CBIC circular no. 107/14/2019-CX dated **27.08.2019**

With State Government of Karnataka, Gujrat, Maharashtra and West Bengal taking up the initiative to ease business hurdles of taxpayers by introducing amnesty scheme post enactment of GST to conclude matters relating to VAT and Entry Tax in case of West Bengal, Central Government has once again after a span of 5 years beginning with the introduction of Voluntary Compliance Encouragement Scheme (hereinafter ‘VCES’) in year 2013 introduced a make believe scheme named ‘Sabka Vishwas (Legacy Dispute Resolution Scheme, 2019 (hereinafter ‘SVLDRS’) in the Finance Act, 2019 to unlock Rs. 3.75 lakhs crore from indirect tax enactments such as service tax and excise duty. What makes the two aforesaid scheme different from each other is, that under VCES Scheme relief was only available from interest and penalty, but SVLDRS covers even the taxes and prosecution along with interest and penalty.

In this article, the author craves to make the scheme on-the-go with an in-depth analysis covering all the possible issues that may come up in its readers mind:-

### Life-Span of the Scheme:

Start date:	01.09.2019 [Ref: Section 120(2) read with notification no. 04/2019 Central Excise – NT dated 21.08.2019]
End date:	31.12.2019 [Ref: sub-rule (1) of Rule 3 of Sabka Vishwas (Legacy Dispute Resolution Scheme Rules, 2019)]
<b>Comment:</b> Act is silent upon the date beyond which the application under the scheme cannot be filed. Yet the same is provided for in the rules. So, Can rules go beyond the Act? No.	
Is there scope for extension of the time limit for filing of application? Yes! Central Government may derive its power of extension of time limit from section 134 of SVLDRS and in the “interest of taxpayers” <b>may</b> (Attention!) do so.	

### Important definitions pertaining to the Scheme:

Section 121 (c)	<p>“amount in arrears” means the amount of duty which is <b>recoverable as arrears of duty</b> under the indirect tax enactment on account of –</p> <ol style="list-style-type: none"> <li><b>No appeal</b> having been <b>filed</b> by the declarant <b>against</b> an <b>order</b> or an <b>order in appeal</b> before expiry of the period for filing of appeal</li> <li>An <b>order in appeal</b> relating to the declarant <b>attaining finality</b></li> <li>The declarant having <b>filed return</b> under the indirect tax enactment <b>on or before the 30.06.2019</b> wherein he has <b>admitted</b> a tax liability but <b>not paid</b> it.</li> </ol>
Section 121 (d)	<p>“amount of duty” means the amount of <b>central excise duty</b>, the <b>service tax</b> and the <b>cess</b> payable under the indirect tax enactment.</p> <p><b>Comment:</b> On perusal of the said definition, it observed that ‘CENVAT’ is not being covered within the said definition as the said definition speaks of <b>amount of duty payable</b> but CENVAT credit is <b>‘not a duty payable’</b>. Reference of CENVAT inclusion can be drawn from para 5 of the CBIC circular dated 27.08.2019 wherein ‘amount of duty (including CENVAT)’ is laid down.</p>

Section 121 (e)	<p>“amount payable” means the <b>final amount payable</b> by the declarant as determined by the designated committee and as indicated in the statement issued by it, in order to be eligible for the benefits under this scheme and shall be calculated as the <b>amount of tax dues less the tax relief.</b></p> <p><b>Comment:</b> Upon interpretation of this definition, the final amount payable by the declarant would mean the tax dues <i>less</i> relief available. However, if we move further into the scheme, it also provides for adjustment of pre-deposit or any other deposit already paid (proviso to section 124 (2)). Therefore, amount payable = Final amount payable calculated as tax dues (-) Relief (-) Pre-deposit (-) any other deposit.</p>
Section 121 (g)	<p>“audit” means <b>any scrutiny, verification and checks</b> carried out under the indirect tax enactment, <b>other than enquiry or investigation</b>, and will commence when a written intimation from the central excise officer regarding conducting of audit is received.</p> <p><b>Comment:</b> the expression ‘enquiry or investigation’ has also been defined separately.</p>
Section 121 (m)	<p>‘enquiry or investigation’ under any of the indirect tax enactment, shall <b>include</b> the following actions, namely:-</p> <ol style="list-style-type: none"> <li>search of premises;</li> <li>issuance of summons;</li> <li>requiring the production of accounts, documents or other evidence;</li> <li>recording of statements;</li> </ol> <p><b>Comment:</b> the definition of audit [section 121 (g)] specifically excludes enquiry or investigation, but the definition of ‘enquiry or investigation’ is an inclusive definition and wide enough to even include audit (scrutiny, verification, checks) within its ambit.</p> <p>Now further when we read clause (ii) and (iv) it states issuance of summon and recording of statement. Readers may be aware of the fact that during summon proceedings statement are recorded so as to establish ‘reason to believe’ before initiation of any proceeding. Therefore, clause (ii) and (iv) are to read in conjunction with each other as per my view.</p>
Section 121 (o)	<p>“order” means <b>an order of determination</b> under any of the indirect tax enactment, <b>passed in relation to a show cause notice issued</b> under such indirect tax enactment.</p> <p><b>Comment:</b> read only the phrase marked as <b>bold</b> for interpretation. Else the reader would be kept wandering as to the expression used ‘order of determination - of what?’</p>
Section 121 (r)	<p>“quantified” with it cognate expression, means <b>a written communication</b> of the <b>amount of duty payable</b> under the indirect tax enactment.</p>

#### Snapshot of meaning of eligibility, meaning of tax dues, relief available

Type of Cases	Eligibility (Section 125)	Meaning of tax dues (Section 122)	Relief (Section 124)
Enquiry or investigation or audit	<p>Amount of duty quantified on or before 30.06.2019</p> <p><b>[Comment:</b> it is a well appreciated fact that amount of duty has never been ‘quantified’ in case of enquiry or investigation, however amount of duty in case of audit can be derived from audit memo issued by the departmental authority.]</p>	Amount quantified on or before 30.06.2019	<p><b>Amount quantified till 30.06.2019 is or less than Rs. 50 lacs = 70%</b> of tax dues.</p> <p><b>Amount quantified till 30.06.2019 is more than Rs. 50 lacs = 50%</b> of tax dues.</p>
Show cause notice (only related to penalty or late fees)	<p>Received before 30.06.2019 and final hearing is pending before 30.06.2019</p> <p>Or,</p> <p>Order Attained finality</p>	<p>The amount demanded in the SCN received before 30.06.2019</p> <p><b>[Comment:</b> Through Show cause notice amount is never demanded it is a</p>	Where amount of duty in said notice notice has been duly paid or nil, then relief will be the total amount of penalty and fees.

	<b>[Comment:</b> What is meant by 'final hearing' has not been defined? The noticee may file an application of being reheard, or may even make further submissions and request for Personal Hearing]	mere proposal to tax a particular issue]	<b>[Comment:</b> Where the amount in the Show cause notice is paid in full (say, under protest), and the relief is 100%, even then the declarant will not be eligible for refund (proviso to section 124(2) (b))]
Show cause notice (relating to erroneous refund or refund)  <b>[Comment:</b> Erroneous refund SCN means the noticee has claimed refund but the department has come across certain facts of material mis-statement or fraud relating to such refund granted, while SCN for refund means a notice for certain deficiency in refund application, or the application becoming liable to be rejected]	NA  <b>[Comment:</b> The Scheme states that if a person has been issued a SCN <b>under indirect tax enactment</b> for an erroneous refund or refund shall not be eligible for the scheme, there is a school of thought that says if the noticee has been served a notice under Central Excise Act, 1944 then the noticee becomes ineligible as a declarant under Chapter V of Finance Act, 1994, as per my view this view is not tenable due to reason that the scheme does not use the words ' <b>any indirect tax enactment</b> '. Hence as per my view the declarant is eligible for the Scheme.  CBIC circular dated 27.08.2019 clarifies the same view in <b>para 10 (b)</b> that the <b>disqualification</b> is for the <b>case</b> and <b>not for the person</b> .	NA	NA
Show cause notice  <b>[Comment:</b> The scheme is silent as to issue of SCN <b>only related to interest</b> , moreover its discussion is also not provided in section 125]	Received before 30.06.2019 and final hearing is pending before 30.06.2019 Or, Order Attained finality <b>[Comment:</b> What is meant by 'final hearing' has not been defined? The noticee may file an application of being reheard, or may even make further submissions and request for Personal Hearing]	The amount demanded (consider only tax amount) in the SCN <b>received</b> before 30.06.2019  <b>[Comment:</b> Through Show cause notice amount is never demanded it is a mere proposal to tax a particular issue]	<b>Amount of duty is or less than Rs. 50 lacs = 70% of tax dues.</b>  <b>Amount of duty is more than Rs. 50 lacs = 50% of tax dues.</b>  <b>[Comment:</b> What shall be the relief if SCN is issued merely for the reason of interest?]
Appeal Cases (before Commissioner (Appeals), High Court, Supreme Court)	Final hearing is pending before 30.06.2019 Or, Order in appeal attained finality  <b>[Comment:</b> What is meant by 'final hearing' has not	<b>Where a single appeal is filed and pending against the order:</b> The amount of tax under appeal  <b>Where more than one appeal is pending (one</b>	<b>Amount of duty is or less than Rs. 50 lacs = 70% of tax dues.</b>  <b>Amount of duty is more than Rs. 50 lacs = 50% of tax dues.</b>



	been defined? The appellant may file an application of being reheard, or may even make further submissions and request for Personal Hearing as per the principles of natural justice]	<b>by declarant and/or department):</b> The total amount of duty being disputed both by the declarant and department.	
Voluntary Disclosure	Not being subjected to any enquiry or investigation or audit	Amount of duty disclosed	No Relief
	Not having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable but has not paid it.		<b>Amount of duty is or less than Rs. 50 lacs =</b> 70% of tax dues. <b>Amount of duty is more than Rs. 50 lacs =</b> 50% of tax dues.
	<b>Comment:</b> Section 124(1) (c) (iii) is in complete disconnect with section 125 (1) (f). In other words, the scheme makes the declarant who declares the amount of duty payable in the return but not paid as ineligible but on the other hand also provides for relief.		
Amount in arrears	All persons	Amount of duty in arrears	<b>Amount of duty is or less than Rs. 50 lacs =</b> 70% of tax dues. <b>Amount of duty is more than Rs. 50 lacs =</b> 50% of tax dues.
<b>Other Disqualification:</b>			
<ul style="list-style-type: none"> <li>➤ Person who have filed an application in the settlement commission for settlement a case.</li> <li>➤ Persons seeking to make declarations with respect to excisable excisable goods set in Fourth schedule (Ex: Tobacco, Mineral products) to the Central Excise Act, 1944.</li> </ul>			

**Permutations and combinations to determine the eligibility under the Scheme (Illustrative only):**

Situation	Eligibility
SCN issued on 01.05.2019	Eligible, if no final PH done
SCN issued on 01.07.2019	Eligible, if duty demanded is quantified during enquiry or investigation or audit as SCN is issued as a result of enquiry or investigation or audit.
PH attended on 01.06.2019	If it is a final PH then ineligible, else eligible.
PH fixed on many dates prior to 30.06.2019 but not attended by noticee	Eligible
PH fixed, ex-parte order passed on 30.06.2019	Eligible
PH done on 25.05.2019, Order received on 02.07.2019	Ineligible, as the matter has been finally heard before 30.06.2019
Order issued on 28.05.2019, time available for appeal	Eligible, due to amount in arrears
Order issued on 28.05.2019, time available for appeal lapsed	Eligible, due to amount in arrears
Order dated 30.06.2019, issued on 01.07.2019	Eligible, due to amount in arrears
Appeal filed on 30.06.2019	Eligible, as appeal is pending
Investigation before 30.06.2019	Eligible, only if quantified.
Investigation after 30.06.2019	Ineligible
SCN issued before 30.06.2019, noticee makes an application to Settlement Commission	Ineligible, even if the noticee withdraws the same. However, if the application is rejected then held as eligible for the Scheme.
SCN issued before 30.06.2019, noticee makes an application to Settlement Commission but the order of commission not passed within time limit.	Eligible  [para 10(f) of CBIC circular dated 27.08.2019]

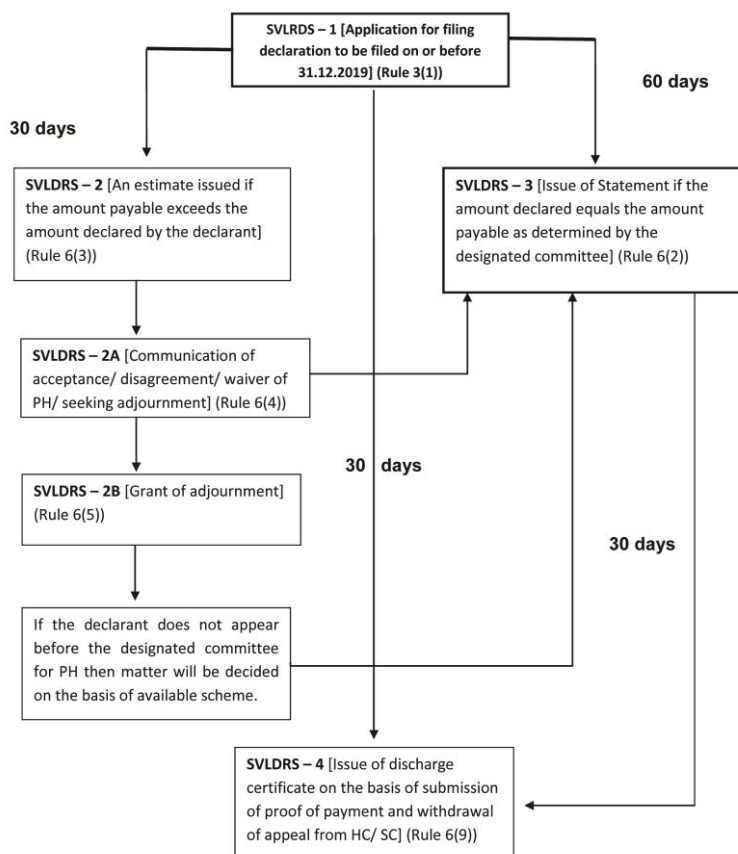
Order of Settlement commission passed, appeal pending or writ has been filed against the said order.	Eligible  [para 10(f) of CBIC circular dated 27.08.2019]
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**Administration of the Scheme:**

For the smooth and efficient implementation a 'Designated Committee' is being set up in exercise of the powers conferred under section 127 of SVLDRS read with Rule 5 of SVLDRS Rules. Its constitution shall be as follows:

<b>Tax dues more than Rs. 50 Lacs (before applying relief)</b>	<b>Tax dues Rs. 50 lacs or less (before applying relief)</b>
1. Pr. Commissioner/ Commissioner of Central Excise and Service Tax. 2. Additional Commissioner/ Joint Commissioner of Central Excise and Service Tax. Nominated by Pr. Chief Commissioner or Chief Commissioner of Central Excise and Service Tax. <b>Note:</b> One committee for every commissionerate (audit commissionerate is to be excluded as per CBIC circular dated 27.08.2019)	1. Additional Commissioner/ Joint Commissioner of Central Excise and Service Tax. 2. Joint Commissioner/ Assistant Commissioner of Central Excise and Service Tax Nominated by Pr. Chief Commissioner or Chief Commissioner of Central Excise and Service Tax. <b>Note:</b> One committee for every commissionerate (audit commissionerate is to be excluded as per CBIC circular dated 27.08.2019)
1. The Principal Additional Director General (Adjudication)/ Additional Director General (Adjudication), Directorate General of Good and Services Tax Intelligence (DGGI), and 2. Additional Director/ Joint Director, Directorate General of Good and Services Tax Intelligence(DGGI), Delhi nominated by Pr. Director General or Director General, Directorate General of Good and Services Tax Intelligence (DGGI)	

**Procedure of filing of Declaration and availing discharge certificate:**





### Other relevant points relating to the Scheme:

1. No verification by the designated committee if amount of duty has been voluntarily disclosed and the matter is to be finalized within 15 days of such declaration. (ref: para 11 (iii) of CBIC circular dated 27.08.2019)
2. The applicant has to submit proof of withdrawal of writ petition, appeal, reference from HC/ SC along with proof of payment after which the discharge certificate would be issued. **[Comment:** Discharge certificate would be issued within 30 days from the date submission of proof of payment and withdrawal of appeal whichever is later]
3. Within 30 days of issue of statement in form SVLDRS – 3, designated committee can rectify its order (only arithmetical error and clerical error) **[Comment:** neither the expression ‘arithmetical error’ nor ‘clerical error’ has been defined under the scheme. Moreover, no such rectification would be possible after the issuance of discharge certificate plus no refund under any circumstances if detection of error post issuance of form SVLDRS - 4]
4. Discharge certificate in form SVLDRS – 4 shall be conclusive as to the matter and time period stated and no further tax, interest and penalty is to be paid.
5. Issue of discharge certificate will not preclude the issue of SCN for the same matter for a subsequent period or a different matter for the same period. **[Comment:** the scheme is silent as to state of affairs for previous periods]
6. If voluntary disclosure is made and subsequently found to be false within a period of one year of issue of discharge certificate then it shall be presumed that declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted. **[Comment:** Provision has been made for reopening only in the case of voluntary disclosure]
7. Amount to be paid under the scheme shall not be paid through input tax credit, and neither shall such payment be available as input tax credit to the declarant or the recipient of the excisable goods or taxable services with respect to the matter and time period covered in the declaration.
8. The amount paid shall not be refunded under **any circumstances**. **[Comment:** The scheme does not provide for the course of action, if subsequently after payment, the statement is revised and the amount payable is reduced and the declarant becomes entitled to refund. Moreover, the moot question that arises is, can the Government retain money to which it is not legally entitled to?]
9. No proceedings shall be commenced against any officer only on the ground of subsequent detection of an error in calculating the amount of duty payable, unless there is evidence of misconduct. **[Comment:** No definition for ‘misconduct’ as to which act(s) shall constitute misconduct, thus the expression becomes subjective. However, the burden of proof shall be on the declarant]
10. CBIC circular dated 27.08.2019 states that the matter is to be finalized within 15 days of the declaration even if timeline is prescribed and is to be strictly adhered to.
11. All taxes and cess which has been subsumed under GST, are the part of this scheme. **[Comment:** Customs Act, 1962 and CVD, SAD and NCCD legislation is however not covered]

### Issues clarified by CBIC vide circular dated 27.08.2019

Issue	Clarification
No person being party in appeal, application, revision or reference shall contend that by issuing a discharge certificate, department has accepted the disputed position.	Same principle applies to the department also. In other words the department shall not issue fresh SCN merely on the basis that the declarant has admitted the position.
Pre-deposit has been made utilising the input credit.	Tax already paid through input credit shall be adjusted by the designated committee at the time of determination of final amount payable under the scheme.
The person is ineligible for the scheme if final hearing is concluded on 30.06.2019. The hearing is rescheduled due to change in bench, officer or any other reason.	The restriction shall apply only to those cases where the appellate forum has heard the matter finally as on 30.06.2019  <b>[Comment:</b> This clarification is issued in respect of appeal proceedings, the same principle may be used in the case of adjudication proceedings too in my considered view]
Section 2(r) defines ‘quantified’ to mean written communication of the amount of duty payable under the indirect tax enactment.	It shall also include letter intimating duty demand, or duty liability admitted by the person during enquiry or investigation or audit or audit report.
SCN covers various matters concerning duty liability. Can the declarant choose the matter for which he	A declarant cannot opt to avail benefit of scheme in respect of selected matters. The declarant has to file a

intends to file declaration?	<p>declaration concerning <b>all the matters in the show cause notice.</b></p> <p><b>[Comment:</b> The author begs to differ with the said clarification, as section 123(a) uses the phrase “..... <b>the total amount of duty which is being disputed.....</b>”. Thus, it can be inferred that only the issues which is a subject matter of dispute can be taken up in the scheme]</p>
Demand proposed against main noticee and penal action proposed against co-noticees. Can co-noticees avail the scheme?	Co-noticees can't avail the benefit of the said scheme till such time the demand is not settled by the main noticee.
State of application if payment not made due to any reason within the stipulated time period of thirty days?	<p>The declaration shall lapse.</p> <p><b>[Comment:</b> the circular does not clarify as to whether the proceedings shall revive upon such lapse of the application, further the circular does not speak as to whether a fresh application could be filed due to lapse of original application]</p>
Duty of the matter under investigation by the DGGI, relates to more than one commissionerate.	The designated committee of the commissionerate wherein the duty involved is maximum will decide the case.
SCN issued by the DGGI, relates to more than one commissionerate.	A common adjudicator is to be appointed under intimation to the chief commissioner concerned and DG systems so the designated committee of that commissionerate can finalise the matter.

