

# MAY'18 INDIRECT TAX LAW REPORT

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## GST SKETCH on "Works Contract Services"

**Section 2 (119): "Works contract"** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any **immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

**Composition scheme** is not available here since works contracts are treated as service under GST, and this scheme is only available to suppliers of goods (with the exception of restaurant services).

**NO ITC on WORKS CONTRACT:** Input tax credit shall not be available in respect of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

**NOTE:** In the erstwhile Service Tax Law, Works Contract definition included both movable and immovable property. However, in the CGST Act, the above definition shall be applicable in case of immovable property only.

# GST NOTIFICATIONS

## CENTRAL TAX NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No.- 21/2018-CT	18-04-2018	<p><b>Central Goods and Service Tax (Fourth Amendment) Rules, 2018</b></p> <p>In Central Goods and Service Tax Rules, 2017, the following changes have been made:</p> <ol style="list-style-type: none"><li><b>Rule 89(5): Refund of input tax credit shall be granted as per the following formula:-</b> Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.</li><li><b>Rule 97: Constitution of the Consumer Welfare Fund and its functions-</b> The following are the highlights:<ol style="list-style-type: none"><li>All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies shall be credited to the Fund.</li><li>An amount equivalent to fifty per cent of the amount of integrated tax shall be deposited in the Fund.</li><li>Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.</li><li>The Government shall constitute a Standing Committee who shall make recommendations for proper utilization of the money credited to the Fund for welfare of the consumers.</li></ol></li></ol>

		e. The Committee shall meet as and when necessary, generally four times in a year.
2. Notification No.- 20/2018-CT	18-04-2018	<p><b>Facility for filing the refunds claim under section 55 of the Central Goods and Services Act, 2017</b></p> <p>The Central Government notifies the specified persons as the class of persons who shall make an application for refund of tax paid by it on inward supplies of goods or services or both, to the jurisdictional tax authority, in such form and manner as specified, before the expiry of eighteen months from the last date of the quarter in which such supply was received.</p>

## *Goods & Service Tax Judgments*

1. **Lottery is the subject matter of the Parliament and not Kerala GST Rules, 2017-** The State's power under the head "Betting and Gambling" in Entry 34 of List II, Schedule VII of the Constitution cannot empower the police officials to seize the tickets and declare the lottery illegal. The petitioners should not be prevented from sale of lottery tickets and cannot be asked to furnish details regarding percentage of commission received. **2018-TIOL-29-HC-KERALA-GST.**
  
2. When the issue is pending before the Larger Bench of the Tribunal for the decision, it is absolutely impermissible for two member bench to remand the matter before Adjudicating Authority for fresh decision. **CCE v. Western Coal Fields Ltd., 2018(12) GSTL 21 Bom.**

3. When ITC could not be taken due to technical glitches or assessee could not file Trans 1 or 2, Department must devise some procedure and accordingly directions given to the Department. **Tara Chand Saluja v. UOI, 2018 (12) GSTL 20 Delhi High Court.**
4. When assessee is providing service of promoting or marketing the product of foreign entity within India, yet it shall amount to export of services and no service tax shall be payable by the assessee. **Yamazaki Mazak P Ltd. v. CST, 2018 (12) GSTL 66 Tri.**
5. **Anti-profiteering benefit-** When there was a substantial reduction in the rate of tax on the cars after the GST was implemented; the benefit of reduction in tax rate was passed on to applicant by way of reduction in price of car- no case of profiteering made out- Application dismissed. **2018-TIOL-1330-CESTAT-MUM.**
6. **'Export' or 'zero rated supply'**- Supply of goods by the applicant to the international passengers from retail outlet situated at T-3, IGI Airport is not outside India but within territory of India. Hence, supply cannot be called 'export' or 'zero rated supply' since the goods are not taken out of India. **2018-TIOL-08-AAR-GST.**
7. **Writ petition against assessment orders** passed under Karnataka VAT Act shall not be maintainable even if the issue is fully covered by the judgments of High Court and Supreme Court and proper remedy is to file an appeal before Appellate Authority under Karnataka VAT Act. **Lease Plan India Ltd. v. State, 2018 (11) GSTL 135 Karnataka High Court.**

