

**INDIRECT TAX LAW REPORT
MARCH 2017**

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GST HIGHLIGHTS

- 1. CAIT: Small businesses yet to prepare for new taxation system; postpone GST to September 1** - The traders association in the country, Confederation of All India Traders (CAIT), has appealed to postpone the roll out of Goods and Services Tax (GST) to September 1, since small businesses are yet to buckle up for the implementation and its aftermath. As per CAIT, there are nearly 70% small businesses, which are not yet prepared for GST. Traders from small businesses need to understand the provisions and details of GST. There are about 2 crore small businesses in the country that would come under the GST regime, and July 1, would be too early to spread awareness and educate the small businessmen on the new taxation system. The Goods and Services Tax (GST) Council in its 11th meeting, held on Saturday, has given in-principle approval to the two key draft laws of Central GST (CGST) and Integrated GST (IGST). The GST Council will again meet on March 16, 2017 to clear the State GST (SGST) and the Union Territory GST (UTGST) laws.
- 2. Quasi-judicial body likely to curb profiteering post GST** - The all-powerful GST Council may set up a quasi-judicial authority or rope in an existing body to protect consumers from profiteering by business entities under the Goods and Services Tax (GST) regime. The model draft GST law, unveiled in November last year, had proposed an anti-profiteering mechanism to ensure benefit of lower taxes is shared with consumers. A senior finance ministry official said GST being one- nation-one-tax will lead to doing away with current system of tax-on-tax and any reduction in tax rate will have to be passed down to consumer. As of now, central excise is levied on a produce manufactured at a factory. When it is sold, a VAT is levied on not the ex-factory price but on the rate arrived at after including the cost of manufacture and excise duty. With GST, this practice will go away. The GST bill, the official said, provides for giving the power to protect consumer interest to either an existing authority or creating a new one. The GST Council, headed by Union Finance Minister Arun Jaitley and comprising

all state representatives, may decide to refer complaints of profiteering to the consumer forum, or set up a new body or a quasi-judicial authority, he said.

The anti- profiteering clause is an enabling provision and an authority can be set up if the Council feels there is a need. A full-fledged authority can be created if profiteering is rampant and there are complaints from public, he said. As per the draft, an authority can be constituted or an existing one entrusted with the task to examine that the input tax credits or reduction in tax rates are passed by registered tax payers to consumers. The official, however, said there is not going to be a drastic reduction in tax rates as the effort would be put fit a good or service in the nearest tax slab of the four-tier structure of 5, 12, 18 and 28 per cent approved by the Council. Tax rules will come to the GST Council meeting sometime later this month or early next month. Under the new GST regime, which is likely to kick in from July 1, all traders and industries will have to get register with the GST network to pay taxes, file return and claim refunds. The official said 75 per cent of the registration is finished in states. E-Permit will be issued by GST-Network at the time of departure if someone is sending goods overseas, he said, adding the commodities, goods and services which are to be exempt from GST will be taken up at the meeting of the Council later.

3. Happy end to e-tail's tax tale in GST era - In what would have come as a relief to ecommerce market places such as Amazon and Flipkart, the proposed tax collected at source (TCS) on them under the goods and services tax (GST) is to be capped at 1%, the GST Council has decided. The draft law had proposed a levy of 1% without any limit. Industry had demanded that TCS be scrapped as it could lead to a steep rise in transaction costs and also discourage ecommerce, but states had wanted the levy. The TCS provision will allow authorities to track transactions carried out through ecommerce platforms and ensure compliance. Some states such as Karnataka, home to a number of ecommerce players, had proposed this levy for the first time and then subsequently pushed for it within the GST framework. The supplier of goods can set off TCS against its final GST liability. Theoretically, the levy could be even lower than 1%. In any case, the purpose of TCS is to track the sales by the vendors on ecommerce platforms which can be achieved with a much lower rate

(than 1%) as well. They would also hope to get clarity as to whether registration for TCS would be state-specific or on a centralised basis through IGST mechanism.

4. The common ground on GST should be accompanied by clarity on the road map - More than six months after the Constitution was amended to enable the Goods and Services Tax (GST), the Centre and States have managed to find considerable common ground on the long-debated indirect tax system, overcoming seemingly irreconcilable differences that cropped up along the way. On Saturday, the GST Council approved final drafts of the Central and Integrated GST Bills, which should be placed in the public domain as soon as possible. With the law to compensate States already cleared, the only pending legislative negotiation left for the Council, which is expected to meet again on March 16, involves the State and Union Territories' GST bills. As these bills secure assent from State Assemblies and Parliament, and swiftly, the operational rules for the GST must be readied. Industry would need at least three months after that to prepare for the transition from the present system of myriad State, Central and local levies on goods and services. Moreover, switching to a new indirect tax system in the middle of a financial year will bring its own subset of accounting complications. The Central government should resist a pushback on the roll-out date, and expedite efforts to ensure everyone is ready to get on board the new system with early clarity on what rates would apply to different goods and services.