### **Conclusion:**

The major concern for which the scheme is introduced is to lighten the burden of pending litigation, were most of the litigation is frivolous and ultimately decided in the favour of assessee. The next question that arises is that if the success rate of the department is so less even at the tribunal level (12%) then why would a taxpayer opt for this scheme?

With the advent of GST, already many 'advance adverse rulings' has been witnessed along with many writs being filed before the high court thus opening another Pandora of litigation. With this backdrop, the scheme of the government is a well appreciated move. Readers are advised to go through the scheme documents thoroughly before opting for the scheme and keeping in mind the merits and other legal factors of the case which are pending as on 31.06.2019.

Hopefully our concerns voiced above are addressed!

### **Disclaimer:**

*This publication contains information/ analysis solely for informational and academic purpose. It is not a guidance note and does not constitute any professional advice at all. The author does not accept any responsibility for any loss or damage of any kind arising out of any information in this article or for any actions taken in reliance thereon.*



## UNION BUDGET – 2019-20 & TDS PROPOSALS

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

**H**on'ble Finance Minister while presenting the Union Budget for 2019-20 has proposed a slew of measures to widen the tax base by introducing new Provisions under the Chapter XVII of the Income Tax Act, 1961. The said Chapter extensively deals with 'Tax Deduct at Source – TDS' provisions such as collecting, recovery of tax and other matters connected therewith. Section 200 of the said Chapter rests a duty on every person who makes a certain payment to deduct the tax at a specified rate before making such payment or crediting to the recipient's account. Section 201, upon failure, imposes a penalty on deductor who bound to deduct the tax at source but defaulting to so deduct the tax or in the remitting the payment thereof to the Central Government within the specified period. Hon'ble Finance Minister vide Finance (No.2) Bill, 2019 has proposed to insert the following Clauses and amendments with effect from 1<sup>st</sup> Septmeber, 2019 suitably, they are –

1. TDS on payment by Individual / HUF to contractors and professionals – *To insert a Section after Section 194LD*

It has been proposed to insert a wholly new Section 194M to cover Individual or Hindu Undivided Family (HUF) to deduct the tax at source at the rate of five per cent on the sum, or the aggregate of sums exceed Rs. fifty lakhs in a year., paid to a resident contractor or professional even though payment made for personal use. Since the absence of this 'due provision', Individual or HUF who is carrying on such business or profession under no such obligation of deducting the tax at source which Revenue stares for a considerable amount of tax evasion. Hence to plug this loophole, this proposal has been made.

2. TDS at the time of purchase of immovable property - *An amendment by inserting Clause (aa) after Clause (a) of Explanation to Section 194-IA*

It has been proposed to include all charges such as club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to the transfer of the immovable property under the term of consideration for immovable property'. Generally, sale transactions include above-said payments where the buyer is bound to make such payments to the seller either under the same or under a different agreement. Hence this proposal has been made.

3. TDS on cash withdrawal to discourage cash transactions – *To insert new Sections 194M and Section 194N and to consequent amendments to Sections 269SS, Section 269ST and Section 269T*

To encourage cashless economy, it has been proposed to insert two new sections 194M and Section 194N to provide for levy of TDS on such cash payments. Section 194M to provide for levy of tax deduction at source on any sum or aggregate of sum exceeds Rs. fifty lakhs, paid by an individual or a Hindu undivided family (other than those persons covered under Section 194C / Section 194J of the Act) to a resident for carrying such works say the supply of labour, by way of professional fees at the time of credit to the account or in cash or any other modes whichever is earlier. Section 194N to enable banking company, co-operative society engaged in the banking business, post office, which is responsible for paying any sum or aggregate of sums exceeds of Rs. one crore in cash during the previous year to any person to deduct tax at source at the time making payment. Further, the said proposal does not apply to such payments made to the Government, banking company, co-operative society engaged in carrying on the banking business, post office, business correspondent of a banking company or co-operative society, operator of white label ATMs. Proposed TDS Rates are 5 per cent and 2 per cent respectively.

4. TDS on the non-exempt portion of life insurance pay-out on a net basis – *To amend the current tax rate and to allow deduct tax on net instead on the gross amount under Section 194DA*

The current provision mandates to deduct the tax amount at the rate of one per cent of such gross amount at the time of payment. To ease the burden on the taxpayer and tax administration, it has been proposed to increase the tax rate at five per cent by allowing levy on income component or on net income.

The aforesaid proposals are in the right direction which will curb the cash transactions at higher strata of the society.

# ADVANCE RULING IN GST (January 2019 to June 2019)

TEAM TRD

<u>Name of Applicant</u>	<u>Industry</u>	<u>Order No. &amp; Date</u>	<u>Case History</u>
Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd.	Manufacturing of Mil Proucts <b>(Rajastahn AAR)</b>	RAJ/AAR/2019-20/12 Dtd. 19.06.19	<ul style="list-style-type: none"> <li>The applicant is engaged in manufacturing of Mil Products</li> <li>The applicant procures raw milk from rural areas through its primary milk producer's dairy co-operative societies.</li> <li>Most of the sale of milk is exempted and few sales are taxable. The question raised</li> </ul> <p>1. <i>Applicability of TDS under GST from payment made to vendors for providing taxable goods &amp; services for making its supplies.</i></p> <p><b>Answer</b> -TDS provision is not applicable u/s 51 since the applicant is not registered under societies registration Act 1860 nor it is established by any Government</p>
M/S Vedant Synergy Pvt. Ltd.	Supply of Goods & Services for E-Governance <b>(Rajastahn AAR)</b>	RAJ/AAR/2019-20/11 Dtd. 03.06.19	<ul style="list-style-type: none"> <li>The applicant will supply various Goods &amp; Services for E-Governance , Govt. of Karnataka</li> <li>The applicant has applied for bidding in RPF"RPF for selection of an SI to implement and maintain software VC up to Gram Panachayat Govt. Offices" issued by center for E-Governance, Govt. of Karnataka. The questions raised</li> </ul> <p>1. <i>Classification of any goods or services or both;</i></p> <p><b>Answer</b> -HSN Code 998361 (Information Technology infrastructure and Network Management Services)</p> <p>2. <i>Determination of the liability to pay tax on any goods or services or both;</i></p> <p><b>Answer</b> - GST rate 18%</p>
Greentech Mega Food Park Pvt. Ltd.	Set up of Mega Food Park <b>(Rajastahn AAR)</b>	RAJ/AAR/2019-20/10 Dtd. 28.05.19	<ul style="list-style-type: none"> <li>Ministry of food processing Industries of India has granted approval to the applicant company to set up a Mega Food Park at Rajasthan</li> <li>Beside the setup of Food Park, the applicant company identified certain individual plots on the food park project site and wishes to enter into lease agreement with several lessees for 99 years. The questions raised</li> </ul> <p>1. <i>Whether the Lease Agreement between the Applicant Company i.e. the lessor and the lessee for a period of 99 years is a sale of immovable property and outside GST and is exempt from levy of GST?</i></p> <p>2. <i>If the present transaction of giving land on lease of 99 years is taxable under GST, then at what rate and what SN code is applicable?</i></p> <p><b>Answer</b> -Lease agreement between lessor and lessee for 99 years is lease agreement of immovable property classified under HSN Code 9972 &amp; attracts GST @18%</p>
National Highway Authority of India (Regional Office)	Development , maintenance & management of National Highways <b>(Rajastahn AAR)</b>	RAJ/AAR/2019-20/09 Dtd. 28.05.19	<ul style="list-style-type: none"> <li>National Highway Authority of India is engaged in Development , maintenance &amp; management of National Highways</li> <li>NHAI undertook a project for development of Highways in Rajasthan where the power transmission line of RVPNL are crossing the Highways</li> <li>So these electrical lines have to be shifted. As per policy of RVPNL, NHAI will have to bear all costs relating to shifting of Electrical lines</li> <li>RVPNL shall be charging 5% of total estimated cost as supervision charge , fixed amount of shut</li> </ul>

			<p>down charge &amp; GST on both components</p> <ul style="list-style-type: none"> <li>RVPNL has issued demand imposing 18% GST on total estimated cost stating as asset transfer. The questions raised</li> </ul> <ol style="list-style-type: none"> <li>Whether there is any 'Asset Transfer' involved which is a supply liable to GST in the work of shifting &amp; raising of transmission lines owned by RVPNL by NHAI in the course of widening, modification &amp; diversification of its highways after completion of this work?</li> <li>Without prejudice to the submissions, if there is an 'Asset Transfer' which is a supply under GST, then who is liable to pay GST?</li> <li>If above GST is to be paid by the Applicant, then the same will be exempt vide Entry 4 of Notification no. 12/2017 CT(R) dated 28.06.2017?</li> </ol> <p><b>Answer</b> – Asset constructed by the applicant does not fall under the category "Goods" . therefore no supply is involved and no GST is applicable.</p>
Vinayak Stone Crusher	Crushing of Boulder <b>(Rajastahn AAR)</b>	RAJ/AAR/ 2019-20/08 Dated 17.05.2019	<ul style="list-style-type: none"> <li>The applicant is engaged in the business of Crushing of Boulder Resulting in to broken or crushed stone , ballast</li> <li>The applicant has been granted mining lease for extracting rough boulder of stone from mining by Rajasthan State Govt.</li> <li>For extracting rough boulder, M/S Kishore &amp; Party collects royalty on behalf of Rajasthan State Govt. The questions raised</li> </ul> <ol style="list-style-type: none"> <li>Classification of Service provided by Rajasthan Govt. to Vinayak Stone Crusher &amp; GST Rate</li> </ol> <p><b>Answer</b> – will be classified under 997337. GST Rate 18%</p> <ol style="list-style-type: none"> <li>Whether service provided by Rajasthan State Govt. covered under Notification No. 13/2017-CT(Rate) dated 28.06.2017 and whether Vinayak Stone Crusher is taxable person to discharge GST under RCM Provision or whether this covered by exclusion clause (1) of entry no. 5 and Rajasthan State Govt. is liable to discharge GST</li> </ol> <p><b>Answer</b> – The applicant is receipt of service. So he is liable to discharge GST under RCM Provision</p> <ol style="list-style-type: none"> <li>As per Notification No. 14/2018C.T (Rate) dated 28.07.2018; the service supplied by Rajasthan State Govt. to excess Royalty Collection Contractor for collection of Royalty became exempt. In this case whether Vinayak Stone Crusher is taxable person to discharge GST under RCM Provision</li> </ol> <p><b>Answer</b> – The applicant is liable to discharge GST under RCM Provision</p>
All Rajasthan Corrugated Board and Box Manufacturers Association	Upliftment & technological advancement of corrugation industry <b>(Rajastahn AAR)</b>	RAJ/AAR/ 2019-20/07 Dated 17.05.2019	<ul style="list-style-type: none"> <li>The applicant is engaged in the business of Upliftment &amp; technological advancement of corrugation industry &amp; to develop strong relationship with stakeholders</li> <li>The applicant will organize and manage the conference and exhibition and it will be attended by delegates, vendors, exhibitors from all states of India. The questions were raised-</li> </ul> <ol style="list-style-type: none"> <li>What shall be the nature of service and classification in accordance with Notification No. 11/2017- CT(R) dated 28.06.17 read with annexure attached to it in relation the following services: <ol style="list-style-type: none"> <li>Service provided by the applicant to the delegates.</li> <li>Service provided by the applicant to the exhibitors.</li> </ol> </li> </ol> <p><b>Answer</b> – The Service provided by the applicant to the delegates and exhibitors is a composite supply and classifiable under Service Code 998596 having Service description "Events, exhibitions, conventions and trade shows organizations and assistance services" as per Annexure: Scheme of Classification of Services to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time).</p>

			<p><b>2. In relation to the brand promotion packages offered by the applicant in the course of the event,</b></p> <p>a) What shall be the nature of service and classification in accordance with Notification N0.n/2017-CT(R) dated 28.06.17 read with annexure attached to it?</p> <p>b) Whether the applicant is liable to pay tax on services provided to the brand promoters or the liability to pay tax on such services falls on recipient under reverse charge according to Notification No. 13/2017 - Central Tax (Rate)?</p> <p><b>Answer</b> –The service of brand promotion packages offered by the applicant in the course of the event is a composite supply and classifiable under Service Code 998397 having Service description "Sponsorship services and brand promotion services" as per Annexure: Scheme of Classification of Services to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time).</p> <p>The applicant is liable to pay GST on service of brand promotion and not covered under reverse charge mechanism.</p> <p><b>3. Whether Input Tax Credit is admissible for the applicant in respect of tax paid on the following:</b></p> <p>a) Services provided by the hotel including accommodation, food &amp; beverages.</p> <p>b) Supply of food and beverages by outside caterers</p> <p>c) Services provided by event manager like pickup &amp; drop, exhibition stall setup, tenting, etc.</p> <p><b>Answer</b> – Input Tax Credit is admissible to the applicant in respect of tax paid on the following:-</p> <p>a) Services provided by the hotel including accommodation, food &amp; beverages.</p> <p>b) Supply of food and beverages by outside caterers</p> <p>c) Services provided by event manager like pickup &amp; drop, exhibition stall setup, tenting, etc.</p>
Pacific Quartz Surfaces LLP	Manufacture of Quartz Slabs (Artificial Stone) <b>(Rajastahn AAR)</b>	RAJ/AAR/ 2019-20/06 Dated 30.04.2019	<ul style="list-style-type: none"> <li>The applicant is a registered manufacturer cum supplier under GST engaged in the manufacture of Quartz Slabs (Artificial Stone). The questions were raised-</li> </ul> <p>1. What is the classification of Slabs of Quartz (Artificial Stone)?</p> <p><b>Answer</b> – HSN Code 68101990</p> <p>2. What will be the applicable rate of GST on Quartz Slabs (Artificial Stone)?</p> <p><b>Answer</b> – The applicable rate of GST on Quartz Slabs (Artificial Stone) is 18% (CGST 9% +SGST 9%) (Central Tax)</p>
Rambagh Palace Hotels Pvt Ltd	Hotel Industry <b>(Rajastahn AAR)</b>	RAJ/AAR/ 2019-20/05 Dated 30.04.2019	<ul style="list-style-type: none"> <li>M/s Rambagh Palace Hotels (P.) Ltd. is a five-star deluxe heritage hotel engaged in hospitality business operated under the brand name "Taj Group". Up-keep and maintenance of hotel building, equipments, electrical installation, Furniture and Fixtures and other infrastructures is crucial for continuity of its business.</li> <li>Expenses being routine in nature, the amount spent on the above-mentioned scenarios are charged to revenue as per Accounting Standards. The questions were raised-</li> </ul> <p>1. Whether ITC is available on expense made on:</p> <ul style="list-style-type: none"> <li>✓ Building materials such as cement, concrete, brick etc. meant for repair of building</li> <li>✓ Electrical fittings and sanitary fittings meant for repair of existing electrical and sanitary fittings</li> <li>✓ Repair of existing furniture and fixtures</li> <li>✓ New ready-to-use furniture such as Chairs etc.</li> </ul> <p><b>Answer-</b></p> <ul style="list-style-type: none"> <li>✓ ITC shall not be available to the extent of capitalization of building materials /Electrical / Sanitary</li> </ul>



			<p>fittings</p> <ul style="list-style-type: none"> <li>✓ ITC will be available on the supply of goods for repairing of Furniture / Purchase of New Furniture u/s 16 of CGST Act.</li> </ul> <p><i>Whether ITC is available on labour supplies received for carrying out above services?</i></p> <p><b>Answer-</b></p> <ul style="list-style-type: none"> <li>✓ ITC shall not be available to the extent of capitalization of service of labour supply in relation to building materials /Electrical / Sanitary fittings</li> <li>✓ ITC will be available for service of labour supply in relation to repairing of Furniture u/s 16 of CGST Act.</li> </ul> <p><i>Whether it makes any difference if aforementioned works are carried out in a composite manner?</i></p> <p><b>Answer-</b></p> <ul style="list-style-type: none"> <li>✓ ITC will not be available for works contract service to the extent of capitalization of supply of Goods &amp; Services</li> <li>✓ ITC will be available for GST paid on composite supply of Furniture &amp; Fixtures and Manpower Supply Service u/s 16 of CGST Act.</li> </ul>
Gitwako Farms India Pvt Ltd	Food Processing Industry ( <b>Rajastahn AAR</b> )	RAJ/AAR/ 2019-20/04 Dated 18.04.2019	<ul style="list-style-type: none"> <li>• The company is supplying frozen chicken to the Indian Armed and paramilitary forces. The work order awarded to the company clearly provides for supply of a specified amount of weight of chicken dressed chilled / frozen over as specified period of time.</li> <li>• As process of its supply, the bird is slaughtered and its carcass is processed, sealed and delivered in its natural shape.</li> <li>• Each dressed chicken (broiler) carcass subsequent to chilling and before freezing shall be individually packed in to primary package Viz. suitable size oxygen-water impermeable, heat shrink, food grade colourless LDPE bags of minimum 200 gauge/50 micron.</li> <li>• The LDPE bags are then put in to a dust and moisture proof and heat resistant food grade secondary package (HDPE Bag)printing on the packet the product name, firm's name and brand, net weight ,batch number/lot number and instructions for consumptions and preservation of such chicken.</li> <li>• The package is specifically mentioned for Defence Personnel Only. Frozen chicken is then delivered in temperature controlled refrigerated vans with data logger installed for continuous monitoring of frozen chicken.</li> </ul> <p>The questions were raised-</p> <p><i>What is the classification when the Frozen Chicken is sold in packaged form and it's HSN code?</i></p> <p><b>Answer-</b>The Branded Frozen Chicken supplied in a unit container is classifiable under HSN Code 02071200.</p> <p><i>Whether frozen chicken as sold by the company is exempt under Entry No. 9 of Not. No. 02/2017-CT(R)?</i></p> <p><b>Answer-</b>The Frozen Chicken supplied by the applicant is not exempted under Entry No. 9 of Notification No. 02/2017-CT(Rate) dated 28.06.2017(as amended from time to time). It attracts GST @5% (CGST 2.5% + SGST 2.5%).</p>
Laxmi Agrotech Steel	Metal Industry ( <b>Rajastahn AAR</b> )	RAJ/AAR/ 2019-20/03 Dated 16.04.2019	<ul style="list-style-type: none"> <li>• The applicant is engaged in the business of manufacturing/ trading of metal parts of sprinkler system used in agriculture irrigation. The parts comprise of Latch Clamp, C-Clamp, Foot Batten, Riser Pipe, Aluminium Rivet and Mini Sprinkler Rod which are exclusively meant for use</li> </ul>