- 8. Cross-examination-** The Adjudicating Authority disallowed cross examination of employee on the ground that owner has already made incriminating statement against the firm. The Rajasthan High Court has held that once statement has been relied upon by the Department then cross must be allowed otherwise adjudication is bad in law. **Sh. Parvati Metals v. UOI, 2018 (11) GSTL 137 Raj High Court.**
- 9.** Rajasthan Govt undertaking is engaged in the business of purchase of IMFL and beer from different manufacturers, its transportation and also sale to its own different vendors. It cannot be taxed under Business Auxiliary Service by Service Tax Department but it is a pure sale and purchase liable to sales tax. **Rajasthan State Beverages Corporation v. CST, 2018 (11) GSTL 157 Rajasthan High Court.**

## *Service Tax Judgments*

- 1. Refund claim-** Service tax was paid, later appellant realized that no tax is payable in view of exemption notification. The CESTAT Larger Bench by 2:1 majority held that time limit prescribed u/s 11B of the Central Excise Act, 1944 will govern the claim for refund of service tax. **2018-TIOL-1432-CESTAT-CHD-LB.**
- 2. CESTAT-** There is a difference in a case where the appellant has intention to evade Service Tax and collected the Service Tax but did not discharge the liability. In the present case, the appellant collected the Service Tax from their client but not paid to the Govt.

treasury. Though they have clear intention to pay the service tax as correct value declared in ST-3 return, penalty u/s 78 does not get attracted. **2018-TIOL-1393-CESTAT-MUM.**

3. **Telecommunication service-** In case of service provided by way of recharge coupons or prepaid cards, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority. It is, therefore clear that prior to 01.03.2011, the gross value of the service shall be the value received by the Respondent. **2018-TIOL-1392-CESTAT-MUM.**
4. **Construction of building** for use as hospital by charitable organization is not taxable being non-commercial venture. **2018-TIOL-1399-CESTAT-MUM.**
5. **Sale of SIM cards does not attract service tax-** The Appellant is engaged in two separate activities viz. first rendering marketing services to M/s RCOM and second, sale of SIM cards. The two being separate and independent activities does not fall into category of telecommunication service. **2018-TIOL-1383-CESTAT-MUM.**
6. **CENVAT-** It is well settled proposition of law that jurisdictional officer at recipient end is not empowered to question or change the classification or valuation at supplier's end. **2018-TIOL-1326-CESTAT-BANG.**
7. **Agreement-** Agreement is for supply of plant, machinery, equipment and other accessories and cannot, by any stretch of imagination, be considered as an agreement for rendering

services- amount of advance received cannot become part of value. **2018-TIOL-1330-CESTAT-MUM.**

## *Central Excise Judgments*

- 1. No duty on captive consumption of sample for testing-** The appellant moved the sample captively within the factory for testing purpose and the same was cleared in the form of waste and scrap and excise duty was paid on the transaction value of such waste and scrap. Held, sample drawn from each batch for testing in the in-house laboratory are not liable to Central Excise duty. **2018-TIOL-1425-CESTAT-MUM.**
- 2. S.35 and 35F of Central Excise Act, 1944** are independent and have got no overriding effect on other. S. 35(1) is in respect of type of appeal which can be filed before the Commissioner (Appeals). S. 35F in turn deals only with entertaining the appeal subject to the condition of pre-deposit of seven and half percent. Non-payment of pre-deposit is a curable defect. **2018-TIOL-1369-CESTAT-MUM.**
- 3. CENVAT Credit-** The contention of the Revenue that goods first should come to the factory is baseless for the reason that there is no purpose of bringing the inputs in the factory for the reason that the final product is manufactured at site, obviously the input has to go to the site and be used in the manufacture of final products. The same is held to be dismissed. **2018-TIOL-1384-CESTAT-MUM.**
- 4. Show Cause Notice (SCN)-** Where the SCN is issued without any foundation, the adjudication order confirming the demand on such cryptic SCN cannot be sustained. **2018-TIOL-1297-CESTAT-MUM.**



**5. Surrender charges under ULIP policy** cannot be held as fund management charges and are not taxable. Surrender charges are charged by the assessee when the person dilutes the policy. It is nothing but ending of contract for which compensation in the form of damages is paid. **2018-TIOL-1308-CESTAT-MUM.**

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