

DECEMBER'18 INDIRECT TAX LAW REPORT

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GST SKETCH on “RECOVERY OF DUES”

Modes of recovery of tax available to proper officer: The proper officer may recover the dues in the following manner:

- Deduction of dues from the amount owned by the tax authorities payable to such person;
- Recovery by way of detaining and selling any goods belonging to such person;
- Recovery from any other person, from whom money is due or who holds any money on account of such person, to pay to the credit of the Central or State Government;
- Distain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered;
- Through the Collector of the district in which such person owns any property or resides or carry on his business, as if it was an arrear of land revenue;
- By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him;
- Through enforcing the bond/instrument executed under this Act or any rules or regulations made there under;
- CGST arrears can be recovered as an arrear of SGST and vice-versa.

Course of recovery in other cases:

1. **Liability of the transferee in case of transfer of business:** If a taxable person with pending tax dues, transfers his business to another person, the person to whom the business is transferred, shall jointly and severally be liable to pay the tax, interest or penalty due from the taxable person up to the time of such transfer, where such dues has been determined before such transfer, but has remained unpaid or is determined thereafter.
2. **Liability in case of liquidation of company:** When the Company goes into liquidation or is wound-up, the Liquidator shall give intimation of his appointment to Commissioner within 30 days. On receipt of such intimation, Commissioner may notify amount sufficient to recover tax liabilities/ dues to the liquidator within 3 months.
3. **Liability of the directors under liquidation:** Every person who was a director of the Company during the relevant period, shall jointly and severally be liable for payment of dues unless he proves to the satisfaction of the Commissioner that such non-recovery is not attributed to any gross neglect, misfeasance or breach of duties on his part in relation to the affairs of the company.
4. **Liability of the partners of a partnership firm to pay outstanding dues:** Partners of any firm shall jointly and severally liable for the payment of tax, interest or penalty. Liability up to the date of such retirement, whether determined on that date or subsequently, shall be on such partner. If no intimation is given within one month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

GST Notifications

Central Tax Notifications

Notification No.	Date of Issue	Subject
1. Notification No. 66/2018-Central Tax	29-11-2018	<u>Due date to file FORM GSTR 7 (TDS Return) extended to 31.01.2019</u> CBIC extends the due date for filing of FORM GSTR 7-Return for Tax Deducted at Source for the months of October, 2018 to December, 2018 till the 31st day of January, 2019.
2. Notification No. 65/2018-Central Tax	29-11-2018	<u>CBIC extends due date to file FORM GSTR-4 in Srikakulam district</u> CBIC extends the due date for filing of FORM GSTR – 4 for the quarter July to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh
3. Notification No. 64/2018-Central Tax	29-11-2018	<u>CBIC extends due date to file Form GSTR-1 in Srikakulam district for taxpayers having turnover up to Rs 1.5 crores</u> CBIC extends the due date for filing of FORM GSTR – 1 for taxpayers having aggregate turnover up to Rs 1.5 crores for the quarter from July, 2018 to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh.
4. Notification No. 63/2018-Central Tax	29-11-2018	<u>CBIC extends due date to file Form GSTR-1 in 12 districts for taxpayers having turnover above Rs 1.5 crores</u> CBIC extends the due date for filing of FORM GSTR – 1 for taxpayers having aggregate turnover above Rs 1.5 crores for taxpayers in Srikakulam district in Andhra Pradesh and 11 districts of Tamil Nadu

5. Notification No. 62/2018-Central Tax	29-11-2018	<u>CBIC Extend dates for filing GST returns FORM GSTR-3B in 12 Districts</u> CBIC Extends dates for filing GST returns FORM GSTR-3B in the district of Srikakulam, Andhra Pradesh, and in eleven districts of Tamil Nadu
6. Notification No. 61/2018-Central Tax	05-11-2018	<u>No TDS under GST on supply from PSU to PSU</u> CBIC exempt supply of Goods and Services from PSU to PSU from applicability of provisions relating to TDS.