			<p>in various types of Sprinkler/drip irrigation system.</p> <ul style="list-style-type: none"> <li>The Latch Clamp, C-Clamp and Foot Batten are made of Iron Sheets, Riser pipe is made of GI Pipe, Aluminium Rivets are made of aluminium wire and Mini Sprinkler Rod is made of Iron Rod and are designed and shaped that these can be used only in sprinkler/ drip irrigation equipment.</li> <li>The manufactured/Traded goods are sold to entities manufacturing sprinkler systems, Sprinkler Parts, Traders and consumers using sprinkler system as a part to be used in their sprinkler system.</li> </ul> <p>The question was raised-  <i>Whether parts of sprinkler system sold by us like Latch Clamp, C-Clamp, Foot Batten, Riser Pipe, Aluminium Rivet and Mini Sprinkler Rod etc. exclusively meant for use in Sprinklers and drip irrigation system but sold in isolation as parts and not as a complete system under the heading 8424 and the tax rate applicable on such components/parts when sold separately and not as a part of the sprinkler/drip irrigation?</i>  <b>Answer-</b>The metal parts manufactured and supplied by the applicant will not be covered under Entry No. 195B of Schedule II of Notification No.01/2017 dated 28.06.2017. The jurisdiction officer (Assistant Commissioner, Circle-I, SGST and Commercial Taxes, Jaipur) has submitted that items mentioned by the applicant fall under the heading 84249000 as components of Sprinkler/Drip irrigation, and should be taxable at the rate of 12%.</p>
Laxmi Rubber Industries	Manufacturing & Trading of Rubber Parts ( <b>Rajastahn AAR</b> )	RAJ/AAR/ 2019-20/02 Dated 16.04.2019	<ul style="list-style-type: none"> <li>The applicant is engaged in the business of manufacturing/Trading of rubber parts of sprinkler system &amp; drip irrigation system used in agriculture irrigation.</li> <li>The parts comprise of Rubber Ring/Gasket/Seal, Rubber Foot Batten Washer and Rubber Grommets which are exclusively made for use and to fit only in various types of Sprinkler/drip irrigation system and have no other use.</li> <li>These parts are designed and shaped that these can be used only in sprinkler/drip irrigation equipment.</li> <li>The manufactured/Traded goods are sold to entities manufacturing sprinkler systems, Sprinkler Parts, Traders and consumers using sprinkler system as a part to be used in their sprinkler/drip irrigation system.</li> </ul> <p>The question was raised-  <i>Considering Note No. 1, 2, 3 of Section XVI and Note No. 2 of Chapter 84, whether based on rules of interpretation of HS codes, the items made of vulcanized rubber like Rubber Ring/GASKET/Seal, Rubber Foot Batten Washer and Rubber Grommets falling under the heading 4016 are taxable as specific rubber items having a GST rate of 18% or as components of sprinkler/Drip irrigation system having a tax rate of 12% under heading 84249000. It is pertinent to note that these items are designed and shaped that these can be used only in sprinkler/drip irrigation equipment and have no other use.</i>  <b>Answer-</b>The rubber parts supplied by the applicant viz. Rubber Ring/Gasket/Seal, Rubber Foot Batten Washer and Rubber Grommets are classifiable under Chapter Heading 4016 and attract GST @18% (CGST 9% + SGST9%).</p>
Udyog Mandir	Manufacture of Khadi Garments ( <b>Rajastahn AAR</b> )	RAJ/AAR/ 2019-20/01 Dated 16.04.2019	<ul style="list-style-type: none"> <li>The applicant is a manufacturer of Khadi garments who buys Khadi fabrics from the market and get those fabrics stitched and makes own garments. The question was raised-  <i>Will Khadi readymade garments to be included under the</i></li> </ul>



			<p><i>entry of Khadi fabric under chapter 50 to 55 of GST classification?</i></p> <p><b>Answer</b>-Khadi readymade garments are not covered under the entry of 130A, chapter heading 50 to 55 of Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017.</p> <p><i>If not, then what is the correct classification and rate of tax on Khadi readymade garments?</i></p> <p><b>Answer</b>-Khadi readymade garments will be classifiable under Chapter heading/tariff item 62, as per Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 will attract GST as follows:-</p> <p>If the sale value of a readymade khadi garments manufactured by the applicant is less than Rs. 1000/- will attract GST @ 5% (SGST 2.5% + CGST 2.5%);</p> <p>If the sale value of a readymade khadi garments manufactured by the applicant is more than Rs. 1000/- will attract GST @ 12% (SGST 6% + CGST 6%).</p>
Ramnath Bhimsen Charitable Trust	Charitable Trust <b>(Chhattisgarh AAR)</b>	STC/AAR/11/2018 Dated 02-03-2019	<ul style="list-style-type: none"> <li>The applicant is running girl's hostel as Charitable Trust and charging a lump-sum fee of Rs.6000/- per month per boarder</li> <li>Further, in case, any boarder want to reside in hostel for few days, then the border is supposed to pay Rs. 240/- per day</li> <li>The Word "Hostel" has not been defined either under the Central/State/Integrated/UT Goods and Services Tax Act. The question was raised-</li> </ul> <p><b>1.</b> Whether the activity of providing the hostel on rent to various boarders is exempted? If it is exempted in such case, under which exemption notification the same is exempted?</p> <p><b>2.</b> Whether the activity of providing the hostel on rent to various boarders is taxable? If it is taxable, in such case, under which service access code the same is taxable?</p> <p><b>Answer</b>- The activity of providing accommodation services by the applicant in their hostel for which the applicant is collecting an amount below the threshold limit of Rs. 1000/- per day and no other charges are being collected for providing other allied facilities / services therein viz, canteen food, parking space for vehicles, coaching, library, entertainment etc. merits exemption as stipulated under Notification No. L2/2017-State Tax (Rate) No. F-10-43120t7/CT/V(80), Naya Raipur, Dated 28.06.2017 under Serial No. t4, Chapter 9963. This amount received for such supply by the applicant falling under tariff heading 9963 qualifies being treated as nil rate tax exempted supply.</p>
Shri Nawodit Agarwal	Transport of Cement/Clinkers <b>(Chhattisgarh AAR)</b>	STC/AAR/10/2018 Dated 26-03-2019	<ul style="list-style-type: none"> <li>The Applicant, is engaged in transporting of Cement/Clinkers to Shree Raipur Cement</li> <li>Shree Raipur Cement proposed that while transporting their cement/clinker they will provide the required diesel for transportation of the some and that the applicant need to charge them freight excluding diesel cost and hence GST will also be levied on taxable amount i.e. the amount excluding the diesel cost. The question was raised-</li> </ul> <p><i>Whether such supply of diesel by the recipient is to be added to the freight amount charged by the applicant or not.</i></p> <p><b>Answer</b>-The applicant are required to charge GST upon M/s Shree Raipur Cement, on the total amount including the cost of diesel i.e. on the total freight amount inclusive of the cost of diesel provided M/s Shree Raipur Cement.</p>
NMDC Limited	Mineral Producer <b>(Chhattisgarh AAR)</b>	STC/AAR/09/2018 Dated 22.02.2019	<ul style="list-style-type: none"> <li>The Applicant NMDC Limited is a state-controlled mineral producer of the Government of India. It is owned by the Government of India and is under administrative control of the Ministry of steel. It is India's largest iron ore producer and exporter producing million tons of iron ore from fully</li> </ul>

			<p>mechanized mines in Chhattisgarh.</p> <ul style="list-style-type: none"> <li>NMDC Bachel is required to pay royalty @15%. Further Section 9B and 9C of Mines and Minerals (Development &amp; Regulation) Act, 1957 mandates that NMDC shall contribute 30% of royalty to District Mineral Foundation and 2% of Royalty to National Mineral Exploration Trust. The questions were raised-</li> </ul> <p><b>1. The Applicant seeks clarification as to whether royalty paid in respect of Mining Lease can be classified under "Licensing services for the right to use minerals including its exploration and evaluation" falling under the heading 9973 attracting GST at the same rate of tax as applicable on supply of like goods.</b></p> <p><b>Answer-</b>The royalty paid by M/s NMDC in respect of mining lease is classifiable under sub heading 997337 ; 'Licensing services for the right to use minerals including its exploration and evaluation' (covered under entry no. 17 of Notification No. 1112017(Rate), dated 28.06.2017, attracting GST at the same rate as applicable for the supply of like goods involving transfer of title in goods, under reverse charge basis.</p> <p><b>2. In this regard, the Applicant seeks clarification whether such statutory contributions made amounts to "supply" and whether the same is liable for GST under reverse charge.</b></p> <p><b>Answer-</b> The contributions made to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET), by M/s NMDC as per MMDR Act, 1957 are liable to GST, under reverse charge basis</p>
Alcon Resort Holdings Pvt. Ltd.	Health Care Service (Goa AAR)	GOA/GAAR/6/2018-19 Dated 22.01.19	<ul style="list-style-type: none"> <li>The applicant provides health care treatment service to Indian as well as International Patients through Ayurveda, Naturopathy &amp; Yoga. The questions were raised-</li> </ul> <p><i>Whether the service provided by the applicant including all incidental services amounts to a composite service under the classification of health care service exempt under Entry No. 74 of Notification 12/2017-Central Tax</i></p> <p><b>Answer-</b> The applicant qualifies to be a clinical establishment and the services offered provided by the applicant qualify to be Health Care Services. The Intra state supplies of the said services attract NIL rate of Tax as per 74 of Notification 12/2017-Central Tax dated 28th June 2017.</p>
Inox India Product Ltd	Manufacture of transport tank (Gujarat AAR)	GUJ/GAAR/R/2019/4 Dated 28.02.19	<ul style="list-style-type: none"> <li>The applicant M/s. Inox India Pvt. Ltd. is engaged in manufacture of 'transport tank', which are used to transport gas, liquefied gas as well as liquids. The question was raised-</li> </ul> <p><i>Whether supply of transport tank by mounting the same on chassis amount to supply of „tank" classifiable under Heading 7311 or supply of „motor vehicle" classifiable under Heading 8704 in the GST regime?</i></p> <p><b>Answer-</b> The product 'Transport Tank mounted on chassis of customer' being supplied by M/s. Inox India Pvt. Ltd. (GSTIN 24AAACI4416P1ZH) is classifiable under Heading 7311.</p>
Sonal Product	Manufacture of Papad and papad pipes (Gujarat AAR)	GUJ/GAAR/R/2019/3 Dated 22.02.19	<ul style="list-style-type: none"> <li>The applicant M/s. Sonal Product is engaged in manufacture of papad and papad pipes (commonly known as un-fried Fryums) of different shapes, sizes and varieties. The question was raised-</li> </ul> <p><b>1. What is the correct classification of "Papad and papad pipes" of different shapes, sizes and varieties (commonly known as un-fried Fryums) manufactured by the applicant and sold vide Supply Invoice No. 1718/38SP dated 24.09.2017?</b></p> <p><b>Answer-</b> The product „Un-fried Fryums" manufactured and supplied by M/s. Sonal Product is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff</p>

			<p>Act, 1975.</p> <p><b>2. What is the applicable rate of CGST payable on such "Papad and papad pipes of different shapes, sizes and varieties (commonly known as un-fried Fryums)?</b></p> <p><b>Answer-</b> Goods and Service Tax rate of 18% (CGST 9% + GGST 9% or IGST 18%) is applicable to the product „Un-fried Fryums“ as per Sl. No. 23 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the CGST Act, 2017 and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the GGST Act, 2017 or IGST Act, 2017</p>
National Dairy Development board	Promoting dairy and other agriculture based industries & Financial Service Provider <b>(Gujarat AAR)</b>	GUJ/GAAR/R/2019/1 Dated 20.02.19	<ul style="list-style-type: none"> <li>The objectives of applicant(NDDDB) set up under National Dairy Development Board Act, 1987 is to promote dairy and other agriculture based industries; and the activities undertaken by NDDDB, to fulfill its objectives, not only include technical or administration assistance but also financial assistance.</li> <li>The applicant submitted that the NDDDB Act has specifically authorized NDDDB to undertake the activity of financing, including lending and borrowing money, for diverse purposes. The applicant pointed out following relevant sections of the NDDDB Act. The question was raised <ol style="list-style-type: none"> <li>Whether NDDDB can be considered as financial institution for the purpose of availing credit to the extent of 50% of input tax credit, as prescribed in Section 17 of CGST Act, 2017?</li> </ol> </li> </ul> <p><b>Answer-</b> M/s National Dairy Development Board (GSTIN 24AADCN2029C1Z5) is to be considered as „Financial Institution“ for the purpose of section 17(4)of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017.</p>
National Dairy Development board	Promoting dairy and other agriculture based industries & Financial Service Provider <b>(Gujarat AAR)</b>	GUJ/GAAR/R/2019/2 Dated 22.02.19	<ul style="list-style-type: none"> <li>The applicant, National Dairy Development Board created a trust as educational institution named by <b>“Anandalaya Educational Society”</b></li> <li>NDDDB allowed that educational institution to occupy and use the building and premise owned by NDDDB within its campus through a lease deed at very nominal amount for enabling the institute to grow and prosper which eventually would encourage the activity of education. The questions were raised- <ol style="list-style-type: none"> <li>Whether NDDDB would be qualified as „Governmental Authority“ from GST perspective?</li> </ol> </li> </ul> <p><b>Answer-</b>National Dairy Development Board would be qualified as „government authority“ from Goods and Services Tax perspective, if it fulfils the condition namely „with 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under article 243W of the Constitution“</p> <ol style="list-style-type: none"> <li>Whether renting of immovable property service provided by NDDDB to an educational institute would be exempted under Sl. No. 4 of Notification No. 12/2017-Central Tax (Rate)?</li> </ol> <p><b>Answer-</b> Renting of immovable property service provided by National Dairy Development Board to an educational institute would be exempted under Sr. No. 4 of Notification No. 12/2017-Central Tax (Rate) and corresponding State Tax Notification, if it qualifies as „governmental authority“.</p>
Bhutoria Refrigeration Private Limited	Manufacture & Trading of Buses <b>(Karnataka AAR)</b>	KAR ADRG 12 / 2019 Dated 25.06.19	<ul style="list-style-type: none"> <li>The Applicant is engaged in the business of building and mounting of body on the chassis of different models of buses.</li> <li>The Applicant, for building and mounting of the body, procures various inputs on payment of appropriate GST and claims ITC on the same.</li> <li>They undertake the body building activity and</li> </ul>

			<p>fabrication works using aforesaid inputs and their own machines, manpower and other facilities.</p> <ul style="list-style-type: none"> <li>Sometimes, the applicant receives the chassis of the buses from Retail customers (Sender) on free of cost basis, under the delivery challan and ownership of the chassis always remains with sender .After that the applicant performs various activities and returned the fully built vehicle to the sender under Tax Invoice. The question was raised-</li> </ul> <p>1. Whether the activity of building and mounting of the body on the chassis by the Applicant will result in supply of goods under HSN 8707 or supply of services under HSN 9988?</p> <p><b>Answer-</b>The supply of ready built body and the activity of mere mounting the body on chassis supplied by the owner amounts to supply of goods and it will be classified under HSN Code 8707, GST Rate will be 28%</p> <p>The activity of step by step building of the body on the chassis supplied by the owner using their own inputs &amp; capital goods amounting to supply of service, in terms of Circular dated 09.08.2018 and will be classified under SAC 9988 , GST Rate will be 18%</p>
Sri.Kanyakapara meshwari Oil Mills	Manufacturing and trading of edible oils and non-edible oils (Karnataka AAR)	KAR ADRG 11 / 2019 Dated 25.06.19	<ul style="list-style-type: none"> <li>The applicant is engaged into the business of manufacturing and trading of edible oils and non-edible oils.</li> <li>The applicant wants to sell "<u>Perfume Deepam Oil</u>" (<u>Not for Cooking</u>) , "<u>Deepam Oil</u>" (<u>Not for Cooking</u>) , <u>A Mixture of Gingely Oil, Palmoline Oil, Rice Bran Oil</u>. The question were raised-</li> </ul> <p>1. What is rate of tax for "Perfumed Deepam Oil" which is prepared by mixing Gingely Oil, Palmoline Oil, Rice Bran Oil or any one oil with perfurme or chemical and used for lighting lamp for God (not for cooking) with HSN Code.</p> <p><b>Answer-</b> will be covered under 1518 &amp; is taxable @6% under CGST Act, 6% KGST Act and 12% under IGST Act</p> <p>2. What is rate of tax for "Non-perfumed Deepam Oil" which is prepared by mixing Gingely Oil, Palmoline Oil, Rice Bran Oil or any one oil without perfurme or chemical and used for lighting lamp for God (not for cooking) with HSN Code.</p> <p><b>Answer-</b> will be covered under 1518 &amp; is taxable @6% under CGST Act, 6% KGST Act and 12% under IGST Act</p> <p>3. What is rate of tax for a mixture of Gingely Oil, Palmoline Oil, Rice Bran Oil or any one oil.</p> <p><b>Answer-</b> Each of the oils , namely Palmoline oil will be covered under chapter heading 1511, Gingely Oil &amp; Rice Bran Oil will fall under chapter heading 1515 , &amp; the mixture of the said edible oils will fall under chapter heading 1517 &amp; is taxable @2.5% under CGST Act,2.5% KGST Act and 5% under IGST Act</p>
Xiaomi Technology India Private Limited	Trading of Electrical & Electrical Goods (Karnataka AAR)	KAR ADRG 01 / 2019 Dated -22.01.2019	<ul style="list-style-type: none"> <li>The applicant is engaged in trading of Electrical &amp; Electrical Goods. The question was raised-</li> </ul> <p>1. Whether the "Power Bank", traded by the Applicant, is classifiable under Heading 8504 40 90 as 'Static Converter - Others'?</p> <p><b>Answer-</b> It will be classified under Heading 8507 as Accumulator &amp; not as Static Converter</p>
Sanghi Brothers (Indore) Pvt. Ltd.	Trading of Motor Vehicles (M.P AAR)	NO. 06/19-20 Dated 03.05.19	<ul style="list-style-type: none"> <li>The applicant is engaged in the business of trading of Motor Vehicles and charges 28% GST at the time of trading</li> <li>The applicant has entered into a contract with M/S Arpijay Fabricators Pvt. Ltd. who will works as Job worker on behalf of applicant. The question was raised-</li> </ul> <p>1. Whether the building of body after utilizing and consuming owned materials and providing labour &amp; further amounting the same on chassis of the principal would amount to supply of Services?</p>

			<p>2. Whether it would amount to a composite supply consisting a small part of supply of goods and major part of supply of services. Supply of services being principal supply therefore on the basis of provision of section 8(a) of the CGST Act the same should be classified as supply of service under HSN 9988</p> <p><b>Answer-</b> It will be classified under SAC Code 998881 &amp; will be taxable @18%</p>
E-DP Marketing Pvt. Ltd.	Trading of Edible Oils <b>(M.P AAR)</b>	NO. 05/19-20 Dated 02.05.19	<ul style="list-style-type: none"> <li>The applicant is engaged in the business of trading of Edible Oils</li> <li>The applicant intends to import crude soya oil on CIF basis including ocean freight in the price of imported goods</li> <li>The applicants are required authorized seller located in Non-taxable territory to transport goods from supplier to Indian Customs Territory</li> <li>The ocean freight will be paid by seller located outside India. The question was raised-</li> </ul> <p>1. Whether the applicant is again required to pay IGST on the component of ocean freight under RCM provision on deemed amount which will amount to double taxation of IGST on the deemed component of ocean freight of the imported goods because as per Corrigendum to Notification No. 8/2017 IGST (Rate) dt. 30.06.2017, the importer of goods is required to pay IGST under RCM provision on the deemed ocean freight equal to 10% of the value of imported goods.</p> <p><b>Answer-</b> The applicant is liable to pay IGST on ocean freight paid on imported goods under RCM provision irrespective of ocean freight component having been a part of the CIF value of imported goods</p>
Network For Information & Computer Technology	Commercial Training & Coaching and Business Auxiliary Services <b>(M.P AAR)</b>	NO. 04/19-20 Dated 10.04.19	<ul style="list-style-type: none"> <li>The applicant is engaged in the business of Commercial Training &amp; Coaching and Business Auxiliary Services. The question was raised -</li> </ul> <p>Sr. No. 72 of Not. No. 12/2017 Central Tax(Rate), dated 28-06-17 issued by the Central Government under CGST Act, 2017 and exemption provided under Sr. No. 72 of Not. No. FA-3-42/2017-1-V(53) dated 30-06-2017 issued by the Madhya Pradesh Government under M.P. Goods &amp; Services Act, 2017 is applicable for the applicant?</p> <p><b>Answer-</b> The applicant shall not be entitled to avail benefit of exemption under Sl No. 72 of Notification No. 12/2017 – Central Tax (Rate) dt. 28.06.2017 and Sl. No. 72 of Notification No. FA 3-42/2017/1/V(53) dt. 30.06.2017 in respect of services of training provided to U,P Skill Development Corporation.</p>
Narsingh Transport	GTA Services <b>(M.P AAR)</b>	NO. 02/19-20 Dated 18.02.19	<ul style="list-style-type: none"> <li>The applicant is engaged in GTA services and opted to pay GST @12% and availing ITC on vehicles and their spare parts used for providing GTA service , inward service i.e insurance of Vehicles, repair &amp; maintenance of Vehicles.</li> <li>The applicant has purchased cars with GST and has provided them to various companies on monthly lease agreement. The question was raised –</li> </ul> <p>1. Whether the GST paid on these cars provided to their different customers on lease rent will be available to it as INPUT TAX CREDIT(ITC) in terms of Section 17(5) of Central Goods and Service Tax Act, 2017</p> <p><b>Answer-</b> The applicant is entitled to avail ITC on cars which are supplied to customers on lease agreement subject to condition applicable in Notification No. 11/2017-Central Tax (rate) dt. 28.06.2017</p> <p>The provision of Rule 42 shall also be applicable if required so</p> <p>At the time of termination of lease agreement , if the vehicle is not being further leased to customer , the applicant shall be liable to reverse ITC already availed</p> <p>Such vehicles should be registered for commercial use.</p>

