

SEPTEMBER'17 INDIRECT TAX LAW REPORT

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GST HIGHLIGHTS

GST Council Meeting update:

1. Council appoints 5 member inter-ministerial committee to study GSTN issues- Union Finance Minister will form this committee.
2. Returns:
 - A. GST return dates extended- July GSTR-1 is 10th October, however, for assesses having annual turnover above 100 crores in a state, the due date will be 3rd October. All other dates also extended.
 - B. Dates for August and thereafter, GSTR-1, 2 and 3 dates will be announced later.
 - C. GSTR-3B will have to be filed every month till December.
3. Dates for Registration for Composition scheme is being extended- details awaited.
4. Penalties will be waived for delay in filing of returns.
5. Some kinds of handicrafts and job work exempted from registration till 20 lacs- even for interstate.
6. GST rates on 30 goods is reduced, mainly food products and daily use items.
7. Branded food stuff definition amended for stopping evasion by a section of traders.
8. GSTR Tran 1 return date extended up to 31st October and one revision allowed.
9. Car rate changes:

Types of Cars	Car rates
A. Small cars below 1200cc petrol and 1500cc diesel and less than 4 mtrs	No change
B. Hybrid cars	No change
C. Mid segment cars- less than 1500cc but more than 4 mtrs	Rate raised by 2%
D. Luxury cars- more than 1500cc and 4mtrs	Rate raised by 5%
E. SUVs- more than 1500 cc and more than 4mtrs and ground clearance more than 170 mm	Rates raised by 7%

Exact rates will be known only when notifications issued.

10. Screening committee will be looking at expanding definition for government works and accordingly, rate of 12% will apply to some more government projects.
11. Registration for persons liable for TDS and TCS will commence from 18th September, however, date of deducting TDS/TCS will be notified.

GST NOTIFICATIONS

CENTRAL TAX NOTIFICATIONS

Notification No.	Date of Issue	Subject												
1. Notification No.- 35/2017-CT	15-09-2017	<p style="text-align: center;">The return for the month as specified shall be furnished in Form GSTR-3B electronically through the common portal on or before the last dates as shown below:</p> <table border="1" style="margin-left: auto; margin-right: auto;"><thead><tr><th style="text-align: center;">Month</th><th style="text-align: center;">Last date for filing of return in FORM GSTR-3B</th></tr></thead><tbody><tr><td style="text-align: center;">August, 2017</td><td style="text-align: center;">20th Sep, 2017</td></tr><tr><td style="text-align: center;">September, 2017</td><td style="text-align: center;">20th Oct, 2017</td></tr><tr><td style="text-align: center;">October, 2017</td><td style="text-align: center;">20th Nov, 2017</td></tr><tr><td style="text-align: center;">November, 2017</td><td style="text-align: center;">20th Dec, 2017</td></tr><tr><td style="text-align: center;">December, 2017</td><td style="text-align: center;">20th Jan, 2018</td></tr></tbody></table>	Month	Last date for filing of return in FORM GSTR-3B	August, 2017	20 th Sep, 2017	September, 2017	20 th Oct, 2017	October, 2017	20 th Nov, 2017	November, 2017	20 th Dec, 2017	December, 2017	20 th Jan, 2018
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2. Notification No.- 34/2017-CT	15-09-2017	<p align="center">Central Goods and Service Tax (Seventh Amendment) Rules, 2017</p> <p>In the Central Goods and Service Tax Rules, 2017, Rule 3A and Rule 120A are inserted which specifies the following:</p> <p>Rule 3A: A person who has been granted registration on a provisional basis or who has applied for registration may opt to pay tax u/s 10 w.e.f. first day of October, 2017 by electronically filing an intimation in FORM GST CMP-02 and shall furnish a statement in FORM GST ITC-03.</p> <p>Rule 120A: Revision of the declaration to be submitted in FORM GST TRAN-1 electronically on the common portal within the time specified.</p>
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INTEGRATED TAX NOTIFICATIONS		
Notification No.	Date of Issue	Subject
1. Notification No.- 7/2017-Integrated Tax	14-09-2017	<p align="center">The persons making inter-State taxable supplies of handicraft goods exempted from obtaining registration under the Act.</p> <p>Provided that the aggregate value of such supplies, does not exceed an amount of twenty lakh rupees in a financial year.</p> <p>Provided further that the aggregate value of such supplies does not exceed an amount of ten lakh rupees in case of Special Category States, other than the State of J&K.</p>
2. Notification No.- 7/2017-Integrated Tax	14-09-2017	<p align="center">Job workers engaged in making inter-State supply of services to a registered person exempted from obtaining registration under the Act.</p>

		<p>Provided that nothing shall apply to a job worker –</p> <ul style="list-style-type: none">(a) Who is liable to be registered u/s 22(1) or who opts to take registration voluntarily u/s 25(3) of the Act.(b) Who is involved in making supply of services in relation to goods mentioned in the Annexure to Rule 138 of the CGST Rules, 2017.
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GST CASE LAWS

1. **Law:** Being busy with the procedural requirement under the GST is no ground to grant adjournment. It is a settled law in case of Salem Bar Association, Tamil Nadu v. Union of India, AIR-2005-SC-3353 that litigants have no right to ask for adjournment. **2017-TIOL-3027-CESTAT-MUM.**
2. **CGST Rules-** The petitioners challenge the Notification 22/2017-CT dated 17th August, 2017 whereby Rule 44A is inserted in the Central Goods and Services Rules, 2017 regarding reversal of 5/6th of CENVAT Credit. The petitioners state that they fulfilled all the conditions and the credit of the CVD paid on imported gold dore bars accrued to them. However, the Rule 44A denied the credit already accrued to the petitioner. The HC directed that it is a prima facie case for grant of interim relief and no steps to be taken to recover the credit already availed by the petitioners. **2017-TIOL-1777-HC-DEL-MISC.**