Goods & Service Tax Judgments

1. **National Anti-Profiteering Authority-** The applicant alleged that after the implementation of the GST, a number of taxes viz. CST, Counter Veiling Duty (CVD) and Special Additional Duty (SAD) had been subsumed in the IGST but the Respondent had charged 18% IGST on the selling price which included CVD and SAD. Held, since the Respondent has wrongly charged higher price from the applicant, he is directed to reduce the sale price immediately and pass on this benefit to his customers. **2018-VIL-12-NAA.**
2. **High Court- Detention of goods-** The State Tax Officer cannot detain the goods on the ground that the tax paid on the product is less. The process of detention cannot be resorted to when the dispute is bona fide, especially if the records he seizes truly reflect the transaction eg. the returns he has filed earlier. Held, the case does not relate to the evasion of tax and therefore, detention orders set aside. **2018-TIOL-170-HC-KERALA-GST.**
3. **Typographical error in e-way bill-** Goods were detained on the ground that in the e-way bill the distance between Kerala and destination at Uttarakhand was shown as 280 kms, instead of 2800 kms. Held, the error was minor and thus verifiable. Goods were released and writ petition disposed of. **2018-VIL-519-KER.**

- 4. National Anti-Profiteering Authority- Restaurant Services-** The Respondent has resorted to profiteering by charging more price from the customers by issuing incorrect tax invoices. Accordingly, he has committed an offence u/s 122 (1)(i) of the CGST Act and a SCN is issued on him. Held, the Respondent is directed to reduce the prices keeping in view the reduced rate of tax and benefit of Input Tax Credit availed by him. **2018-VIL-11-NAA.**
- 5. U.P. GST Act, 2017 -** Seizure of goods on the ground that they were not accompanied with the E-way bill. Held, that since the requirement of the E-way bill was not applicable for the petitioner during the relevant period, the seizure itself is bad in law. Accordingly, the impugned seizure order passed under Section 129(1) of U.P. GST is quashed and all consequential proceedings stands dropped. The writ petition is allowed. **2018-VIL-524-ALH.**
- 6. Confiscation of goods-** The petitioner is aggrieved as the Assistant State Tax Officer refused to release the goods on the ground that petitioner has to pay tax and penalty through cash or Demand Draft. It was held that under GST regime, everything is made online with minimum manual interventions. The insistence of the officer is out of tune with the very spirit of GST regime and has been asked to release goods and vehicle forthwith. **2018-VIL-516-KER.**
- 7. Export of Service – Zero Rate Supply –** The Business Support Service comprising of Back Office Support and Accounting Services, provided to overseas client do not amount to export of services and thus, do not qualify as zero rated supply as per section 16 of the IGST Act. To qualify a transaction as export of services, the transaction has to satisfy all five ingredients of the definition of export of services simultaneously. **2018-VIL-270-AAR**
- 8. Chandigarh AAR-** The fee/charges received against ancillary services, which are inter-linked with the service of providing lease of Industrial Plots to the industrial units, is not exempt from GST and is liable to be taxed at 18%. Held, Notification No. 12/2017-CT(Rate) grants exemption only to the upfront amount payable in respect of service by way of granting of long term lease of thirty years, or more. Therefore, the other

subsequent services are not covered by this exemption.
2018-VIL-271-AAR.

9. Power of inspecting officials- Inspecting Officer cannot invoke Section 129 of the CGST/KGST Act to detain goods on the ground of misclassification of goods and incorrect rate of tax in the invoice when the dispute is bona fide and if the records truly reflect the transaction of the assessee that he has filed the returns earlier; the detention is not warranted and cannot be held as evasion of tax- answered in favour of assessee. **2018-VIL-502-KER.**

10. Input Tax Credit (ITC) on construction of foundation, sheds for protecting the plant- Held, as per Section 17(5) of the CGST Act, applicants are not eligible to take ITC on goods and input services which are used for installation (Foundation) of plant and machinery. **2018-VIL-254-AAR**

11. Job work- The process of providing job work service to the foreign principal in the premises of the applicant as per the specifications of the recipient of services, is taxable under GST and liable to tax @ 18%. The place of supply for this transaction is location of service where actually performed i.e., business premises of the applicant. Hence the tax liability under SGST Act/CGST Act 2017 only applies and the job work services exemption as per Notification No. 25/2012, is not applicable. **2018-VIL-258-AAR.**