J C Genetic India Private Limited	Healthcare Company (M.P AAR)	NO. 01/19-20 Dated 21.01.2019	<ul style="list-style-type: none"> <li>The applicant is a healthcare company</li> <li>The applicant has collaboration with diagnostic companies, accredited by NABL , and DSIR certified to provide advance genetic tests that help in prevention and management of Cancer &amp; various health &amp; metabolic disorders. . The question was raised –</li> </ul> <p>1. Whether exemption provided under Sr No. 74 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 is applicable to the applicant?</p> <p>2. Whether applicant qualifies to be a “Clinical Establishment” under clause 2(s) of the said notification?</p> <p><b>Answer-</b> The applicant has failed to prove their legal status as Clinical Establishment and they are merely working as sub-contractors to other accredited companies , and accordingly the applicant are not entitled to avail exemption 12/2017-Central Tax (Rate) &amp; corresponding notification issued under MPGST Act.</p>
Indian Institute of Science Education and Research	Providing Science Education & Research Training (Orissa AAR)	07/Odisha/AAR/18-19 Dated 13.02.2019	<ul style="list-style-type: none"> <li>The applicant is engaged in imparting Science Education Research training to students and has commenced BS-MS (for 5 years) leading to Post-Graduate Degree. It is also conducting PHD program in stream of Sciences from August, 2016 and such education and research provided by it are exempted from levy of GST.</li> <li>It has also developed advanced teaching and research laboratories &amp; for this purpose the Institute has installed/procured with imported equipment's from abroad or from OEM's suppliers of such imported equipment's in India. The question was raised-</li> </ul> <p>1. Applicability of notification issued under the provisions of GST Act, and Determination of the liability to pay tax on any goods or services or both.</p> <p><b>Answer-</b> Notification No-S1/1996-customs, dated 23.07.1996 read with Notification No. 4312017-customs dated 30.06.2017 and Minutes of the 14th GST council is applicable to the Applicant for import of specified Equipments as listed under column (3) of the aforesaid notifications and notifications are not applicable to the OEM suppliers of imported equipment.</p> <p>The scope of issuing a ruling u/s gg of the oGST/CGST Act is limited to the extent prescribed in sub-section (2) of section 97 of the OGST/CGST Act. A ruling on whether the decision of the GST council granting the exemption is binding on the Department in the absence of non-issuance of corresponding Notification by the central/state Government is not within the competence and mandate of the Authority of Advance Ruling constituted u/s 96 of the OGST Act.</p> <p>Concessional rate of GST/IGST at s% vide Notification No-45_CGST (Rate) dt. 14.11.2017 and Notification No-47-IGST (Rate), Dt. 14.11.2017 is applicable goods mentioned at para 6.3.0 as above whether imported or indigenous.</p>
Prabhat Gudakhu Factory	Manufacture & Sale of Tobacco Product (Orissa AAR)	06/Odisha/AAR/18-19 Dated 05.02.2019	<ul style="list-style-type: none"> <li>The applicant is engaged in the business of manufacture &amp; sale of “Gudakhu”, a tobacco product in a paste form which is generally used as a Tooth Paste. The question was raised-</li> </ul> <p>1. Appropriate classification of Gudakhu under GST Tariff Heading</p> <p><b>Answer-</b>24039990</p> <p>2. Determination of liability to pay NCCD(National Calamity Contingency Duty)</p> <p><b>Answer-</b> NCCD is levied under Central Excise Act &amp; not under CGST/OGST/IGST Act. So it is not within scope of OGST/CGST Act.</p>



Innovative Textile Ltd	Textile Company (Uttarakhand AAR)	No.20 dated 26.03.2019	<ul style="list-style-type: none"> <li>The applicant is carrying on business of textile yarns, fabrics , garments</li> <li>The applicant sold his running business on slump sale basis with all asset &amp; liabilities. The question was raised-</li> </ul> <p>1. Whether business transfer agreement as a going concern on slump sale basis is exempted from the levy of GST in terms of sl. no. 2 of the notification no.12/2017 central tax (Rate) dated 28-06-2017?</p> <p><b>Answer-</b> Transfer of Business would be treated as Going Concern which is exempted from GST as per on date notification no.12/2017 central tax(Rate) dated 28-06-2017</p>
Opto Electronic Factory	Unit of Ordnance Factory (Uttarakhand AAR)	No.19 dated 07.02.2019	<ul style="list-style-type: none"> <li>The applicant is exclusively engaged in manufacturing and repair of Sight Vision Equipment for Armed Forces for being used in Tanks</li> <li>The applicant classified their goods under HSN Code 8710 &amp; discharged GST @28%</li> <li>Later , GST Rate was reduced to 12% under HSN Code 8710. . The question was raised-</li> </ul> <p>1. Classification and Rate of Applicable GST on various equipment manufactured for being used exclusively in various Tanks.</p> <p><b>Answer-</b> The classification of subjected goods should be under HSN Code 9013 &amp; GST rate will be 18%.</p>
Elefo Biotech Pvt. Ltd.	Sanitary Products (Uttarakhand AAR)	Ruling No.18 dated 07.02.2019	<ul style="list-style-type: none"> <li>The applicant supplies <i>Anaerobic Microbial Inoculums</i> for using in Bio Toilet Technology. The question was raised-</li> </ul> <p>1. Recommendation on the HSN code and applicable tax rate to be used under GST for the AMI (said product)</p> <ul style="list-style-type: none"> <li>3002-HS Code of Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological process.</li> <li>0511-Animal products not elsewhere specified or included; dead animals of chapter 1 or 3, unfit for human consumption, other than semen including frozen semen.</li> <li>3101-All goods i.e. animal or vegetable fertilisers put up in unit containers and bearing a brand name.</li> </ul> <p><b>Answer-</b> The said product will be classified under sub heading 31010099 and accordingly the GST will be levied 5% on supply of these products</p>
Goodwear fashion Pvt Ltd. SIDCUL Pantnagar.	Garments Business (Uttarakhand AAR)	Ruling No.16 dated 30.01.2019	<ul style="list-style-type: none"> <li>The applicant is engaged in Garments Business. The question was raised-</li> </ul> <p>1. Whether interlining fabrics is Classified under HSN code 5903 or should be Classified as further blend of yarn (In chapter 52-55)?</p> <p><b>Answer-</b> Interlining fabrics i.e polyester viscose fusing interlining Woven fabric , partially covered with plastic which leads to plastic coated pattern that is visible on it's one side does not fall under HSN Code 5903. However it being partially coated or partially covered with plastics &amp; bearings will fall under chapters 50 to 55, 58 or 60 as per the chapter note 2(a)(4) of the chapter 59 of the GST Tariff.</p>
Premier Solar Systems Pvt Ltd. Dehradun.	Power-plant (Uttarakhand AAR)	Ruling No.15 dated 24.01.2019	<ul style="list-style-type: none"> <li>The applicant has supplied solar rooftop power plant with design , erection , commissioning , installation</li> <li>The applicant has also supplied solar irrigation water pumping system with design , erection , commissioning , installation. The question was raised-</li> </ul> <p>1. "Whether the supply of Solar rooftop power plant along with design Erection, Commissioning and Installation is a 'Composite supply' and the applicability of GST rate"?</p> <p>2. "Whether the supply of solar irrigation water pumping</p>

			<p><i>system along with design erection, commissioning and installation is a 'composite supply' and the applicability of GST rate"?</i></p> <p><b>Answer</b>-Supply in question would covered under "Solar Power Generating System" as a whole in terms of serial no. 234 of schedule-I of the Notification No.01/2017-Central Tax(Rate) dated 28.06.2017</p> <p>Supply in question would be treated as "Composite Supply" 70% of the gross value of supply in question shall be the value of supply of said goods falling under chapter 84,85 or 94 of the tariff only would attract 5% GST rate and the remaining portion (30%) of the aggregate value shall be the value of supply of taxable service attracting 18% GST rate in terms of Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018. Other goods used in these plants attract applicable GST rate.</p>
Mahalaxmi Poly Pack Pvt Ltd. Pantnagar Uttarakhand	Manufacturing of Bags (Uttarakhand AAR)	Ruling No.14 dated 07.01.2019	<ul style="list-style-type: none"> <li>The applicant manufactures and supplies Bags. The question was raised- <ol style="list-style-type: none"> <li>1. Identification of correct classification of poly Propylene Leno Bags among heading no. 63053300 and 39232990?</li> <li>2. Identification of rate of Duty applicable as per respective HSN of Poly Propylene Leno Bags?</li> </ol> </li> </ul> <p><b>Answer</b>- Poly Propylene Leno Bags will be classified under HSN Code 3923 of the GST Tariff Act &amp; therefore supply of said product will be chargeable to GST @ 18%.</p>
Time Tech Waste Solutions Pvt Ltd	Waste Management Service (W.B AAR)	14/WBAAR/2019-20 Dated 27.06.2019	<ul style="list-style-type: none"> <li>The applicant is providing conservancy/solid waste management service to the Bally Municipal Corporation.</li> <li>Any "pure service" (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution is exempted under GST. The question was raised- <ol style="list-style-type: none"> <li>1. Whether notifications relating to TDS apply to supply of waste management service to a municipality and whether the applicant needs to be registered even if he makes exempted supplies only.</li> </ol> </li> </ul> <p><b>Answer</b>- The Applicant's supply to the Bally Municipal Corporation is exempt from the payment of GST as per Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017. As the Applicant is making an exempt supply, the provisions of section 51 and, for that matter, Notification No.50/2018 - Central Tax dated 13.09.2018 and State Government Order No. 6284 - F(Y) dated 2B/09/2018, to the extent they mandate and deal with the mechanism of TDS, do not apply to his supply.</p> <p>If the Applicant's turnover consists entirely of exempt supplies, he is not liable to registration in terms of section 23(1)(a) of the GST Act.</p>
Borbheta Estate Pvt Ltd	Renting dwelling units (W.B AAR)	13/WBAAR/2019-20 Dated 27.06.2019	<ul style="list-style-type: none"> <li>The applicant is inter alia renting dwelling units</li> <li>The Applicant has executed agreements for leasing/renting of four dwelling units it owns at different locations in Kolkata.</li> <li>According to the agreements, all of these units are to be used for residential purpose. The question was raised- <ol style="list-style-type: none"> <li>1. Whether applicant is liable to pay GST on leasing of a dwelling unit to a company for residential purpose.</li> </ol> </li> </ul> <p><b>Answer</b>- The Applicant's service of renting/leasing out the</p>



			dwelling units for residential purpose, is exempt under SI No. 12 of Notification No. 12/2017-CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 - FT dated 28/06/2017), The Applicant is, therefore, not liable to pay tax on supply of such service
Dredging & Desiltation Company Pvt Ltd	Drainage Service <b>(W.B AAR)</b>	12/WBAAR/2019-20 Dated 27.06.2019	<ul style="list-style-type: none"> <li>The applicant enters into a contract with Orissa Construction Corporation Limited for sectioning of Makara River &amp; and Garanimunha branch of Makara River in Orissa.</li> <li>The Applicant is executing a works contract, more than 75% of which is earthwork.</li> <li>The recipient is a government entity and the work being executed is part of an irrigation project under the Department of Water Resources, Government of Odisha. The question was raised- 1. What will be the taxability of the service of upgrading navigability of a river-bed when supplied to Orissa Construction Ltd.</li> </ul> <p><b>Answer-</b> The recipient, namely Orissa Construction Corporation Ltd, is a government entity in terms of clause 2 (zfa) of Notification No 912017 - Integrated Tax (Rate) dated 28/06/2017.</p> <p>The Applicant's supply to Orissa Construction Corporation Ltd was taxable @18% under SI No. 3(vii) of Notification No. 8/2017 - Integrated Tax (Rate) dated 28/06/2017 till 12/10/2017.</p> <p>The supply was taxable @ 5% under SI 3(vii) of Notification No. 8/2017 - Integrated Tax (Rate) dated 28/06/2017, as amended by Notification No. 39/2017 - Integrated Tax (Rate) dated 13/10/2017 with effect from 13/10/2017 till 24/01/2018.</p> <p>It has since been exempted under SI No. 3A of Notification No 9/2017 - Integrated Tax (Rate) dated 28/06/2017, as amended by Notification No.2/2018-Integrated Tax (Rate) dated 25/01/2018</p>
Champa Nandi	Leasing Business <b>(W.B AAR)</b>	10/WBAAR/2019-20 Dated 25.06.2019	<ul style="list-style-type: none"> <li>The applicant stated to be leasing out cranes and equipment and locomotives, provides diesel-hydraulic locomotives to several companies for placement/shunting of rakes/wagons/oil tankers from the siding or terminal of the Indian Railways to the factory premises of the company and vice versa. The question was raised- 1. <i>Classification of supply of leasing out cranes, equipments, and locomotives to different companies and applicable rate of tax under Notification No 11/2017 CT (Rate) dated 28/06/2017.</i></li> </ul> <p><b>Answer-</b> The Applicant's service to the DVC, is classifiable as railway pushing and towing service'(SAC 996731) and taxable @ 18% under SI No 11(ii) of Notification No. 11-t2017 - Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1135 - FT dated 28/06/2017), as amended from time to time.</p>
Ashis Ghosh	Installation & earthwork of tank, low etc. <b>(W.B AAR)</b>	9/WBAAR/2019-20 Dated 25.06.2019	<ul style="list-style-type: none"> <li>The applicant has procured two contracts from M/s Mackintosh Burn Ltd for filling in the compound, tank, low land etc. with silver sand and earthwork in layers, including spreading and compacting the same at the district Correction Home, Baruiapur.</li> <li>The supplier is providing works contract service to a government entity. More than 75% of the value of the supply constitutes earthwork. The question was raised- 1. <i>Whether filling of land with silver sand and earthwork for preparing the ground for construction is classifiable as supply of sand.</i></li> </ul> <p><b>Answer-</b> The Applicant's supply to M/s Mackintosh Burn Ltd, is works</p>

			contract service, classifiable as site preparation service (SAC Group 99543) and taxable @ 18% under Sl No. 3(xii) of Notification No. 11/2017 - Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1 1 35-FT dated 28/06/2017), as amended from time to time. Being a service, the Applicant's supply is not classifiable under HSN 2505.
Mohana Ghosh	Rental CAB Service <b>(W.B AAR)</b>	8/WBAAR/2019-20 Dated 25.06.2019	<ul style="list-style-type: none"> <li>The Applicant, stated to be supplying cabs on a rental basis.</li> <li>The applicant submits that she supplies rent-a-cab service. She refers to section 17(5)(a)(B) of the GST Act that allows credit of input tax paid on the purchase of motor vehicles when used for supplying passenger transportation service.</li> <li>The Applicant submits that people take the car on rent for the transportation of passengers.</li> <li>Rent-a -Cab is, therefore, essentially associated with the transportation of passengers.</li> <li>GST paid on the purchase of motor vehicles for supplying rent-a-cab service should, therefore, be admissible in terms of section 17(5)(a)(B) of the GST Act.</li> <li>She submits photocopies of a few invoices, showing that the invoices are made on the distance travelled. The question was raised-</li> </ul> <p>1. <i>Whether input tax credit is admissible on purchase of motor vehicles for supply of rent-a-cab service</i></p> <p><b>Answer-</b> GST paid on the [inward supply] of motor vehicles for supplying rent-a-cab service is not admissible for credit in terms of section t17(5)(a)l of the GST Act.</p>
Neo-Built Corporation	Re-excavation of river <b>(W.B AAR)</b>	5/WBAAR/2019-20 Dated 10.06.2019	<ul style="list-style-type: none"> <li>The applicant enters into a contract with The Irrigation and waterways Directorate, Govt. of W.B. for the resuscitation by re-excavation of river palaspai from Banskhal to Mahisghata along with raising-and strengthening of embankment on both sides of the river in Block Daspur. The question was raised-</li> </ul> <p>1. <i>Whether exemption under Sl No. 3A of Notification No. 9/2017-CT(Rate) dated 28/06/2017 applies to the activity of upgrading the navigability of a river, the contractee being the Irrigation and Waterways Directorate.</i></p> <p><b>Answer-</b> The Applicant's supply to the Irrigation and Waterways Directorate, Govt. of West Bengal, as mentioned in para 1.1, is exempt from the payment of GST under Sl No.34 of Notification No 9/2017 - Integrated Tax (Rate) dated 28/06/2017 , as amended from time to time.</p>
Senco Gold Ltd	Jewellery Business <b>(W.B AAR)</b>	2/WBAAR/2019-20 Dated 08.05.2019	<ul style="list-style-type: none"> <li>The applicant is engaged in the manufacturing and retailing of jewellery and articles made of gold, silver, platinum, diamonds and other precious stones under the brand name "Senco Gold &amp; Diamonds"</li> <li>Apart from his own retail stores, the Applicant also maintains a network of franchisee-operated stores. He grants such a franchisee the right and license to operate a showroom and to use, in connection therewith, certain Proprietary Marks and System in accordance with a Franchise Agreement</li> <li>The Applicant raises tax invoices on the Franchisee for the supply of jewellery and other articles and also for Franchise Support Services in terms of the Agreement periodically. On its part, the Franchisee also raises tax invoices on the Applicant for the supply of old gold, silver etc., received from the customers. The question was raised-</li> </ul> <p>1. <i>Whether input tax credit is admissible when the applicant</i></p>