5. Authority under GST - If Parliament doesn't intervene in the days to come, the Goods and Services tax (GST) may stay out of the purview of the Comptroller and Auditor General (CAG). The GST Council, aiming for a July rollout, has conveniently avoided CAG's oversight with respect to the GST's functioning. CAG enjoys constitutional authority to certify the accounts (revenue expenditure) of the Centre and states. Despite a special mandate for CAG in the original GST draft bill to audit the review of GST system, the GST Council agreed to delete the said proviso in the final draft. Section 65 under the preliminary draft of the GST authorised the CAG to seek information and clarifications from GST Council. In October 2016, the move to dilute CAG's authority in GST affairs slowly finished off. CAG had, in fact, written a letter to

the government requesting to maintain its power in GST act as per constitutional norms. Although it is still authorised to verify the formula on which the Centre will compensate the states for their losses post GST, the Centre and state are in sync to keep the constitutional auditor at bay in other GST affairs. If this decision fructifies and gets Parliament's nod, the constitutional auditor's role to oversee the central and state governments' revenue will be extremely limited. Interestingly, this is not the only bone of contention between the auditor and the budding GST administration. The CAG has been denied permission to audit the GST network (GSTN) as well.

SERVICE TAX NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No. 10/2017- Service Tax	March 08, 2017	<p>Subject: Amendment to Notification No. 25/2012-Service Tax, dated the 20th June, 2012-</p> <p>In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20th June,</p>

		<p>2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20th June, 2012, namely:- In the said notification, in the opening paragraph, in entry 9, in clause (b), after sub-clause (iv), the following proviso shall be inserted, namely:- “Provided that nothing contained in clause (b) of this entry shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent;”. 2. This notification shall come into force on the 1st day of April, 2017.</p>
<p>2. Notification No. 09/2017- Service Tax</p>	<p>February 28, 2017</p>	<p>Subject: Service Tax payable by way of admission to a museum-</p> <p>Whereas, the Central Government is satisfied that in the period commencing on and from the 1st day of July, 2012 and ending with the 31st day of March, 2015, according to a practice that was generally prevalent, there was non levy of service tax, on the services by way of admission to a museum and this service was liable to service tax, in the said period,</p>

		<p>which was not being paid according to the said practice.</p> <p>Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944, read with section 83 of the Finance Act, 1944, the Central Government hereby directs that the service tax payable on the services by way of admission to a museum under section 66B of the Finance Act, 1994 but for the said practice, during the said period, shall not be required to be paid.</p>
<p>3. Notification No. 10/2017- Service Tax</p>	<p>February 20, 2017</p>	<p>Subject: Services by the operators of Common Effluent Treatment Plant by way of treatment of effluent from the 1st of July 2012 to 31st of March 2015 -</p> <p>Whereas, the Central Government is satisfied that in the period commencing on and from the 1st of July 2012 and ending with the 31st of March, 2015 according to a practice that was generally prevalent, there was non levy of service tax, on the services by the operators of Common Effluent Treatment Plant by way of treatment of effluent and this</p>

service was liable to service tax, in the said period, which was not being paid according to the said practice.

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944, read with section 83 of the Finance Act, 1944, the Central Government hereby directs that the service tax payable on the said services by the operators of Common Effluent Treatment Plant, under section 66B of the Finance Act, 1944 but for the said practice, during the said period, shall not be required to be paid.

SERVICE TAX JUDGMENTS

1. Strictures against Commissioner (Appeals) - Hyper technical view ought not to be taken as delay can be condoned even on oral prayer. Such orders unnecessarily increase work load of High Court. Direction to Chief Commissioner to give guidance to Commissioners (Appeals) so that technical orders be not passed by them.

Appeal to Commissioner (Appeals) - Limitation – Delay in filing appeal by 2 days as last two days happened to be holidays on account of being Saturday and Sunday. It was held there was no delay and the appeal was restored under Section 85(3A) of Finance Act, 1944 and Article 226 of Constitution of India.

Beldih Club v. Commr. Of C. Ex. & S.T., Jamshedpur 2017 (48) S.T.R. 22 (Jhar.)

- 2. Penalty - Delay in payment of tax-** Service Tax paid with interest before issue of show cause notice – Circular dated 3-10-2007 clarifies that when an assessee had paid Service Tax in full together with interest, proceedings against assessee including proceedings under section 73(3) of Finance Act, 1944 would be concluded – Assessee not liable to pay penalty under sections 76, 77 & 78 of Finance Act, 1944. **Commissioner of C. Ex., NAGPUR-II v. Galaxy Construction Pvt. Ltd. 2017 (48) S.T.R. 37 (Bom.)**

- 3. Appeal by Department - Procedural defect -** Effect of Appeal dismissed by the Tribunal on the ground that instead of the Committee of Commissioners, the Commissioner of Surat alone took the decision to file appeal. It was held that Appeal should not have been dismissed only on the above ground. Moreover, the regular incumbent to the commissioner was unavailable, thus, decision had to be taken by Commissioner of other Commissionerate, and same cannot be stated to be invalid. The matter was remanded for consideration on merits under section 35E of Central Excise Act, 1944. **Commr. Of C. Ex. And Cus., Surat-I v. Rupa Dyeing & Printing Pvt. Ltd. 2017 (48) S.T.R. 39 (Guj.)**

