

AUGUST'17 INDIRECT TAX LAW REPORT

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GST HIGHLIGHTS

- 1. 60 outreach programmes on GST since July 1-** The Commerce Ministry has organized over 60 outreach programmes for members of trade and industry on issues related to GST. It has also established GST cells in all public sector undertakings. The aim is to disseminate all information related to GST to all stakeholders. Besides, Director General of Foreign Trade (DGFT) have also set up GST facilitation cells to resolve issues of exporters and importers. All the senior officials of the ministry and customs authorities are attending those outreach programmes being organized by Federation of Indian Export Organisations (FIEO).
- 2. Govt. extends deadline for filing GST returns for some businesses-** A statement issued by the CBEC said that the extension till 28 August applies only to filing of returns where credit is being claimed, and not for remitting the applicable tax amount for July, the deadline for which remains 20 August. The extra time for filing GST returns was taken because of the non-availability of 'Trans 1', the form for claiming tax credit.
- 3. 18% GST on takeaway food from non-AC area of AC restaurant-** The CBEC has clarified through a FAQ on the GST rates that will be levied by restaurant-cum-bars where the first floor area is air-conditioned and used for serving food and liquor, while the ground floor only serves food and non-AC. The CBEC said that tax will have to be at 18% irrespective of form where the supply is made, first floor or second floor. If any part of the establishment has a facility of air-conditioning, then the rate will be 18% for all supplies from the restaurant.
- 4. GST Council flooded with requests to slash tax rates on various commodities-** India moved to a GST regime on July 1 after the Council fixed over 1,200 products in four slabs of 5, 12, 18 and 28%. Some of the changes sought are:
 - Slashing GST on IT products from 18% to 12%
 - GST on helmets demanded from 18% to 5%, on textiles to nil from 5%, on tractors to 5% from 12% and on granite slabs to 18% from 28%.

GST SPECIAL

Things to know about Input Tax Credit under GST regime

Section 16 and 17 of the CGST Act deals with Input Tax Credit provisions. Further, recently CGST Rules for Input Tax Credit (relevant rules being 36 to 45) are also notified through Notification No. 7/2017-CT.

- 1. Utilization of Input Tax Credit:** The available ITC should be utilized in the following manner:

Credit of	Utilization
IGST	First against IGST then against CGST and later against SGST
CGST	First against CGST then against IGST
SGST	First against SGST then against IGST

- 2. A 'registered taxable person'** as per Section 16(1) can avail the credit of input tax.

- 3. Whether ITC is now online?**

ITC will now be available provided the credit is appearing in the Electronic Credit Ledger online! Thus, unlike current service tax and excise law, the credit will be effectively dependent on the vendors as vendors unless file the appropriate returns, GST credit will not be available to the recipient.

In this regard, vide Not.No.4/2017-CT gst.gov.in is notified as the Common Goods and Services Tax Electronic Portal for:

- Facilitating registration
- Payment of tax
- Furnishing of returns
- Computation and settlement of integrated tax
- Electronic way bill

- 4. Conditions prescribed for the availment of ITC:**

Section 16(2) lists following four conditions for availment of ITC:

- a) He is in possession of tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying document as may be prescribed.
- b) He has received the goods or services or both
- c) The tax charged in respect of supply has actually been paid to the Government, either in cash or through utilization of input tax credit admissible in respect of such supply.
- d) He has furnished the returns u/s 39.

5. When ITC be available in case of goods are received in instalment?

It is provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

6. No double benefit under GST and Income tax-

In case where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

7. Time limit for claiming credit-

A registered person shall not be entitled to take credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return u/s 39 for the month of September following the end of financial year to which such invoice pertains or furnishing of relevant annual return, whichever is earlier.

8. Can ITC be availed on telecommunication towers and pipelines-

Explanation to Section 17 provides that the expression “plant and machinery” means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes:

- Land, building or other civil structures;
- Telecommunication towers;
- Pipelines laid outside the factory premises;

9. ITC is not available on the following/s 17(5):

❖ Motor vehicle and other conveyances
❖ Employee related benefits (such as catering, beauty treatment, life insurance etc.)
❖ Works contract unless for further supply of Works contract services
❖ Composition supplies
❖ Goods/services used for personal use
❖ Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples
❖ Any tax paid in accordance with the provisions of Section 74, 129 and 130.

10. Restrictions for sending goods to job worker:

As per Rule 45 of the CGST Rules, following are the prescribed conditions:

- a) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker.
- b) The challan issued by the principal to a job-worker shall contain the details as specified in Rule 55.
- c) The details of challan in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in Form GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter.
- d) Where the inputs or capital goods are not returned to the principal within the time stipulated in Section 143, it shall be deemed that such inputs or capital goods has been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-

1 and the principal shall be liable to pay tax along with the applicable interest.