			<p><i>settles through book adjustment the debt created on inward supplies</i></p> <p><b>Answer-</b> The Applicant can pay the consideration for inward supplies by way of setting off book debt. The GST Act and rules made there under does not restrict the recipient from claiming the input tax credit when consideration is paid through book adjustment, subject to the conditions and restrictions as may be prescribed and in the manner specified in Sections 16 and 49 of the GST Act.</p>
Bengal Peerless Housing Development Co Ltd	Real Estate Developer <b>(W.B AAR)</b>	1/WBAAR/2019-20 Dated 02.05.2019	<ul style="list-style-type: none"> <li>The Applicant is a joint venture of The West Bengal Housing Board and The Peerless General Finance and Investment Company Limited for developing real estate projects in West Bengal.</li> <li>It is developing a residential housing project named 'Avidipta II' and supplying construction service to the recipients for possession of dwelling units in the year 2023.</li> <li>In addition to the construction service, the Applicant provides services like preferential location service, which includes services of floor rise and directional advantage. The question was raised-</li> </ul> <p>1. <i>Whether supply of construction service bundled with preferential location service is a composite supply with construction service as the principal supply</i></p> <p><b>Answer-</b> The Applicant is providing service of construction of a dwelling unit in a residential complex, bundled with services relating to the preferential location of the unit and right to use car parking space and common areas and facilities.</p> <p>It is a composite supply, construction service being the principal supply. Entire value of the composite supply is, therefore, to be treated, for the purpose of taxation, as supply of construction service, taxable under Sl No. 3(i) read with Paragraph 2 of Notification No 11/2017 - CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), as amended from time to time.</p>
Ratan Projects & Engg Co Pvt Ltd	Manufacturer of Electrical Ancillary Parts <b>(W.B AAR)</b>	49/WBAAR/2018-19 Dated 28.03.2019	<ul style="list-style-type: none"> <li>The applicant is manufacturer of cable tray, angel ladder tray etc, which are mainly used for electrical works.</li> <li>The Applicant sends steel structures for galvanising to a job worker along with furnace oil, zinc, nickel that are to be consumed in the galvanising process. The question was raised-</li> </ul> <p>1. <i>Whether the inputs sent to the job-worker and consumed in the process of galvanisation should be treated as supply in terms of section 143(3).</i></p> <p><b>Answer-</b> Return of the galvanised goods to the Applicant satisfies the condition of receiving back the inputs in accordance with section 143(1)(a) of the GST Act. As the goods like furnace oil, zinc etc - consumed in the process of galvanising - are inseparable from the galvanised goods, they should not be treated as supply in terms of section 143(3) of the GST Act, provided they have been entirely used up in the process of galvanising.</p>
The Bengal Rowing Club	Non Profit Making Company <b>(W.B AAR)</b>	48/WBAAR/2018-19 Dated 28.03.2019	<ul style="list-style-type: none"> <li>The Applicant is stated to be a company limited by guarantee and registered with ROC as a nonprofit making company. It is engaged in providing its members privileges and amenities of a club such as swimming facility, gymnasium, indoor games, restaurant service etc. The question was raised-</li> </ul> <p>1. <i>Classification and rates of tax on the services supplied by the club.</i></p> <p><b>Answer-</b> Supply of food, by way of or as part of any service or in any other manner whatsoever, from the Applicant's</p>

			<p>restaurant is classifiable under SAC 9963 and taxable under SI No. 7(i) or 7(iii) of the Notification No. 11/2017-CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), depending upon the criteria mentioned therein.</p> <p>If food is supplied by way of or as part of the services associated with organizing social events at the club premises, together with renting of such premises, it will be classifiable under SAC 9963 and taxable under SI No. 7(vii) of the above-mentioned rate notification.</p> <p>All other services offered by the Applicant are classifiable under SAC 9995 and taxable under SI No. 33 of the above rate notification.</p> <p>The Applicant should apply the provisions under section 17(2) &amp; (6) of the GST Act, for reversal of input tax credit, treating supplies, if any, taxable under SI No. 7(i) of the above rate notification, as exempt supplies.</p> <p>Reference to food in this ruling includes the supply of other articles of human consumption and drink (whether or not alcoholic liquor).</p>
Alok Bhanuka	Repairing and servicing of transformers <b>(W.B AAR)</b>	47/WBAAR/2018-19 Dated 26.03.2019	<ul style="list-style-type: none"> <li>The Applicant is stated to be engaged in repairing and servicing of transformers owned by WBSEDCL. The question was raised- 1. <i>Whether repairing of transformers is composite supply and what will be the applicable rate of tax.</i> <b>Answer-</b> Repairing and servicing of transformers owned by another person is not job work as defined under section 2(68) of the GST Act. It is composite supply unless the contract specifies that the goods and services are to be separately charged. The principal supply is the service of repair of transformers classifiable under SAC 998719 and taxable under SI No. 25(ii) of Notification No. 11/2017 - CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135 FT dated 28/06/2017), as amended from time to time.</li> </ul>
Eskag Pharma Pvt Ltd	Manufacturer of pharmaceuticals <b>(W.B AAR)</b>	46/WBAAR/2018-19 Dated 26.03.2019	<ul style="list-style-type: none"> <li>The Applicant is stated to be a manufacturer of pharmaceuticals, APIs and other medicaments.</li> <li>The Applicant sold some products having therapeutic or prophylactic uses. They are being sold at pharmacies and are not available at any general stores or groceries. They are prescribed by physicians or medical practitioners for treatment of various diseases. The question was raised- 1. <i>Classification of food supplements.</i> <b>Answer-</b> The Application has been admitted for classification of the products mentioned in Table I of the Application that are labelled as dietary/health supplements. Products mentioned under SI Nos. 2 to 13 are classifiable under HSN 2106, and taxable under SI No. 23 of Schedule III of Notification No. 1/2017-CT (Rate) dated 28/06/2017 of the Centre (corresponding State Notification No. 1125-FT dated 28/06/2017), as amended vide Notification No. 41/2017-CT(Rate) dated 14/11/2017 (corresponding State Notification No. 2019-FT dated 14/11/20174).</li> </ul>
Udayan Cinema Pvt Ltd	Film Producing Company <b>(W.B AAR)</b>	45/WBAAR/2018-19 Dated 13.03.2019	<ul style="list-style-type: none"> <li>The Applicant intends to produce a feature film, a portion of which is planned to be shot at locations outside India. For this purpose, he is in the process of appointing CDI Virtual Films Inc. (hereinafter the CDIVF) as a Line Producer in Brazil. The question was raised- 1. <i>Whether the producer of a feature film is liable to pay IGST on reverse charge basis on payment made to a line producer engaged in Brazil. If so, what should be the classification of the service of a line producer and the rate of IGST.</i> <b>Answer-</b> The Line Producer to be engaged for the shooting of a feature film in Brazil is supplying motion picture</li> </ul>

			<p>production service, classifiable under SAC 999612</p> <p>The Applicant is liable to pay IGST on the payments made to the above Line Producer in terms of Sl No. 1 of Notification No. 10/2017 – IGST (Rate) dated 28/06/2017 at 18% rate specified under Sl No. 34(vi) of Notification No. 08/2017 – IT (Rate) dated 28/06/2017, as amended from time to time. No deduction is available in terms of the contract with the Line Producer appended to the Application from the value of the supply of motion picture production service even if payment is made on an actual cost basis. However, if the Applicant modifies the contract so that the Line Producer acts as pure agent for certain services in addition to the main supply of motion picture production service, the related transactions will be import of services from the actual suppliers, and the amount paid on actual cost basis for procuring those services will be subjected to IGST at the applicable IGST rate on such services.</p>
Shiva Writing Co Pvt Ltd	Manufacturing and supplying of ball point pens <b>(W.B AAR)</b>	44/WBAAR/2018-19 Dated 13.03.2019	<ul style="list-style-type: none"> <li>The Applicant is stated to be in the business of manufacturing and supplying of ball point pens, for which pen tips and balls to be used inside the tips are required in order to make the same tips working, and also trades and supplies ball point pen tips and refills to various dealers. The question was raised-</li> </ul> <p>1. <i>Classification of and rate of tax on tips and balls of ball point pens.</i></p> <p><b>Answer-</b> “Tips and Balls” of Ball Point Pens are to be classified under GST Tariff Heading 9608 99 90 and included under Sl No. 453 of Schedule III of Notification No. 01/2017–Central Tax (Rate) dated 28.06.2017 (corresponding State Notification No. 1125-FT dated 28/06/2017).</p>
Nipha Exports Pvt Ltd	Manufacturer of agricultural machinery <b>(W.B AAR)</b>	43/WBAAR/2018-19 Dated 26.02.2019	<ul style="list-style-type: none"> <li>The Applicant, stated to be a manufacturer of agricultural machinery &amp; and has purchased an ambulance for the benefit of the employees, as required under Section 45(4) of the Factories Act, 1948.</li> <li>The Applicant argues that the input tax paid on inward supply of the ambulance is eligible for credit under the Second Proviso to Section 17(5)(b) of the GST Act, as amended w.e.f. 01/02/2019. The question was raised-</li> </ul> <p>1. <i>Whether ITC is admissible on purchase of an ambulance in November 2018 for the benefit of the employees under the legal requirements of the Factories Act, 1948</i></p> <p><b>Answer-</b> Input tax credit is not admissible on the ambulance purchased in November 2018, as Section 17(5) of the GST Act, as it stood in the relevant period, blocks any such enjoyment, even if provisioning of ambulance service to the employees is obligatory under the Factories Act, 1948.</p>
Sarj Educational Centre	Lodging & Fooding Service Provider to an Educational Society <b>(W.B AAR)</b>	42/WBAAR/2018-19 Dated 26.02.2019	<ul style="list-style-type: none"> <li>The Applicant is stated to be the owner of a private boarding house and is providing services of lodging and food exclusively to the students of a secondary school, run by a Charitable Society, namely Sunshine Educational Society</li> <li>The boarding facility shall include lodging, housekeeping, laundry, medical assistance and food. The consideration is a consolidated charge on the individual boarder for the combination of the services. The question was raised-</li> </ul> <p>1. <i>Whether lodging along with food to the students by a private boarding house is a compiste supply and eligible for exemption under Sl No. 14 of Notification No. 12/2017-CT (Rate) dated 28/06/2017.</i></p> <p><b>Answer-</b> The Applicant is offering several individual services in two different combinations to the recipients,</p>

			depending upon their need for lodging facility. None of the combinations of services being offered is a composite supply, as defined under section 2(30) of the GST Act. They are mixed supplies within the meaning of section 2(74) and taxable in accordance with section 8(b) of the GST Act. Being mixed supply, value of the entire combination of services offered is taxable at the applicable rate.
Piyush Polytex Industries Pvt Ltd	Manufacturer of P.P. Nonwoven Fabric ( <b>W.B AAR</b> )	41/WBAAR/2018-19 Dated 26.02.2019	<ul style="list-style-type: none"> <li>The Applicant, stated to be a manufacturer of P.P. Nonwoven Fabric, Laminated Nonwoven Fabric, B.O.P.P. Pasted P.P. Nonwoven Fabric, P.P. Woven Fabric Pasted with Nonwoven Fabric and Nonwoven Bags/Sacks.</li> <li>The Applicant states that nonwoven bags/sacks are made of P.P. Nonwoven Fabric and it falls under Chapter Heading 63 of the GST Tariff. The question was raised- 1. <i>Classification and rate of tax for polypropylene non-woven bags</i> <b>Answer-</b> Bags/Sacks (both with &amp; without Handle) made of Laminated P.P. Nonwoven Fabric is classifiable under Sub-Heading 39232990 Bags/Sacks (both with &amp; without Handle) made of B.O.P.P. Pasted P.P. Nonwoven Fabric is classifiable under Sub-Heading 39232990. Bags/Sacks (both with &amp; without Handle) made of Woven Fabric Pasted with Nonwoven Fabric have to be classified as per the General Rules for the Interpretation of the First Schedule of the Customs Tariff.</li> </ul>
Tewari Warehousing Co Pvt Ltd	Warehousing Services ( <b>W.B AAR</b> )	40/WBAAR/2018-19 Dated 18.02.2019	<ul style="list-style-type: none"> <li>The Applicant, stated to be supplying warehousing services, is constructing a warehouse on leasehold land, using pre-fabricated technology.</li> <li>According to the Applicant, it can be dismantled and reconstructed at a different location. The question was raised- 1. <i>Whether ITC is admissible on construction of a warehouse using pre-fabricated technology</i> <b>Answer-</b> The warehouse being constructed is immovable property. The input tax credit is, therefore, not admissible on the inward supplies for construction of the said warehouse, as the credit of such tax is blocked under section 17(5)(d) of the GST Act.</li> </ul>
Storm Communications Pvt Ltd	Event Management Service Provider ( <b>W.B AAR</b> )	39/WBAAR/2018-19 Dated 28.01.2019	<ul style="list-style-type: none"> <li>The Applicant, stated to be a supplier of Event Management Services in West Bengal</li> <li>The Applicant organises events on behalf of clients and, for this purpose, books conference halls, banquet halls, outdoor caterers etc.</li> <li>The Applicant is registered as a GST assessee in West Bengal, Jharkhand, Odisha, Maharashtra and Delhi.</li> <li>. In relation to this Event Management Service, the Applicant has to move to other states, where the Applicant is not registered, to serve clients in those states, and incur miscellaneous expenses for booking hotels, banquet halls and on food</li> <li>On such inward supplies, the Applicant is charged CGST &amp; SGST of that particular state and the invoices are issued as B2B with the Applicant's GSTIN. These invoices are also reflected in the Applicant's GSTR-2A.</li> <li>Such inward supplies are taken to serve the clients and the Applicant desires to know if ITC can be claimed in the GST Returns in West Bengal on the CGST &amp; SGST paid on such invoices in other states. The question was raised- 1. <i>Whether tax paid on intra-state inward supply in one state can be used to pay output tax liability in another state,</i></li> </ul>



			<p><i>especially if the applicant is not registered in the state where he receives the inward supply</i></p> <p><b>Answer-</b> The Applicant is not registered under Section 25(1) of the CGST Act in Tamil Nadu. The SGST and CGST paid on intra-state inward supply in Tamil Nadu are not, therefore, "input tax" to the Applicant. The GST Act does not contain any concept of "input tax" in relation to an unregistered person. No credit of it is, therefore, admissible under the GST Act.</p> <p>So, to answer in the Applicant's language:</p> <p><b>a.</b> A person, registered in WB, cannot claim ITC for CGST &amp; SGST of other states.</p> <p><b>b.</b> He cannot adjust the ITC of one state's CGST for payment of another state's CGST.</p> <p><b>c.</b> He cannot adjust the ITC of Tamil Nadu GST for payment of IGST, whereas he is not registered in Tamil Nadu</p>
Ex-servicemen Resettlement Society	Security Service Provider <b>(W.B AAR)</b>	38/WBAAR/2018-19 Dated 28.01.2019	<ul style="list-style-type: none"> <li>The Applicant, stated to be a registered society providing Security Services and Scavenging Services to various hospitals under the State Government as well as the Central Government</li> <li>The Applicant has stated that under the Exemption Notification, the services provided by them are exempt by way of activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution. The question was raised-</li> </ul> <p>1. <i>Whether security and scavenging services to the Govt is exempt under SL No. 3 or 3A of Notification No. 12/2017-CT(Rate) dated 28/06/2017, as amended from time to time</i></p> <p><b>Answer-</b> Benefit of exemption from the payment of GST is not available to the Applicant under Notification No 12/2017-CT(Rate) dated 28.06.2017 and WB Govt. Gazette Notification-1136- FT dated 28.06.2017, as amended, for the supply of Security Services and the bundle of service that he describes as "Scavenging Services".</p>
NIS Management Ltd	Service Provider <b>(W.B AAR)</b>	37/WBAAR/2018-19 Dated 28.01.2019	<ul style="list-style-type: none"> <li>The Applicant, is a service provider by the deployment of personnel like a plumber, sweeper, security guard, electrician, carpenter etc. to the West Bengal Housing Board.</li> <li>The Applicant was required to charge GST on the entire bill, including sweeping service.</li> <li>The Directorate, however, has since raised an objection on GST being charged on sweeping service, which, in their opinion, is part of sanitation service listed under the Eleventh Schedule of the Constitution and, therefore, eligible for exemption under Sl. No. 3 of the Exemption Notification. The question was raised-</li> </ul> <p>1. <i>Whether sweeping service to the Govt is exempt under SL No. 3 or 3A of Notification No. 12/2017-CT(Rate) dated 28/06/2017, as amended from time to time</i></p> <p><b>Answer-</b> Sweeping Service that the Applicant supplies to the Housing Directorate of the Government of West Bengal, cannot be classified as an activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution. The exemption under Sl No. 3 or 3A, as the case may be, of Notification No 12/2017-CT (Rate) dated 28.06.2017 and WB Govt. Gazette Notification-1136-FT dated 28.06.2017 is not, therefore, applicable to such supplies.</p>
Vedika Exports Tea Pvt Ltd	Packer of tea bags <b>(W.B AAR)</b>	36/WBAAR/2018-19 Dated 28.01.2019	<ul style="list-style-type: none"> <li>The Applicant, stated to be a contract packer of tea bags</li> <li>The process of service undertaken by the Applicant involves assembly of materials on</li> </ul>

			<p>machine, including blended tea leaves and other inputs received from the recipient of the service. The question was raised-</p> <p>1. <i>Classification of the service to Hindustan Unilever Ltd for packing tea into tea bag pouches and its packaging</i>  <b>Answer-</b> The Applicant makes a composite supply to Hindustan Unilever Ltd, where the service of manufacturing tea bags from the physical inputs owned by the latter is the principal supply. It is classifiable under SAC 9988 and taxable at 5% rate under SI No. 26(f) of Notification No. 11/2017 – CT (Rate) dated 28/06/2017, as amended from time to time. Applicability of this Ruling with respect to other recipients is subject to the specific nature of the contracts with them.</p>
Abhishek Tibrewal (HUF) carrying on business under trade name Avantika Industries	Iron & Steel Manufacturer <b>(W.B AAR)</b>	35/WBAAR/2018-19 Dated 28.01.2019	<ul style="list-style-type: none"> <li>The Applicant is a Manufacturer of, inter alia, Springs of Iron and Steel for supply to the Railways. The question was raised-</li> </ul> <p>1. <i>Classification and rate of tax for springs of iron and steel for railways</i>  <b>Answer-</b> Springs of Iron and Steel for Railways are classifiable under HSN Code no. 7320 (taxable @ 18%) under Serial No. 234 of Schedule III of Notification No. 1/2017- CT (Rate) dated 28.06.2017</p>
Dinman Polypacks Pvt Ltd	Manufacturer of Polypropylene Leno Bags <b>(W.B AAR)</b>	34/WBAAR/2018-19 Dated 28.01.2019	<ul style="list-style-type: none"> <li>The Applicant is a manufacturer of Polypropylene Leno Bags which are mainly used for packing of dry vegetables and fruits in bulk and their sale price is far less than Rupees One Thousand per piece. The question was raised-</li> </ul> <p>1. <i>Classification and rate of tax for Polypropylene Leno Bags</i>  <b>Answer-</b> "Poly Propylene Leno Bags" are to be classified as plastic bags under HSN 3923 and would attract 18% GST.</p>
ITD Cementation India Ltd	Works Contract Service <b>(W.B AAR)</b>	33/WBAAR/2018-19 Dated 08.01.2019	<ul style="list-style-type: none"> <li>The Applicant is supplier of works contract service.</li> <li>He has entered into an agreement with Inland Waterways Authority of India for construction of a multi-modal IWT terminal at Haldia on EPC basis.</li> <li>The contractee is a Government Entity, being a statutory body established under the Inland Waterways Authority of India Act, 1985 (hereinafter the IWAI Act, 1985), and functions under the administrative control of the Ministry of Shipping, Government of India. The question was raised-</li> </ul> <p>1. <i>Whether works contract service supplied to Inland Waterways Authority of India is taxable under SI No. 3(vi) of Notification No. 11/2017 -CT(Rate) dated 28/6/2017, as amended from time to time</i>  <b>Answer-</b> Amendments to Serial No. 3(vi) of Notification No. 11/2017–CT (Rate) dated 28/06/2017, brought about by Notification No. 24/2017-CT (Rate) dated 21/09/2017 and 31/2017 – CT (Rate) dated 13/10/2017, are not applicable to the Applicant's supply of works contract service for construction of the Multi-modal IWT Terminal at Haldia. It will attract GST at 18% rate under Serial No. 3(xii) of 11/2017–CT (Rate) dated 28/06/2017.</p>
WEBFIL Ltd	Joint Venture <b>(W.B AAR)</b>	32/WBAAR/2018-19 Dated 08.01.2019	<ul style="list-style-type: none"> <li>The Applicant is a joint venture company formed by West Bengal Industrial Development Corporation, a Govt. of West Bengal undertaking, and the group of companies of Andrew Yule &amp; Co Ltd (a Central Govt. under taking)</li> <li>According to the Application, WBIDC and Andrew Yule &amp; Co and its associates are "Government Companies" and they together hold 62.29% of the subscribed and paid up share capital of the Applicant. The rest is held by the public.</li> <li>The Applicant is a 'deemed Government</li> </ul>