- 4. Prosecution - Confession by Co-accused - Evidence -** Conviction of other co-accused on the basis of admission of co-accused is not permissible. Statement of co-accused against other co-accused is a weak type of evidence and conviction of co-accused cannot be based on the uncorroborated statement of co-accused. In the instant case, the Trial Court acquitted the persons who had been named by the accused-carriers of gold biscuits, as the owners of the biscuits, due to lack of corroborative evidence against said owners. **Assistant Collector, Customs v. Amrik Singh 2017 (48) S.T.R. 41 (P&H)**

- 5. Refund - Consequent to allowing appeal -** Pending appeal against impugned order. Impugned order not stayed, operation not suspended. Application for refund be processed as expeditiously as possible. **APM Terminals India Pvt. Ltd. v. Union Of India 2017 (48) STR 46 (Bom.)**

CENTRAL EXCISE NOTIFICATIONS

TARIFF NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No.- 3 /2017	February 02, 2017	Subject: In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 85 of Finance Act, 2005 (18 of 2005), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 6/2005- Central Excise, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, vide number G.S.R. 126 (E), dated the 1st March, 2005, namely :- In the said notification, in the Table,- (i) against S. No. 1, for the entry in column (4), the entry "9 %" shall be substituted; (ii) against S. No. 2, for the entry in column (4), the entry "8.3 %" shall be substituted; (iii) S. Nos. 13, 15 and 20 and the entries relating thereto shall be omitted; (iv) against S. No. 21, in column (3), after the words "a brand

		name” the brackets and words “(other than pan masala containing tobacco ‘gutkha’)” shall be inserted.
2. Notification No.- 5/2017	February 02, 2017	Subject: In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all items of machinery, including instruments, apparatus and appliances, transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for,- (a) initial setting up of fuel cell based system for generation of power or for demonstration purposes; or (b) balance of systems operating on bio-gas or bio-methane or by-product hydrogen, so much of the duty of excise leviable thereon which is specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as is in excess of 6% ad valorem with addition to certain conditions.

NON-TARIFF NOTIFICATIONS

Notification No.	Date of Issue	Subject
Notification No. 06/2017-Central Excise (N.T.)	March 14, 2017	<p>Subject: In exercise of powers conferred by clause (b) of section 2 of the Central Excise Act, 1944(1 of 1944) read with sub-rule (1) of rule 3 of the Central Excise Rules, 2002, the Central Board of Excise and Customs makes the following further amendment in the notification of the Government of India, Ministry of Finance (Department of Revenue), Notification No. 38/2001-Central Excise (N.T.) dated the 26th June, 2001, namely:- In the said notification, in the TABLE, for S.No.4 and the entries relating thereto, the following shall be substituted, namely:-</p> <p>“4-Officers of Directorate General of Central Economic Intelligence Bureau namely: -</p> <ol style="list-style-type: none">1. Additional Director General-Commissioner2. Additional Director/Joint Director- Joint Commissioner3. Deputy Director- Assistant Commissioner or Deputy Commissioner4. Assistant Director- Inspector”

CENTRAL EXCISE JUDGMENTS

- 1. Demand – Excess duty** – Assessee collecting excise duty, more than it had paid, from his customers due to incentive granted to him is not bound to deposit such amount with the Government as per Section 11D of Central Excise Act, 1944. **Commr. Of C. Ex., Noida v. New Holland Tractors (India) Pvt. Ltd. 2017 (347) E.L.T. 7 (All.)**
- 2. Seized Goods** – Release of Settlement Commission finalizing dues required to be paid by assessee and also holding assessee entitled to refund. No justification in Department to continue to retain goods in question. Directions to release goods were given under Article 226 of Constitution of India. **Pankaj Bansal v. Commissioner of Customs (Import) 2017 (347) E.L.T. 13 (Del.)**
- 3. Appeal to Appellate Tribunal** – Limitation for delay in filing, Condonation of Delay not deliberate or willful or due to negligence on assessee's part- Held that assessee is not going to be benefited by delay, instead of non-suiting on technical grounds, assessee to be given opportunity to submit its case on merits. Order of Tribunal set aside and delay condoned. **Shree Royal Polyplast Industries v. Commissioner of Customs 2017 (347) E.L.T. 14 (Guj.)**
- 4. Order of Tribunal – Ex parte order** – Dismissal of appeal for non-prosecution. Due to merger of assessee firm with another firm, notice of hearing never served on them for participating in proceedings. On coming to know of ex parte dismissal of appeal, their application for recall of order also dismissed without consideration. Original order as well as order passed on recall application quashed by Bombay High Court. Appeal restored for fresh hearing by Tribunal after affording opportunity of hearing to petitioner. **VIP Industries Ltd. v. Union of India 2017 (347) E.L.T. 22 (Bom.)**

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