SERVICE TAX JUDGMENTS

- 1. Non-compete agreement-** Non-compete agreement fee covered under the definition of 'support service of business and commerce' of Section 65 (104c) is taxable under the Finance Act, 1994. **2017-TIOL-2923-CESTAT-DEL.**
- 2. Insurance services-** Tax paid on insurance service is an input service and CENVAT Credit can be availed. Such insurance being integrally connected with the business, the credit is admissible. **2017-TIOL-2849-CESTAT-MUM.**
- 3. Transaction outside the purview of service tax-** A transaction which is a 'deemed sale' under Article 366(29A) (d) could not be taxed as service. It covers supply of any tangible goods by a person to another person for consideration which involves transfer of right to use the goods, is outside the scope of service tax. **2017-TIOL-2031-CESTAT-MUM.**
- 4. Service tax liability cannot be imposed where rates fixed for lump sum job work undertaken by appellant is not covered under 'Manpower Recruitment and Supply Agency services' for conversion of raw material to finished goods. Dheeraj Iron and Steel Ltd. v. CCE&C, 2017-TIOL-1826-CESTAT-MUM.**
- 5. It is held that u/s 35L of the Finance Act, 1994, an appeal against the Tribunal order lay before the Supreme Court. Hence, Revenue may seek remedy before the Apex Court where appeal is dismissed on grounds of maintainability by the Tribunal. CST v. Bird Travels Pvt. Ltd., 2017-TIOL-1040-HC-DEL-ST.**

- 6. Export of service-** An Indian agent who undertakes marketing in India of goods of foreign seller and receives commission for the service in convertible foreign exchange and recipient of service is located outside India, the same would qualify as export of service. **2017-TIOL-2674-CESTAT-MUM.**
- 7. Construction services-** The appellant provided construction services to MHADA, a government entity and did not discharge the service tax on the same holding that the scheme is for philanthropic purpose. The Bench held that service tax is demanded under Section 65(30a) of the Finance Act, 1994 in respect of construction of residential complex, commercial or philanthropic; the nature of construction is irrelevant. **2017-TIOL-2623-CESTAT-MUM.**
- 8. Club or Association service-** Member subscription received by forum is not chargeable to service tax. The Gujarat HC in case of Sports Club of Gujarat Ltd. v. UOI 2013 (31) STR 645 have struck down the provisions of Section 65(25a) and Section 65(105)(zzze) of the Finance Act, 1994 relating to the taxability of club or association service. **2017-TIOL-2663-CESTAT-MUM.**
- 9. Facilitation fee liable to be taxed-** The appellant is engaged in tourism facilities where they undertake to stop the bus carrying the guests in front of the contracted emporium (with which appellant have signed the agreement) and not in front of others, is in the nature of promoting the sale of goods of clients. Therefore, facilitation fee received by the appellant from the emporium is commission and liable to be taxed under 'Business Auxiliary Service'. **2017-TIOL-2654-CESTAT-DEL.**
- 10.** It is held that the donation amount received by the Club from members is not compulsory rather it is paid voluntarily by the members. Since the donation amount does not present any additional facilities, the

same has no nexus with the taxable services provided by the Club. Hence, the donation amount towards the building fund is not liable for payment of service tax. **Jaisal Club Ltd. v. CCE & ST, 2017-TIOL-1828-CESTAT-DEL.**

CENTRAL EXCISE NOTIFICATIONS

EXCISE NON-TARIFF NOTIFICATION		
Notification No.	Date of Issue	Subject
1. Notification No.- 25/2017-CENT	16-08-2017	<p style="text-align: center;">Amendment in Notification No. 45/2001- CE (NT) dated 26.06.2001</p> <p>The Central Government amends Notification No. 45/2001-CE (NT) dated 26th June, 2001 in exercise of Rule 19(1) and (3) of Central Excise Rules, 2017.</p>
2. Notification No.- 24/2017-CENT	09-08-2017	<p style="text-align: center;">Specification of Form E.R.-2</p> <p>The Central Government specify return ER-2 under rule 23(3) of Central Excise Rules, 2017 and rule 11(3) of CENVAT Credit rules, 2017 in supersession of Notification No. 24/2008-CE (NT).</p> <p>The Central Board of Excise and Customs hereby specifies the following Form of monthly return in respect of goods manufactured, goods cleared and receipt of inputs and capital goods, for the purposes of the said rules, namely :-</p> <p>Monthly Return for hundred per cent export-oriented undertakings in respect of goods manufactured,</p>

		goods cleared and receipt of inputs and capital goods.
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CENTRAL EXCISE JUDGMENTS

- 1. Clandestine removal-** In order to bring home the charges of clandestine removal it is necessary to prove the same by some positive evidence. No evidence in the form of procurement, production, clearance and transportation of goods has been brought on record. The duty was set aside and no penalties were imposed. **2017-TIOL-2918-CESTAT-MUM.**
- 2. Reversal of credit-** Reversal of credit is no ground for denying benefit of Notification No.30/2004-CE. The said notification states about non-availment of the CENVAT credit of the duty paid on inputs. Held, reversal of credit is accepted and held as satisfying the conditions of the notification. **2017-TIOL-2907-CESTAT-MUM.**
- 3. CENVAT Credit-** A manufacturer should be permitted to utilize the CENVAT Credit legally availed during the first 5 days or 6 days of the subsequent month for paying excise duty for the goods cleared in the previous month. **2017-TIOL-1538-HC-AHM-CX.**
- 4. No denial of credit on debit notes-** The information required to be appeared on invoice, challan etc. is clearly mentioned in the debit notes in terms of Rule 4A of Service Tax Rules, 1994, the credit cannot be denied. Therefore, except the title of documents there is no difference between the details supposed to be appeared in the invoice and the details which actually appearing in the said debit notes. **2017-TIOL-2900-CESTAT-MUM.**

5. Valuation- Powder hair dye sachets of 3 gms packed in mono carton containing 6 or 8 sachets is a retail package. Legal Metrology Rules clarified that a package containing less than 10 retail package is not a wholesale package and therefore, all mandatory declarations are required to be carried out. **2017-TIOL-2826-CESTAT-KOL.**

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