			<p>Company' for the limited purpose of audit by the C&amp;AG.</p> <ul style="list-style-type: none"> <li>• However, he is not a "Government Company", as defined under section 2(45) of the Companies Act, 2013, as neither the Central Government nor the State Government subscribes to the paid up share capital of the Applicant.</li> <li>• He is not a subsidiary of any "Government Company" either, as no "Government Company" separately holds more than 51% of the share capital, or exercises control by having majority in the composition of the Board of Directors.</li> <li>• Moreover, the Registrar of Companies, Kolkata, has incorporated the Applicant as a non-Government company. The question was raised-</li> </ul> <p>1. <i>Whether Notification No. 50/2018-CT dated 13/09/2018 under the CGST Act, 2017 is applicable on a JV of two Govt. companies</i></p> <p><b>Answer-</b> The Applicant, if established by government notification, is liable to deduct tax at source under section 51(1) read with Notification No. 1344-FT dated 13/09/2018, being a company controlled by the Central and the State Governments.</p>
U S Polytech	Manufacturer of Polypropylene Non-Woven Bags ( <b>W.B AAR</b> )	31/WBAAR/2018-19 Dated 08.01.2019	<ul style="list-style-type: none"> <li>• The Applicant is a manufacturer of Polypropylene Non-Woven Bags which are mainly used by big industrial units, retail outlets and textile shops for packing of different goods and have been granted registration by the Office of the Textile Commissioner of Textile based products. The question was raised-</li> </ul> <p>1. <i>Classification and rate of tax for polypropylene non-woven bags</i></p> <p><b>Answer-</b> 'PP Non-woven Bags', specifically made from non-woven Polypropylene fabric are plastic goods to be classified under Sub Heading 3923 29 and taxed at 18 % rate under Serial No. 108 of Schedule III of Notification no. 01/2017-C.T (Rate) dated 28-06-2017 under the CGST Act, 2017 &amp; Notification No. 1125-FT dated 28/06/2017 under the WBGST Act, 2017.</p>
GGL Hotel & Resort Co Ltd	Real Estate & Hospitality Service Provider ( <b>W.B AAR</b> )	30/WBAAR/2018-19 Dated 08.01.2019	<ul style="list-style-type: none"> <li>• The Applicant, stated to be a subsidiary of Ambuja Neotia Holdings Private Limited, is in the hospitality and real estate business since 1997</li> <li>• The Applicant is engaged in the hospitality and real estate business and is contemplating a new project on a leasehold land.</li> <li>• The Lessor, Bengal Housing Infrastructure Development has leased a piece of land in New Town Area for a period of 32 years to the Applicant who is Lessee for a lease premium of Rs. 17 Crores 20 Lakhs only.</li> <li>• As per the Indenture of Lease dated 21.08.2013, the Applicant is liable to pay annual lease rent at the rate of 10% of the aforesaid premium for the first and second year, and the same would be escalated at the rate of 5% per annum, in the subsequent years from the start of the third year over the last annual lease rent p.a.</li> <li>• The project is proposed to be completed within a period of 2 years from the foundation of the project and the lease rent paid during the pre-operative period shall be capitalized in the books of account by the Applicant. The question was raised-</li> </ul> <p>1. <i>Whether ITC is admissible on lease rent paid during pre-operative period for the leasehold land on which a resort is being constructed to be used for furtherance of business</i></p> <p><b>Answer-</b> Input Tax Credit is not available to the Applicant for lease rent paid during pre-operative period for the leasehold land on which the resort is being constructed on his own account to be used for furtherance of business, when the same is being capitalised and treated as capital expenditure.</p>

# TAX UPDATES, NOTIFICATIONS AND CIRCULARS

## INDIRECT TAX NOTIFICATIONS

### CUSTOMS – TARIFF

Notification No – 28/2019

Date – 2.09.2019

#### Amendment to the Notification No. 57/2000-Customs dated 08.05.2000

CBIC has made amendments in the Notification No. 57/2000-Customs, dated the 8<sup>th</sup> May, 2000

In the said notification –

(a) in the opening paragraph, for the portion beginning with the words, figures and brackets “*hereby exempts silver, gold and platinum, falling under headings 71.06, 71.08 and 71.10 respectively of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India*” and ending with the words, brackets and figures “*from the whole of the duty of customs leviable thereon, which is specified in the said First Schedule, and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act*”, the following shall be substituted, namely:-

“hereby exempts silver, gold and platinum of the description specified in column (3) of the Table below falling under headings 71.06, 71.08 and 71.10 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India under the scheme specified in column (2) of the said Table, from so much of the duty of customs leviable thereon under the said First Schedule as specified in the corresponding entry in column (4) of the said Table, and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act:-

**TABLE**

Sl. No.	Scheme under Foreign Trade Policy	Description of goods	Amount of duty
1	As replenishment under the Scheme for ‘Export through Exhibitions/Export Promotion Tours/Export of Branded Jewellery’ as referred to in Paragraph 4.46 of the Foreign Trade Policy, read with relevant provisions of Chapter 4 of the Handbook of Procedures.	a) Gold b) Silver c) Platinum	11.85% 11.00% Whole of the duty of customs leviable thereon, which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
2	Under the Scheme for ‘Export Against Supply by Nominated Agencies’ as referred to in Paragraph 4.41 of the Foreign Trade Policy, read with relevant provisions of Chapter 4 of the Hand Book of Procedures	Gold, Silver, Platinum	Whole of the duty of customs leviable thereon, which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)”;

b) the third proviso shall be omitted.

Notification No – 29/2019

Date – 04.09.2019

**Seeks to further amend notification no. 53/2011 dated 01.07.2011, to increase the rate of duty of customs by 5 percent, for a period of 180 days, on imports of RBD Palmolein/Palm Oil originating in Malaysia and imported under India-Malaysia Comprehensive Economic Cooperation Agreement, on recommendation of preliminary findings of Directorate General of Trade Remedies under India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017**

Whereas the Directorate General of Trade Remedies in the matter concerning imports of “Refined Bleached Deodorized Palmolein and Refined Bleached Deodorized Palm Oil”, falling under tariff item [1511 90 10] or tariff item [1511 90 20] of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), initiated an investigation in

terms of rule 9 of the India Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017 vide notice of initiation Case No. (SG) 04/2019, dated the 14th August 2019 published in the Gazette of India, Extraordinary the dated 14th August 2019.

And Whereas, in the preliminary findings of Bilateral Safeguard Investigation issued vide notification (Bilateral Safeguard Investigation) case no (SG) 04/2019, dated the 26th August 2019, published in the Gazette of India, Extraordinary on 26th August, 2019, the Director General has noted that: -

- (a) the import of subject goods into India has shown significant increase. Imports of subject goods from Malaysia increased from 626,362 MT in 2016-17 to 2,596,225 MT in January June, 2019 (on annualized basis) thus showing an increase of 314 percent;
- (b) quarterly movement in imports shows that imports were just 27,206 MT in October December, 2018, which surged to 804528 MT in April-June, 2019 thus showing a surge of almost 29 times increase;
- (c) this increase in import at low prices has led to idling of significant capacities of the domestic industry during the period of investigation;
- (d) though domestic industry has huge installed capacity, it is unable to increase its production of subject goods despite increase in domestic demand of the subject goods;
- (e) market share of the domestic industry has declined significantly.

and came to a preliminary conclusion that critical circumstances exist where delay in imposition of safeguard measures would cause irreparable damage to the domestic producers and recommended an increase in rate of duty of customs by 5 percent, for a period of 180 days, on imports of subject goods, originating in Malaysia and imported under India-Malaysia Comprehensive Economic Cooperation Agreement.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with rule 9 of the said Rules, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby increases the rate of duty of customs by 5 percent, on imports of subject goods for 180 days, originating in Malaysia and imported under India-Malaysia Comprehensive Economic Cooperation Agreement by making the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.53/2011-Customs, dated the 1st July, 2011, published in the Gazette of India, vide number G.S.R. 499 (E), dated the 1st July, 2011, namely:

In the said notification

(i) after Sl. No. 130 and the entries relating thereto, the following Sl. No. and entries shall be inserted, namely: -

"130A.	151190	All goods	50.0";
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(ii) after the Table, the following shall be inserted namely: - "Provided that nothing contained in serial number 130 and entries relating thereto of the said table shall have effect upto and inclusive of the 2<sup>nd</sup> day of March 2020:

Provided further that nothing contained in serial number 130A and entries relating thereto of the said table shall have effect on or after the 3<sup>rd</sup> day of March 2020."

**Notification No - 30/2019**  
**Date - 17.09.2019**

**Seeks to amend notification No. 50/2017-Customs dated 30.06.2017 to reduce basic customs duty on Open cell (15.6" and above) for use in the manufacture of Liquid Crystal Display (LCD) and Light Emitting Diode (LED) TV panels and certain goods for use in the manufacture of Open cell of Liquid Crystal Display (LCD) and Light Emitting Diode (LED) TV panels**

CBIC has made amendments in the Notification No. 50/2017-Customs, dated the 30th June, 2017. In the said notification,

(I) In the Table, for S. No. 515A and the entries relating thereto, the following serial numbers and entries shall be substituted, namely: -

515A	8529	Open cell (15.6" and above) for use in the manufacture of Liquid Crystal Display (LCD) and Light Emitting Diode (LED) TV panels of heading 8529	Nil	-	9
515B	8529	The following goods for use in the manufacture of Open cell of Liquid Crystal Display (LCD) and Light Emitting Diode (LED) TV panels of heading 8529, namely: -	Nil	-	9

		(i) Chip on Film;			
		(ii) Printed Circuit Board Assembly (PCBA);			
		(iii) Cell (glass board/substrate).			

(II) In the first proviso, after clause (c), the following clause shall be inserted, namely: -

“(d) the goods specified against serial numbers 515A and 515B of the said Table after the 30th day of September, 2020.”.

### **CUSTOMS – NON TARIFF**

**Notification No – 63/2019-Customs (N.T)**

**Date – 04.09.2019**

**Seeks to further amend notification no. 53/2011 dated 01.07.2011, to increase the rate of duty of customs by 5 percent, for a period of 180 days, on imports of RBD Palmolein/Palm Oil originating in Malaysia and imported under India-Malaysia Comprehensive Economic Cooperation Agreement, on recommendation of preliminary findings of Directorate General of Trade Remedies under India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017**

CBIC has determined the rate of exchange of conversion of the foreign currencies relating to imported and export goods.

#### **SCHEDULE -I**

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Exported Goods)
1	Australian Dollar	50.25	48.00
2	Bahraini Dinar	197.05	184.85
3	Canadian Dollar	55.40	53.45
4	Chinese Yuan	10.25	9.95

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt63-2019.pdf;jsessionid=9ED786458B60D291D3FF70E3459CE1A5>

**Notification No – 64/2019 - Customs (N.T)**

**Date – 13.09.2019**

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

CBIC has made amendments in the Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
1	1511 10 00	Crude Palm Oil	548
2	1511 90 10	RBD Palm Oil	570
3	1511 90 90	Others – Palm Oil	559
4	1511 10 00	Crude Palmolein	572

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt64-2019.pdf;jsessionid=173400E708D494FDD405DBEAB507C20>

**Notification No – 65/2019 - Customs (N.T)**

**Date – 13.09.2019**

**Amending Notification No. 12/97-CUSTOMS (N.T.), dated the 2nd April, 1997 so as to include Barhi, Distt Sonapat, Haryana**

CBIC has made amendments in the Notification No. 12/97-CUSTOMS (N.T.), dated the 2nd April, 1997.

In the said notification, in the Table, against serial number 5 relating to the State of Haryana, after item (ix) in column (3) and the entries relating thereto in columns (3) and (4), the following shall be inserted, namely: -

3	4
“(x) Village Barhi, Gannaur, District Sonapat.	Unloading of imported goods and loading of export goods”.

### **CUSTOMS – ANTI DUMPING DUTY**

**Notification No – 34/2019-Customs (ADD)  
Date – 06.09.2019**

**Seeks to amend notification No. 2/2016-Customs (ADD), dated 28.1.2016, in pursuance of New Shipper Review final findings issued by DGTR**

In case of import of ‘Melamine’ falling under Tariff items 2933 61 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in or exported from People’s Republic of China and imported into India, the designated authority, had come to the conclusion that-

- (i) there is continued dumping of the subject goods from the subject country;
- (ii) these dumped imports continue to cause injury to the domestic industry;
- (iii) in the event of revocation or cessation of anti-dumping duties, dumping of subject goods from subject country and injury to domestic market is likely to continue or intensify

and had recommended imposition of definitive anti-dumping duty on imports of Melamine, in order to remove injury to the domestic industry.

However, M/s. Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) and M/s Foshan Kaisino Building Material Co. Ltd (exporter), had requested for review in terms of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, and had recommended provisional assessment of all exports of Melamine.

The designated authority, vide its final findings notification No. 7/11/2017- DGAD, dated the 19th June, 2019, has come to the conclusion that: -

- (i) the quantity of export by the producer was quite reasonable to reference this sales to the exporter i.e M/s Foshan Kaisino Building Material Co. Ltd (exporter) to evaluate the ex-factory price of export destined to India;
- (ii) the producer has dumped the subject goods during the Period of Investigation; and (iii) the extent of dumping margin 30-35% (as referred in para 30 of the final findings) is awarded to the producer i.e M/s Kuitun Jinjiang Chemical Industry Co. Ltd (Producer) as the Anti-dumping duty.

Now, therefore, the Central Government has made amendments in the Notification No. 2/2016-Customs (ADD), dated the 28th January, 2016.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfnfs-2019/cs-add2019/csadd34-2019.pdf;jsessionid=CA84ACCD026736E669A0483373FA704A>

**Notification No – 35/2019-Customs (ADD)  
Date – 06.09.2019**

**Seeks to rescind notification No. 11/2018-Customs (ADD), dated 20.3.2018, in pursuance of New Shipper Review final findings issued by DGTR**

The Central Government, has rescinded the Notification No.11/2018- Customs (ADD), dated the 20th March, 2018, except as respects things done or omitted to be done before such rescission.

**Notification No – 36/2019-Customs (ADD)  
Date – 14.09.2019**

**Seeks to rescind notification No. 11/2015-Customs (ADD) dated 11th April, 2015**

The Central Government has rescinded the Notification No.11/2015-Customs (ADD), dated the 11th April, 2015, except as respects things done or omitted to be done before such rescission.

**Notification No - 37/2019-Customs (ADD)**  
**Date - 14.09.2019**

**Seeks to impose the definitive anti-dumping duty on the imports of "Electrical Insulators" originating in, or/and exported from China PR**

The designated authority had initiated the review in case of matter of continuation of anti-dumping duty on imports of 'Electrical Insulators of Glass or Ceramics/Porcelain, whether assembled or unassembled' falling under the tariff item 8546 10 00 or sub-heading 8546 20 of the First Schedule to the Customs Tariff Act, originating in, and/or exported from People's Republic of China.

The Designated Authority in its final findings, published vide notification No. F. No. 7/44/2018-DGTR, dated the 17th July, 2019 has come to the conclusion that: -

- (i) The product under consideration continues to be imported at the dumped prices from the subject Country;
- (ii) The domestic industry has suffered continued injury on account of dumped imports;
- (iii) The continued injury to the domestic industry is on account of dumped imports and is likely to continue if the anti-dumping duties from subject country cease to exist;
- (iv) The information on record clearly shows likelihood of continuation of dumping and injury in case the anti-dumping duty in force is allowed to cease at this stage; and has recommended continued imposition of the anti-dumping duty on the subject goods, originating in or exported from the subject country.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-add2019/csadd37-2019.pdf;jsessionid=1EAA983DBDC7BA12C88527D0F8FE67CD>

**INDIRECT TAX CIRCULARS**

**Circular No 27/2019-Customs**  
**Date - 03.09.2019**

**I Roll out of Project Import Module in ICES**

Project Imports Scheme provides that all the goods imported for the purpose of setting up of Industrial Project or substantial expansion of existing industrial projects be subjected to single classification under heading 98.01 of Custom Tariff Act, 1975 and single rate of duty instead of merit assessment of imported goods. For this purpose, Project imports registration as mandated by Project Imports Regulations, 1986 has been happening manually till now. Bulky registers are being maintained by the field formations for the debit entries of all the items of import. Further, the process of issuing release advises to other ports, debiting bond and finalizing the project have also been largely manual thus making the process cumbersome and impacting its efficiency.

To overcome the difficulties faced due to manual processing, Project Imports module has been developed in ICES. It is to inform that Project import module shall cover following processes:

**A. Registration**

Project Registration functionality has been developed on the lines of license registration. The registration has to be done in the LIC role under License Registration. The same form as available at the time of registering licenses will be used for generating project number in the System. Following points may be kept in mind while registering a project.

- a) Scheme code to be used is PI, Notification will be null.
- b) All items of import have to be entered with quantity and value; No items of export.
- c) Default validity has been kept as 84 months. But the same is amendable.
- d) The limitation factor would be B-both value and quantity.
- e) Sponsoring authority's certificate details can be entered in Receipt No and date fields.
- f) Iss\_By will be the code of the sponsoring authority (list of values in F7).
- g) Bond details are mandatory. Only the bonds registered under the new bond category of PI can be given during registration.
- h) Value (CIF in foreign currency (FC) is mandatory.



Once the registration is complete in LIC role and then approved in APR role (under license management), a 10-digit number license number would be generated by the System with the first two digits as 99. This can be treated as the Project number, for further quoting the same in the Bills of Entry.

### **B. Bond Registration**

For the purposes of Project Imports, a new category of bonds with the code PI have been created. This bond is a national provisional bond, and can be used for imports at any port under a project. The bond registration is similar to any other bond in the roles of REB and ACB. Only when a PI bond is registered can project be registered quoting the same in registration form

### **C. Filing of import declarations**

Once a project (license) number is generated, the same can be used to file import declarations similar to how declarations with EP licenses are filed. The BEs will have to be filed with PI as the scheme code and the serial numbers of the items of import will also have to be quoted as per the project registration along with the Project number in the license table. The bond details will reflect similarly at the time of assessment and with the corresponding debit value. The project ledger will also be maintained the same way as the license ledger in the System with both item quantity and value debits. For imports at ports other than the port of registration, online TRA can be issued in the System at the port of registration. A detailed advisory on the filing of import declarations including necessary information for the benefit of trade will follow.

### **D. Finalization of Project**

The finalization of all the BEs under a project and re-crediting of the bond can be done using the already existing options in the FAO and FDC roles.

3. To begin with, project registration and bond registration have been operationalized in ICES. It is requested that all the live projects currently and hereafter be compulsorily registered in the System as detailed in Para 1 and 2 above. This exercise may be started immediately and all project registrations should be completed before 15th September, 2019 and filing of BE under Project Import on ICES should be mandatory from 16th September, 2019.

**Circular No 28/2019-Customs  
Date - 03.09.2019**

### **Putting of mono-cartons on Bottled in Origin alcoholic beverages in both Public and Private bonded warehouses**

BIO alcoholic beverages are imported without a mono carton, in a shipper's carton, usually in sets of 12. To carry out statutory labeling, the goods have to be unpacked from the shipper's carton. Each bottle of BIO alcoholic beverages is labeled and then placed in a mono carton, which is then put in another shipper's carton. Both the mono carton and the shipper's carton protect products from breakage during transit in Indian road conditions.

There was a practice of allowing the activity of putting of the mono carton under Section 65 of the Customs Act by some field formations. Section 65 of the Customs Act allows for manufacture and other operations in a bonded warehouse. In the case under consideration, there is no resultant product, distinct from the BIO alcoholic beverages that arise due to putting of the mono-carton. Thus, the activity of putting a mono carton cannot be considered as processing and hence cannot be allowed under section 65 of the Customs Act. It is also not the policy intent to allow the extended warehousing benefits available under section 61 for units operating under section 65, for activities such as placement of mono-cartons over BIO alcoholic beverages.