SERVICE TAX JUDGMENTS

- 1. Franchise services-** As per the service tax law there is no exemption provided to franchise service relating to educational activity. **2017-TIOL-3317-CESTAT-MUM.**
- 2. Place of provision of service-** As per Master Supply Agreement, where it is clearly evident that recipient of service is Verizon US, the service is an export and not chargeable to tax. **2017-TIOL-1863-HC-DEL-ST.**
- 3. Service tax under Reverse Charge-** Where the appellants are getting eminent speakers for their annual summit through agency abroad, the activities of foreign agents are covered under 'event management services'. Held, foreign agents are event managers and service tax is payable by reverse charge. **2017-TIOL-3287-CESTAT-DEL.**
- 4. E-commerce services-** The respondent is running website through which the interested steel manufacturer/ trader are making trade. The buyers of the goods are not accessing any information online or on the respondent's website but they are only interested for sale and purchase of the steel products. Therefore, such services are classified as e-commerce services and not online information or database access or retrieval services (OIDAR). **2017-TIOL-3262-CESTAT-MUM.**
- 5. Bank Charges-** Charges collected from a/c holders for cheque return, minimum balance violation and non-maintenance of average balance are not penalties and are rightly chargeable to tax. **2017-TIOL-3269-CESTAT-MAD.**

6. **Law-** Where there is bonafide doubt based on the interpretation of the legal provisions, the question of suppression and willful mis-statement cannot be sustained. **2017-TIOL-3115-CESTAT-DEL.**
7. **Unjust enrichment-** When invoice was mistakenly raised including duty but duty was not collected, there is no question of burden of duty being passed on, hence, doctrine of unjust enrichment does not apply. **EPE Process Filters & Accumulators Pvt. Ltd. v. CCE& S.T., Hyderabad- IV, 2017(352) E.L.T. 398 (Tri.- Hyd.)**
8. It was not open for adjudicating authority as well as Commr.(A) to visit an issue which was not subject matter of SCN. **2017-TIOL-3056-CESTAT-MUM.**
9. Where nature of work is clearly in nature of regular maintenance which may include replacement of certain items or provision of new items, services do not fall under 'Commercial and Industrial Construction Service.' It is possible that during maintenance, some structure needs to be removed and a new structure built thereon. The service need to be classified as 'management, maintenance and repair service.' **2017-TIOL-3048-CESTAT-MUM.**

CENTRAL EXCISE JUDGMENTS

1. **Availing area based exemption-** 'Unit' and 'factory' cannot be accorded same meaning for purpose of Notification No. 50/03-CE. The notification grants exemption to new industrial units or existing industrial units undertaking substantial expansion. **2017-TIOL-3299-CESTAT-DEL.**
2. **CENVAT Credit-** Where no CENVAT Credit had been availed on inputs (raw material), the appellants are not liable to reverse the credit in terms

of Rule 3(5) of the CENVAT Credit Rules, 2004. **2017-TIOL-3276-CESTAT-DEL.**

3. **Powers of the Settlement Commission-** Whenever the Settlement Commission comes to the conclusion that the dispute cannot be resolved by it, it has an absolute discretion to refer the matter to the adjudicating authority. **2017-TIOL-1790-HC-DEL-CX.**
4. **Taxi Services-** Appellant recovering amount paid for rent-a-cab service from employees clearly means that service was availed by employee for personal use. In these circumstances, availing credit amount to fraud. **2017-TIOL-3246-CESTAT-MUM.**
5. **CENVAT Credit-** Rule 6(3) of CENVAT Credit Rules, 2004 shall be applicable only when manufacturer of goods manufactures goods of two types, one is excisable and another is exempted. **2017-TIOL-3087-CSETAT-MUM.**
6. **Supply of services to SEZ-** Rule 6(6) (A) of CENVAT Credit Rules, 2004 was not introduced by way of substitution but it is a new Rule inserted in the CENVAT Credit Rules, 2004. The provisions of the SEZ Act have an overriding effect that the amendment shall be applicable w.e.f. 10-09-2004 when the CCR, 2004 came into existence and therefore, exception provided u/r 6(6) shall be applicable to supply of exempted goods both to SEZ units and SEZ developers/promoters. **2017-TIOL-3226-CESTAT-MUM.**
7. **Manufacture-** The process of labelling imported retail biscuit packets does not amount to manufacture. **2017-TIOL-1659-HC-MAD-CX.**
8. **Transfer of CENVAT Credit-** As there are no restrictions under Rule 7 of CENVAT Credit Rules, 2004 (which deals with the manner of distribution of credit by Input Service Distributor) appellant is entitled to transfer

credit from their Wagholi unit to Kanhe unit. **2017-TIOL-3106-CESTAT-MUM.**

9. **Refund claim-** Even if refund is not governed by Section 11B of Central Excise Act, 1944, the refund claim can be entertained whether it was for amount which was paid by the assessee or amount which was due to the assessee, and could be very well allowed by way of credit in Modvat account. **Godrej and Boyce Manufacturing Co. Ltd. v. CCE, Mumbai-II, 2017 (352) E.L.T. 384 (Tri.-Mumbai).**

10. **Increase in installed capacity of plant-** It is immaterial whether substantial expansion of unit is a result of additional or new plant or by renovation of existing plant. The benefit of Notfn. 49/2003 is available (which is in relation to area based exemption). **2017-TIOL-2980-CESTAT-DEL.**

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