Clause (b) of section 64 allows the owner of the warehoused goods to deal with the containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods. Since the original shipper's carton in which the goods are imported has to be removed to comply with the statutory labelling requirements and thereafter, the goods have to be packed in the mono carton and an outer carton which enable safe transport, these activities are permissible in both public and private bonded warehouses under clause (b) of section 64 of the Customs Act.

**Circular No 29/2019-Customs  
Date - 05.09.2019**

### **Eligibility Criteria for availing of DPD Scheme by Importers**



CBIC has taken various steps which have had the impact of reducing the dwell time as well as bringing down the logistics cost of EXIM clearances. One of the flagship initiatives in this regard has been the **Direct Port Delivery (DPD)** of containers to the importers thus obviating the need of routing the clearance through the **Container Freight Stations (CFSs)**.

Although this initiative is in operation at all the ports, however, Board has felt the need for providing general guidelines/eligibility criteria so that reach of DPD could be made maximized.

Ideally, any fully facilitated Bill of Entry (BoE) filed at the gateway port ought to get the DPD benefit. However, feedback from the field has suggested that factors like *non-receipt of original documents from abroad and consequent delay in issuance of Delivery Order, financial and credit woes, delay in settlement of dues of shipping lines, opening PD Account with the terminals* are some of the reasons inhibiting a larger section of importers to opt for DPD. CBIC by promoting DPD has raised the bar of efficiency. It is, therefore, but natural that other players in the EXIM logistics chain get their act together so that this successful reform measure could be made even more widespread.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2019/Circular-No-29-2019.pdf;jsessionid=8B41431C1802CA3B9825CAE424B6275E>

**Circular No 30/2019-Customs**  
**Date - 11.09.2019**

**Disposal of Seized/Confiscated Foreign Origin Liquor**

This circular has been issued to the practice of disposal of seized/confiscated liquor lying with Customs formations. Under the extant instructions/guidelines such seized/confiscated liquor was being disposed of by various means including sales to **Canteen Stores Department (CSD)**, other Defence Establishments or sale to hotels/restaurants and clubs having the necessary liquor licenses or to Indian Tourism Development Corporation (ITDC).

Now, field formations brought the following difficulties in disposing of seized/confiscated foreign origin liquor to the notice of the Board namely:

- i. Lack of response from Canteen Store Department (CSD) or from other Defence Establishments;
  - ii. Lack of response from other bidders on account of problems associated with getting clearances from:
    - a. State Excise Department;
    - b. Food Safety and Standards Authority of India (FSSAI);
  - iii. Denial of permission to sell by State Excise Authorities;
3. The matter was examined in consultation with Food Safety and Standards Authority of India (FSSAI) & Canteen Stores Department (CSD).
- 3.1. At present CSD is buying liquor of foreign brands directly in bulk quantity. As the seized/confiscated liquor is in assorted brands and in different quantities, they are not in a position to buy the stock from Customs.
- 3.2. FSSAI has stated that:-
- i. As per Food Safety and Standards (Import) Regulations, 2017, the Authorised Officer shall follow the procedure of inspection, sampling, testing and clearance, laid down under these regulations, for disposal of all cases of uncleared or unclaimed articles of food;
  - ii. FSSAI has also categorically emphasized that without obtaining a No Objection Certificate (NOC) from FSSAI, the imported food products including seized/confiscated foreign-origin Liquor should not be released to the market for sale/consumption and if sampling is not feasible in case of seized lot/batch of one or two bottles, then such stock shall be destroyed by the Customs;
  - iii. FSSAI has also informed that there is provision to minimize the cost of sampling of imported high priced alcoholic beverages. As per their Order F. No. 1/1619/FSSAI/Imports/2016 dated 06.03.2017, a miniature/representative sample of 100 ml (in two numbers) will be taken for laboratory analysis;
  - iv. FSSAI has also clarified that there is no de-minimis clause/exemption from testing of small lots.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2019/Circular-No-30-2019.pdf;jsessionid=624CE8585A70996C1EC54BFB66837B48>

**Circular No 31/2019-Customs**  
**Date - 13.09.2019**

**Revised Norms for Execution of Bank Guarantee under Advance Authorisation, DFIA and EPCG Schemes - reg.**

Board is in receipt of references from field formations and inputs from trade and industry seeking clarification as to what should be the basis for waiver of Bank Guarantee to be executed with Customs in the Goods and Services Tax (GST) regime under AA, DFIA and EPCG schemes in respect of manufacturer exporters/service providers.

GST has come into force from 01.07.2017 whereby Service Tax as well as major portion of Central Excise have been subsumed in the GST. Board's Circular No. 58/2004-Cus dated 21.10.2004 (hereinafter referred to as 'the said Circular') as amended vide Circular Nos. 17/2009-Cus dated 25.05.2009, 32/2009-Cus dated 25.11.2009, 06/2011-Cus dated 18.01.2011, 08/2013-Cus dated 04.03.2013 and 15/2014-Cus dated 18.12.2014 inter alia prescribes the norms for execution of Bond/Bank Guarantee in respect of imports made under the AA, DFIA and EPCG Schemes. The said Circular and amending Circular No. 17/2009-Cus dated 25.05.2009 extend exemption from execution of Bank Guarantee based on export turnover, quantum of duty, tax paid etc.

In the wake of GST regime, the norms for execution of Bank Guarantee under AA, DFIA and EPCG schemes have been reviewed and the following clarification is given:-

- (i) Manufacturer exporters/Service Providers registered with the GST authorities (Centre/State/Union Territory) who have been exporting during the previous two financial years and have minimum export of Rs. 1 crore or more during the preceding financial year shall also be eligible to claim exemption from furnishing Bank Guarantee under category (d) of importers specified in Table given in para 3.1 of the said Circular.
- (ii) Manufacturer exporters/Service Providers registered with the GST authorities (Centre/State/Union Territory) who have paid GST of Rs.1 crore or more during the preceding financial year shall also be eligible to claim exemption from furnishing Bank Guarantee under category (e) of importers specified in Table given in para 3.1 of the said Circular.
- (iii) In cases where the AA/DFIA/EPCG authorisation holder is a registered member of an Export Promotion Council, he shall produce a certificate of export performance or payment of duty/GST for the purpose of availing Bank Guarantee exemption from the concerned Export Promotion Council on the lines of similar facility available earlier.
- (iv) In cases where the AA/DFIA/EPCG authorisation holder is not a registered member of an Export Promotion Council, he may produce such certificate duly authenticated by a practicing Chartered Accountant who is registered with the GST Department (Centre/State/Union Territory) for payment of GST. The Chartered Accountant will mention his GSTIN and other registration details in the certificate on the lines stipulated earlier.

## **DIRECT TAX NOTIFICATIONS**

**Notification No. 60/2019**

**Date - 5.09.2019**

### **Application for grant of approval for the exemption under sub-clause (iv), sub-clause (v), sub-clause (vi) and sub-clause (via) of clause (23C) of section 10**

In exercise of the powers conferred by the first proviso to clause (23C) of sub-section (1) of section 10 and clause (vi) of sub-section (5) of section 80G read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: -

1. Short title and commencement —

- 1) These rules may be called the Income-tax (6th Amendment) Rules, 2019.
- 2) They shall come into force on the 5th November, 2019.

2. In the Income-tax Rules, 1962 -

(i) for 'rules 2C and 2CA', the following rule shall be substituted, namely: -

### **“Application for the purpose of grant of approval for the exemption under sub-clause (iv), sub-clause (v), sub-clause (vi) and sub-clause (via) of clause (23C) of section 10.**

2C. (1) The prescribed authority under sub-clause (iv), sub-clause (v), sub-clause (vi) and sub-clause (via) of clause (23C) of section 10 shall be the Principal Commissioner or Commissioner whom the Central Board of Direct Taxes may authorise to act in this behalf.

(2) An application for grant of approval for the exemption under sub-clause (iv), sub-clause (v), sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 to any fund or institution, any trust (including any other legal obligation) or institution, any university or other educational institution and any hospital or other institution (hereinafter referred to as 'the applicant') shall be made in Form No. 56 and shall be verified by the person who is authorized to verify the return of income under section 140, as applicable to the assessee.

(3) Form No. 56 shall be furnished electronically, -

- I. under digital signature, if the return of income is required to be furnished under digital signature; or
- II. through electronic verification code in a case not covered under clause (i).

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down the data structure, standards and procedure of furnishing and verification of Form No. 56 and shall be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the said form so furnished.”.

(ii) for ‘rule 11AA’, the following rule shall be substituted, namely: -

**“Requirements for approval of an institution or fund under section 80G.**

For more details, please follow -

[https://www.incometaxindia.gov.in/communications/notification/notification\\_60\\_2019.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_60_2019.pdf)

**Notification No. 61/2019**

**Date - 12.09.2019**

**E-Assessment Scheme**

E-assessment Scheme, 2019 shall come into force on the date of its publication in the Official Gazette.

**2. Definitions.--** (1) In this Scheme, unless the context otherwise requires, --

- i. “Act” means the Income-tax Act, 1961 (43 of 1961);
- ii. “addressee” shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- iii. “assessment” means assessment of total income or loss of the assessee under sub-section (3) of section 143 of the Act;
- iv. “authorised representative” shall have the same meaning as assigned to it in sub-section (2) of section 288 of the Act;
- v. “automated allocation system” means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;
- vi. “automated examination tool” means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;
- vii. “Board” means Central Board of Direct Taxes constituted under the Central Board of Revenues Act, 1963 (54 of 1963);
- viii. “computer resource” shall have the same meaning as assigned to them in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- ix. “computer system” shall have the same meaning as assigned to them in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- x. “computer resource of assessee” shall include assessee’s registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the email account of the assessee with his email service provider

**Notification No. 62/2019**

**Date - 12.09.2019**

**Instruction regarding E-Assessment Scheme**

The Central Government hereby makes the following directions for the purposes of giving effect to the E-assessment Scheme, 2019 made under sub-section (3A) of section 143 of the Act.

1. The provisions of clause (7A) of section 2, section 92CA, section 120, section 124, section 127, section 129, section 131, section 133, section 133A, section 133C, section 134, section 142, section 142A, section 143, section 144A, section 144BA section 144C and Chapter XXI of the Act shall apply to the assessment made in accordance with the said Scheme subject to the following exceptions, modifications and adaptations, namely: -

“A. (1) The assessment shall be made as per the following procedure, namely:

- (i) the National e-assessment Centre shall serve a notice on the assessee under sub-section (2) of section 143, specifying the issues for selection of his case for assessment;
- (ii) the assessee may, within fifteen days from the date of receipt of notice referred to in sub-clause (i), file his response to the National e-assessment Centre;
- (iii) the National e-assessment Centre shall assign the case selected for the purposes of assessment under this Scheme to a specific assessment unit in any one Regional e-assessment Centre through an automated allocation system;
- (iv) where a case is assigned to the assessment unit, it may make a request to the National e-assessment Centre for\_
  - a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;
  - b) conducting of certain enquiry or verification by verification unit; and
  - c) seeking technical assistance from the technical unit;

**Notification No. 63/2019**  
**Date - 12.09.2019**

**Cost Inflation Index**

The Central Government has made amendments in the Notification number S.O. 2413(E), dated the 13th June, 2018, namely:—

In the said notification, in the Table, after serial number 18 and the entries relating thereto, the following serial number and entries, shall be inserted, namely:—

Sl. No.	Financial Year	Cost Inflation Index
1	2	3
"19	2019-20	289".

This notification shall come into force with effect from the 1st day of April, 2020 and shall accordingly apply to the Assessment Year 2020-2021 and subsequent years.

**Notification No. 64/2019**  
**Date - 12.09.2019**

**Notification regarding Section 92C**

The Central Government has notified that where the variation between the arm's length price determined under section 92C of the said Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2019-2020

**Explanation.-** For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-

- (i) purchase cost of finished goods is eighty per cent. or more of the total cost pertaining to such trading activities; and
- (ii) average monthly closing inventory of such goods is ten per cent. or less of sales pertaining to such trading activities.

**Notification No. 65/2019**  
**Date - 12.09.2019**

**Notification regarding E-Verification Authority**

CBDT has authorised that the Assistant Commissioner of Income-tax (e-Verification), having headquarter at Delhi, to act as prescribed Income-tax Authority for the purpose of sub-section (2) of section 143 of the said Act, in respect of returns furnished under section 139 or in response to a notice under sub-section (1) of section 142 of the said Act during the financial year commencing on 1st day of April, 2018 for the purposes of issuance of notice under sub-section (2) of section 143 of the said Act.

**Notification No. 66/2019**  
**Date - 16.09.2019**

## Income-tax (7th Amendment) Rules, 2019

CBDT has made amendments in the Income-tax Rules, 1962, namely: —

### **1. Short title and commencement.—**

- a) These rules may be called the Income-tax (7th Amendment) Rules, 2019.
- b) They shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, in Rule 2F, in sub-rule (5), the proviso shall be omitted.

## DIRECT TAX CIRCULARS

**Circular No. 23 of 2019**

**Date – 06.09.2019**

### Exception to monetary limits for filing appeals specified in any Circular issued under Section 268A of the Income-tax Act, 1961-reg

This circular has been issued for laying down monetary limits and other conditions for filing of departmental appeals before Income Tax Appellate Tribunal (ITA T), High Courts and SLPs/appeals before Supreme Court.

Several references have been received by the Board that in large number of cases where organised tax-evasion scam is noticed through bogus Long-Term Capital Gain (LTCCG)/Short Term Capital Loss (STCL) on penny stocks and department is unable to pursue the cases in higher judicial fora on account of enhanced monetary limits. It has been reported that in large number of cases, ITA Ts and High Court have recognized the unique modus operandi involved in such scam and have passed judgements in favour of the revenue. However, in cases where some appellate fora have not given due consideration to position of law or facts investigated by the department, there is no remedy available with the department for filing further appeal in view of the prescribed monetary limits.

In this context, Board has decided that notwithstanding anything contained in any circular issued U/S 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate

Tribunal (IT AT), High Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to said circular, where Board, by way of special order direct filing of appeal on merit in cases involved in organised tax evasion activity.

**Circular No. 25 of 2019**

**Date – 09.09.2019**

### Relaxation of time-Compounding of Offences under Direct Tax Laws-One-time measure-Reg

The Central Board of Direct Taxes (CBDT) has been issuing guidelines from time to time for compounding of offences under the Direct Tax Laws, prescribing the eligibility conditions. One of the conditions for filing of Compounding application is that, it should be filed within 12 months from filing of complaint in the court.

2. Cases have been brought to the notice of CBDT where the taxpayers could not apply for Compounding of the Offence, as the compounding application was filed beyond 12 months, in view of para 8(vii) of the Guidelines for Compounding of Offences under Direct Tax Laws, 2014 dated 23.12.2014 or in view of para 7(ii) of the Guidelines for Compounding of Offences under Direct Tax Laws, 2019 dated 14.06.2019.

3. With a view to mitigate unintended hardship to taxpayers in deserving cases, and to reduce the pendency of existing prosecution cases before the courts, the CBDT in exercise of powers u/s 119 of the Income-tax Act, 1961 (the Act) read with explanation below subsection (3) of section 279 of the Act issues this Circular.

4.1 As a one-time measure, the condition that compounding application shall be filed within 12 months is hereby relaxed, under the following conditions:

- i. Such application shall be tiled before the Competent Authority i.e. the Pro CCIT/CCIT/Pr. DGIT/DGIT concerned, on or before 31.12.2019.
- ii. Relaxation shall not be available in respect of an offence which is generally/normally not compoundable, in view of Para 8.1 of the Guidelines dated 14.06.2019.

4.2 Applications filed before the Competent Authority, on or before 31.12.2019 shall be deemed to be in time in terms of Para 7(ii) of the Guidelines dated 14.06.2019.

4.3 It is clarified that Para 9.2 of the Guidelines dated 14.06.2019, shall not apply to all such applications made under this one-time measure. The other prescriptions of the Guidelines dated 14.06.2019 including the compounding procedure, compounding charges etc. shall apply to such applications.

5. For the purposes of this Circular, application can be filed in all such cases where

- a) prosecution proceedings are pending before any court of law for more than 12 months, or
- b) any compounding application for an offence filed previously was withdrawn by the applicant solely for the reason that such application was filed beyond 12 months, or
- c) any compounding application for an offence had been rejected previously solely for technical reasons.

**Circular No. 26 of 2019**  
**Date - 16.09.2019**

**Special Order of Board u/s 268A in cases involving bogus LTCG through penny stocks**

This is in reference to Circular No. 23 of 2019 dated 6th September 2019 and to say that by virtue of powers of CBDT u/s 268A OF Income Tax Act 1961, the monetary limits fixed for filing appeals before ITAT/HC and SLPs /Appeal before SC shall not apply in case of assessee claiming bogus LTCG/STCL through penny stocks and appeals/SLPs in such cases shall be filed on merits.

# PRESS RELEASE

## DIRECT TAX

**Press Release**  
**Date – 2nd September 2019**

### Consolidated Circular for ease of compliance of Start-ups

In order to provide hassle-free tax environment to the Start-ups, a series of announcements have been made by the Hon'ble Finance Minister in her Budget Speech of 2019 and also on 23rd August, 2019. To give effect to these announcements, the Central Board of Direct Taxes (CBDT) issued various circulars/ clarifications in the matter from time to time. Vide Circular No.22/2019 dated 30.08.2019, CBDT has consolidated all the circulars/ clarifications issued on this subject for the ease of compliance of Start-up entities. The present circular inter alia highlights the following:-

- A. Simplification of process of assessment of Start-ups:** Circular No. 16/2019 dated 7th of August, 2019 provided for the simplified procedure of assessment of Start-ups recognized by DPIIT. The circular covered cases under "limited scrutiny", cases where multiple issues including issue of section 56(2)(viib) were involved or cases where Form No.2 was not filed by the Start-up entity. Detailed process of obtaining mandatory approval of the supervisory authorities for conducting enquiry was also laid down by this circular.
- B. Time limit for Completion of pending assessments of Start-ups:** The time limit for completion of pending assessments was also specified by CBDT. All cases involving "limited scrutiny" were to be completed preferably by 30th September, 2019 and the other cases of Start-ups were to be disposed off on priority, preferably by 31st October, 2019.
- C. Procedure for addition made u/s 56(2)(viib) in the past assessment:** Vide clarification issued on 9th August, 2019 it was provided that the provisions of section 56(2)(viib) of the Act would also not be
- Contract manufacturing provision of software development services
  - Back office engineering support service
  - Provision of back office (ITeS) support services
  - Provision of marketing support services
  - Payment of royalty for use of technology and brand
  - Trading and distribution
  - Payment of charter charges
  - Corporate guarantee
  - Intra-group services

applicable in respect of assessment made before 19th February, 2019 if a recognised Start-up had filed declaration in Form No. 2. The timelines for disposal of appeals before CsIT(Appeals) was also specified. Further, the addition made under section 56(2)(viib) would also not be pressed in further appeal.

- D. Income-tax demand:** It has been reiterated time and again by CBDT that outstanding income-tax demand relating to additions made under section 56(2)(viib) would not be pursued and no communication in respect of outstanding demand would be made with the Start-up entity. Other income-tax demand of the Start-ups would not be pursued unless the demand was confirmed by ITAT.
- E. Constitution of Start-up Cell:** Vide order dated 30.08.2019, CBDT has constituted a Start-up Cell under the aegis of Member (IT&C), CBDT to redress grievances and to address various tax related issues in the cases of Start-ups. Grievances can also be filed online at [startupcell.cbdt@gov.in](mailto:startupcell.cbdt@gov.in)

**Press Release**  
**Date – 4th September 2019**

### CBDT enters into 26 APAs during the current Financial Year

The Central Board of Direct Taxes (CBDT) has entered into 26 APAs in the first 5 months of the current financial year (April to August, 2019). With the signing of these APAs, the total number of APAs entered into by the CBDT as of now stand at 297, which includes 32 BAPAs.

Out of these 26 APAs, 1 is a BAPA entered into with the United Kingdom and the remaining 25 are UAPAs.

The BAPA and UAPAs entered into during this period pertain to various sectors and sub-sectors of the economy like Information Technology, Banking, Semiconductor, Power, Pharmaceutical, Hydrocarbon, Publishing, Automobile, etc.

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

- Interest on financial instruments

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

### Services by Govt. Authority related to Health Services –Exempted from GST

#### West Bengal Medical Services Corporation Ltd vs. W.B AAR

Case No. - 29 of 2019  
Date – 5.07.2019

#### Fact of the Case

- The Applicant acts as the implementing agency for the procurement of drugs and equipment for the medical colleges and hospitals and construction and maintenance of health facilities.
- The Department of Health & Family Welfare, Government of West Bengal, sanctions the fund directly in its favour and it, in turn, supplies the Department utilization certificate upon disposal of such fund.
- The Applicant is merely acting as the canalizing agency on behalf of the State Government and cannot appropriate any part of the fund for any other purpose.
- The applicant has raised a question whether exemption in terms of Sl No. 3/3A/4/5 of Notification No12/2017-CT (Rate) dated 28.06.2017 and WB Govt. Gazette Notification-1136-FT dated 28.06.2017, as amended from time to time (hereinafter collectively referred to as "the Exemption Notification"), is available on such administrative cost, which, according to the Applicant, is the consideration received for the management services provided.

#### Decision of the Case

- As per Notification No. 12/2017- Central Tax (Rate) dated 28th June 2017, any Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution would be exempted from GST.
- Accordingly, the Applicant is a governmental authority as defined under para no. 2(zf) of Notification No 12/2017-CT (Rate) dated 28.06.2017 and State Notification-1136-FT

dated 28.06.2017, as amended from time to time, and eligible for exemption under Sl No. 5 of the said notifications on supply of any service in relation to establishment and maintenance of hospitals and similar health facilities.

### Supply of Cleaning Material Central Government and State Government hospitals not exempted from GST

#### M/s Reliable Hospitality service vs. W.B AAR

Case No. - 30 of 2019  
Date – 8.07.2019

#### Fact of the Case

- The applicant carrying on business of supplying facility management services like mechanized and manual cleaning, housekeeping, security services etc. to various Central Government and State Government hospitals under the trade name M/s Reliable Hospitality service
- The Applicant also supplies cleaning material incidental or ancillary to provisioning the cleaning services.
- The applicant has raised a question whether exemption from payment of GST is available for such supplies in terms of Notification No 12/2017-CT (Rate) dated 28.06.2017 and WB Govt. Gazette Notification-1136-FT dated 28.06.2017, as amended.

#### Decision of the Case

- The Applicant is not providing 'health service' to any hospitals. The scope of 'sanitation and similar services', as classified under SAC 99945, in as much it includes 'cleaning and sweeping', is limited to cleaning and sweeping of roads and streets. Cleaning of hospitals is, therefore, not to be treated as 'sanitation' service under the GST Act.
- Therefore Benefit of exemption from the payment of GST is not available to the Applicant under Notification No 12/2017-CT (Rate) dated 28.06.2017 and State Govt. Notification-1136-FT dated 28.06.2017, as amended, for the supply of security services and cleaning and sweeping services.

### Rate of GST on contract for construction of building and structure for colony

#### M/s. Madhya Pradesh Power generating Company Limited vs. AAR Madhya Pradesh

Case No. - 12/2019

Date - 26/07/2019

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

- The company M P Power Generating Co. Ltd is 100% Madhya Pradesh State Government Hold Company.
- Deputy Secretary, Energy Department, Government of Madhya Pradesh, vide its Letter No. 192/01/2011/13 dated 07.01.2011 entrusted the liability to construct 2 X 660 MV Shree Singaji Thermal Power Project Stage -II Khandwa on MP Power Generating Co. Ltd.
- It was also mentioned that an SPV (Special Purpose Vehicle) to be constituted for the same, which was constituted in the form of Company Shree Singaji Power Project Limited on 12.10.2017.
- The total cost of the project was estimated at Rs. 6500 Crore which was revised to Rs. 7738 Crore. This cost includes cost of Colony Building.
- Company has awarded contract to M/s Shreeji Infrastructure India Pvt Ltd towards construction of residential quarters at 2x660 MW Shree Singaji Thermal Power Project Stage -II Khandwa.
- The question was raised –
  - ✓ Rate of GST on contract for construction of building and structure for colony at village Siveria at 2x660 MW Shree Singaji Thermal Power Project Stage -II Khandwa. As per Notification No. 11/2017 as amended by Notification No. 24/2017 further amended vide Notification No. 31/2017.
  - ✓ Rate of GST on construction contract of residential quarters at various power houses of MPPGCL as per Notification No. 11/2017 as amended by Notification No. 24/2017 further amended vide Notification No. 31/2017.

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

The work contract awarded to Shreeji Infrastructure P.Ltd. for construction of 599 residential quarters at Shree Singaji Thennal Power Project Stage-II shall attract GST @18% (9% CGST +9% SGST) under SAC 9954.

**Whether the various systems, sub-systems and onboard spares supplied by the applicant for use in the Warships, Vessels and Submarines meant for Indian Navy and Shipbuilders, attracts 5% GST**

**M/s Bharat Electronics Limited vs. GST AAR  
Karnataka**

**Case No. - KAR ADRG 21/2019  
Date - 26/08/2019**

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

- The Applicant is a Public Sector Company and is registered under the Goods and Services Act, 2017.
- The applicant states that they are having manufacturing units at various places across India and are mainly engaged in the manufacture and supply of various defence related equipment/ machinery/ systems. The said goods are supplied to all the three forces guarding the frontiers of the country.
- The applicant states that the subject matter of the present application relates to supplies effected against Purchase Orders received from various Ship Building Industries, namely, Mazagaon Dock Limited, Garden Reach Shipbuilders and Engineers, Hindustan Shipyard Limited, Larsen and Toubro etc., and directly to Indian Navy.
- The question was raised - Whether the various systems, sub-systems and onboard spares supplied by the applicant for use in the Warships, Vessels and Submarines meant for Indian Navy and Shipbuilders, attracts 5% GST?.

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

Various systems, sub-systems and onboard spares supplied by the applicant for use in the Warships, Vessels and Submarines meant for Indian Navy and Shipbuilders (excluding consumables and raw materials) are appropriately covered under sl.no.252 of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017, and accordingly attracts 5% GST.

**Whether Leasing of Satellite Transponder which is covered under SAC Code 997319 be charged at 5% GST as per HSN Code 8803 - Parts Goods of Heading 8802 (Satellites)**

**M/s Antrix Corporation Limited vs. GST AAR  
Karnataka**

**Case No. - KAR ADRG 19/2019  
Date - 26/08/2019**

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

- The applicant stated that they are a company wholly owned by the Government of India (GOI) and under the administrative control of the Department of Space, incorporated under the provisions of the Companies Act, 1956 as a private limited company on 28th September, 1992 –
  - a. For the promotion and commercial exploitation of space based services and products,
  - b. To provide technical consultancy services;

- c. To carry out transfer of technologies developed by Indian Space Research Organisation (ISRO); and
- d. To facilitate development of space related industrial capabilities in India.
- The question was raised - Whether Leasing of Satellite Transponder which is covered under SAC Code 997319 be charged at 5% GST as per HSN Code 8803-Parts Goods of Heading 8802 (Satellites)?

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

The service of Leasing of Satellite Transponders, covered under SAC 9973 19, falls under the Entry No.17 (viii) of Notification No. 8 / 2017-Integrated Tax (Rate) dated 28th June 2017, as amended, and is taxable to GST at the rate of 5% IGST (i.e. 2.5% of CGST and 2.5% of KGST), as applicable on the supply of like goods (transponder – part of communication satellite) involving the transfer of title in goods, covered under 8803 90 00, in terms of Entry no. 245 of the Schedule I of the Notification No. 1 / 2017 – Integrated Tax (Rate) dated 28th June, 2017, as amended.

### **DIRECT TAX**

#### **Salary to Teachers / Lectures / Staff of College subject to TDS u/s 192, not FTS: ITAT**

#### **Principal Sri Sathya, Sai College for Women vs. I.T.O., Jaipur**

**Case No. – 684,685,686/JP/2018**  
**Date – 19.08.2019**

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

- In the present case the assessee is a organizer of college named Sri Sathya Sai P.G College for women.
- During the Assessment Years under consideration, the assessee paid salary to its employees who are teaching thereon which assessee deducted the tax at source under section 192 of the Act.
- During the course of assessment, the Assessing Officer held that the employees to whom assessee paid salary are not having an employer-employee relationship between the college teachers/ lecturers/ staff. It was, therefore, held that the assessee is liable to deduct tax at source under section 194] of the Act in place of 192 of the Income Tax Act, 1961.
- The assessee appealed to the Tribunal against the order of the assessing officer.
- The Tribunal noted that the month-wise salary sheet was also prepared by the college on the basis of the attendance register of the employees. The salary was paid to the

employees and due taxes are being deducted u/s 192 of the I.T. Act, 1961.

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

The Tribunal observed the followings –

- The assessee has appointed teachers/ lecturers and staff for full-time employment as per terms of the appointment letter issued by the college.
- The assessee is paying monthly fixed salary as per the terms of employment of service.
- The appointment is made under an employer-employee relationship between the college and the teachers/ lecturers/ staff.
- Since there were employee and employer relationship between the college teachers/ lecturers/ staff, therefore, tax on the salary paid to them was correctly deductible u/s 192 of the Act.
- The Income Tax Appellate Tribunal (ITAT), Jaipur has held that the salary paid to teachers, lectures and staff by the college would not amount to the fee for technical services and the same is subject to TDS under Section 192 of the Income Tax Act.

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#### **Registration can't be denied to Charitable Institution merely because It is solely for benefit of Christian Community: Patna HC**

#### **St. Michaels Educational Association vs. Commissioner of Income Tax, Patna**

**Case No. – 438 of 2015**  
**Date – 13.08.2019**

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

- The appellant is an educational institution which was granted registration under section 12AA on April 26, 1985.
- In the year 2011, the income tax department cancelled its registration on the ground that its activities were exclusive to benefit of Christians rather than for the public.
- The assessee, before the High Court, held that the registration of an Educational Society can be cancelled if the activities of the institution are not in accordance with its objective.

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

- The learned justice of the bench stated that there are two circumstances where the principal commissioner or commissioner can exercise the power of cancellation of registration of charitable institution.

- The circumstances are (a) if the activities of such trust or institution are not found genuine; or (b) the activities of such trust or institution are not being carried out in accordance with the objects of the trust or institution.
- The legislative intent of the provision of sub-section 3 of Section 12AA is loud and clear and it is if and only if, the institution in question is found violating either of the two conditions that the Principal Commissioner or the Commissioner can exercise such power to cancel the registration and in no other circumstance.
- In the present case there is no satisfaction recorded by the CIT either that the activities of the assessee was not genuine or that it was not being carried in accordance with the objects for which it was set up. So the registration cannot be cancelled.
- The Patna High Court has held that, Registration can't be denied to Charitable Institution merely because It is solely for benefit of Christian Community.

**Ex-Gratia Payment to Prematurely retiring Employees Deductible even in the absence of a Scheme: ITAT**

**Prathamik Shikshak Sahakari Bank Ltd. vs. Dy. Commissioner of Income Tax**

**Case No. -ITA No. 1307/PUN/2017**  
**Date - 19.08.2019**

**Fact of the Case**

- In the present case Prathamik Shikshak Sahakari Bank Ltd. is the assessee
- The bank paid ex-gratia to its prematurely retiring employee and claimed deduction
- But during the course of assessment the A.O did not allow the deduction.
- The assessee, on the other hand, has held that the said payment was made in recognition of long term and meritorious services of the employees. The assessee had claimed the said expenditure as ex-gratia payment as in the nature of profits and in lieu of salary, and on the same, TDS was also deducted.
- However, the Assessing Officer disallowed the said expenses in view of section 35DDA of the Act and also held that they were not allowed as a deduction under section 37(1) of the Act.
- The assessee went to the Tribunal against the order of the A.O

**Decision of the Case**

- Relying on its earlier order in the case of assessee's own matter, the Tribunal found that this issue also arose before the Tribunal in assessee's own case in the assessment year

2011-12 and the Tribunal vide paras 9 to 14 had decided the issue and allowed the claim of the assessee.

- The Pune bench of the Income Tax Appellate Tribunal (ITAT) has held that the amount of ex-gratia payment to the prematurely retiring employees can be allowed as a deduction under the provisions of Income Tax Act even though there is no such scheme providing the same.

**Transfer of Right to Sue would not constitute Capital Gain: ITAT**

**Shri Anil Gulabdas Shah vs. ACIT, Mumbai**

**Case No. - 5134/Mum/2017**  
**Date - 09.08.2019**

**Fact of the Case**

- In the present situation a practicing lawyer is the assessee
- The assessee was assessed for compensation of Rs. 900 lakhs during assessment year pursuant to certain consent terms as approved by honorable Supreme Court.
- The property under consideration was the subject matter of extensive litigation which ultimate got culminated into the sale of the property by the assessee in terms of consent terms dated 03/01/2012 between the assessee and certain other parties.
- The assessee, along with others, has executed the deed of conveyance on 31/12/2011 in favour of Hubtown Limited for an aggregate sale consideration of Rs. 4 Crores.
- The additional compensation of Rs.9 Crores was payable to the assessee only pursuant to consent terms dated 03/01/2012 filed before Hon'ble Supreme Court.

**Decision of the Case**

The Tribunal observed the followings-

- The additional compensation was towards time, cost and effort of the assessee in pursuing the litigation.
- The said compensation was part and parcel for the sale transaction and received by the assessee as a consideration of the sale of the property.
- On the other hand, the learned CIT (A), in our considered opinion, has clinched the issue in the proper perspective. As rightly held, there could not be any transfer of a "right to sue" under Indian Law and any capital receipt arising from a right to sue cannot thus be considered capital gains under Section 45.
- The ITAT, Mumbai has held that the assessee cannot be assessed for capital gain on the ground of transfer of right to sue.

**Share in Goodwill paid to Legal Heirs of Deceased Partners allowable as Deduction: ITAT**

**Wadia Ghandy and Company vs. Assistant Commissioner of Income Tax, Mumbai**

**Case No. - 5328/Mum/2016**

**Date - 7.08.2019**

**Fact of the Case**

- In the present case A partnership firm is the assessee.
- It paid the share in goodwill to the legal heirs of deceased partner and claimed deduction
- But the A.O did not allow the claim of deduction of the assessee firm.
- The assessee firm contended that as per partnership deed the assessee has to pay 5% of the net profit to the retired partners or the legal heirs of the deceased partners on account of the goodwill of the partners.
- It was submitted since the payment made was for the purpose of business. It has to be allowed as an expenditure.
- However, the Assessing Officer did not find merit in the submissions of the assessee and disallowed the deduction claimed.

**Decision of the Case**

- The assessee firm went to the Tribunal against the order of the A.O
- The Tribunal held that the allowability of payment made to the legal heirs of deceased partners towards share in goodwill is a recurring issue between the parties continuing from the preceding assessment years.
- The Tribunal held that the payment made to the legal heirs of the deceased partners is allowable as a deduction.

# TAX COMPLIANCE CALENDAR AT A GLANCE

## GST CALENDAR

Date	Return Type
20-09-2019	<b>GSTR 3B</b> - for the month of August 2019
20-09-2019	<b>GSTR 5 &amp; 5A</b> - to be filed by the <i>Non-Resident taxable person</i> & <i>OIDAR</i> for the month of August 2019.
18-10-2019	<b>CMP 08</b> - The last date for furnishing statement containing the details of the self-assessed tax in for the quarter July, 2019 to September, 2019 by taxpayers under composition scheme.
31-10-2019	<b>GSTR 1</b> - Applicable for taxpayers with Annual Aggregate turnover upto Rs. 1.50/- Crore for the quarter July, 2019 to September, 2019

## DIRECT TAX CALENDAR - SEPTEMBER, 2019

### 07.09.2019

- Due date for deposit of Tax deducted/collected for the month of August, 2019. 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

### 14.09.2019

- Due date for issue of TDS Certificate for tax deducted under section 194-IA and section 194-IB in the month of July, 2019

### 15.09.2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of August, 2019 has been paid without the production of a challan
- Second instalment of advance tax for the assessment year 2020-21
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of August, 2019



### 30.09.2019

- Audit report under section 44AB for the assessment year 2019-20 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on September 30, 2019).
- 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 August, 2019
- 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 September 30, 2019)
- Annual return of income for the assessment year 2019-20 if the assessee (not having any international or specified domestic transaction) is (a) corporate - assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited).
- 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 September 30, 2019)
- Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or 11(1) (if the assessee is required to submit return of income on September 30, 2019)
- 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 does not have any international/specified domestic transaction]
- Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2018-19 and of foreign tax deducted or paid on such income in Form no. 67. (if due date of submission of return of income is September 30, 2019).

## DIRECT TAX CALENDAR - OCTOBER, 2019

### 07.10.2019

- Due date for deposit of tax deducted/collected for the month of September, 2019. 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
- Due date for deposit of TDS for the period July 2019 to September 2019 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H

### 15.10.2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of September, 2019 has been paid without the production of a challan
- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IB in the month of August, 2019
- Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending September, 2019
- Quarterly statement of TCS deposited for the quarter ending September 30, 2019
- Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September, 2019
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of September, 2019



**30.10.2019**

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB in the month of September, 2019
- Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2019

**31.10.2019**

- Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2018-19.
- Quarterly statement of TDS deposited for the quarter ending September 30, 2019
- Due date for furnishing of Annual audited accounts for each approved programmes under section 35(2AA)
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending September 30, 2019
- Copies of declaration received in Form No. 60 during April 1, 2019 to September 30, 2019 to the concerned Director/Joint Director

## SNAPSHOTS OF TRD SEMINARS



CMA Biswarup Basu, Vice-president, CMA Pallab Bhattacharya, Chairman – EIRC, CMA Arundhuti Basu, Regional Council Member, CMA Ashis Banerjee, Chairman- Chapters' Coordination Committee and other dignitaries graced the seminar organized by Kharagpur Chapter on 13.09.2019  
Theme of the Seminar – Income Tax

Dr. Satyahari Dey, Managing Director, IIT Kharagpur participated in the seminar as a chief guest.

Mr. S. K. Roy, Managing Director AMER-SIL KETEX Pvt. Ltd. (Kharagpur) was the guest of honour.

CMA Shyamalendu Bhattacharya, Assistant Commissioner of Income Tax, Govt. of India (Retd.) delivered his speech on the various issues of income tax in the technical session of the seminar.



A good number of delegates from industry, faculty and students participated in the seminar organized by Kharagpur Chapter on 13.09.2019



CMA Niranjana Mishra – Chairman Indirect Tax Committee, CMA S.P Padhi-Eminent GST Expert with other dignitaries graced dais in “Seminar on GST-Annual Return” organized by Bhubaneswar Chapter on 12.09.2019

Shri Bijoy Kumar Kar, IRS, Principal Commissioner of GST Commissionerate & Central Excise, Customs, Bhubaneswar Zone and Shri S. Nath, Assistant Commissioner of GST Commissionerate, Bhubaneswar Zone were the Chief Guest



Around 200 participants attended the seminar organized by Bhubaneswar Chapter on 12.09.2019





CMA Chittaranjan Chatterjee, Central Council Member delivered speeches in the Seminar "Area of Direct Tax-Scope of Cost and Management Accountants" on 15.09.2019 organized by Sreerampore Chapter



Delegates from industry, Members and students participated in the seminar organized by Sreerampore Chapter on 15.09.2019



## TAXATION COMMITTEE - PLAN OF ACTION

### Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. 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.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
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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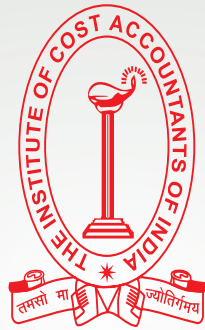


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