Service Tax Notifications

Notification No.	Date of Issue	Subject
1. Notification No. 1/2018-Service Tax	30-11-2018	<p><u>Exempting the payment of Service Tax on services by way of granting of right of way by local authorities for the period commencing from 1st day of July, 2012 and ending with the 30th of June, 2017.</u></p> <p>In the period commencing on and from the 1st day of July, 2012 and ending with the 30th day of June, 2017 there was non-levy of service tax, on the services by way of granting of "right of way" by "local authorities", as defined in the Indian Telegraph Act.</p>

Service Tax Judgments

- 1. Export of service-** The two conditions are mandatorily required to be fulfilled for qualifying service as export of service namely, some part of the service needs to be necessarily be provided outside India and the payment against provisioning of such service is received in convertible foreign exchange. **2018-TIOL-3689-CESTAT-MUM.**
- 2. Intellectual Property Right (IPR) Service-** The IPRs supplied by the foreign collaborators are not registered in India. It was convincingly held that the trademarks, technical know-how, etc. supplied by the foreign collaborators to the appellants do not fall under the category of "IPR" service and thereby liable to pay service tax under IPR service in terms of Finance Act, 1994. **2018-TIOL-3673-CESTAT-MUM.**
- 3. Manpower Supply Services-** The activity of packing, loading/ unloading of cement bags into wagons and trucks cannot be taxed under the category of 'Cargo Handling Service', w.e.f. 16.06.2005, the Department accepted the classification of said services under 'Manpower Supply Services'. Held, the appellants are only performing supportive and ancillary role in the mechanized process of packing and unloading. The impugned order is not maintainable, the same is set aside and appeal is allowed. **2018-VIL-776-CESTAT-DEL-ST.**
- 4. Stock Transfer-** The assessee stock transfers the major portion of the goods manufactured in their factory to the consignment agent's premises through transporters, paying duty at the factory gate. Held, the premises of the consignment agents are places of removal as envisaged in the Act and the service tax paid on the freight by the assessee for transportation of goods from the factory to the consignment agent's place is available as Cenvat Credit. Answered in favour of assessee. **2018-VIL-771-CESTAT-BLR-ST.**
- 5. Mobilization advance-** The amount received by the appellant from Indian Navy for building facilities is in the nature of a grant and to be amortized against future payments. No service tax is payable on the amount received towards mobilization advance of the contract from the Indian Navy. **2018-VIL-765-CESTAT-HYD-ST.**

- 6. Banking and Financial Services-** The appellant is HDFC Bank and providing credit card, Cash Credit, Over Draft and Bill Discounting services to its customers and charging interest along with administrative services. Held, that actual consideration for such services is only higher interest rate and nothing else. Since exemption is granted in respect of interest charged on such services, these services are treated as exempted and attract Rule 6 of CENVAT Credit Rules, 2004. **2018-TIOL-3516-CESTAT-MUM.**
- 7. Site Formation service -** The appellant's activity involved raising of mined ore from the mining area and loading and transporting of the same up to the Dock Yard. The job undertaken by the appellant as per Contract is Site Formation, which included specific loading and Dumping and not an activity of mining. The demand of service tax on activity covered by this work order under Site Formation Service is upheld. **2018-VIL-766-CESTAT-KOL-ST.**
- 8. Management and Consultant Service -** When the person is providing services abroad, the destination of services is treated abroad. The destination has to be decided on the basis of place of consumption and not the place of performance of service. The service qualifies as export of service and is admissible for credit u/r 6(5) of CENVAT Credit Rules, 2004. **2018-VIL-758-CESTAT-DEL-ST.**
- 9. Security-** The appellants were appointed on behalf of the Court Receiver (CR) of Bombay HC and Debt Recovery Tribunal for guarding suit properties filed by banks and PFIs for recovery of debts. Held, the appointment of CR in no way be considered as "client" and is not taxable under 'Security Agency Service' since the activity is purely a sovereign function of the State. **2018-TIOL-3325-CESTAT-MUM.**
- 10. High Court- SCN-** Central Excise Officers of DGCEI (Director General of Central Excise Intelligence) have all India jurisdiction and can issue SCNs and enquire into allegations of evasion of tax if assessee is registered with multiple Commissionerates. **2018-TIOL-2432-HC-DEL-ST.**

- 11. SEZ clearances-** The appellant is a unit located in SEZ area and was availing the benefit of Notfn No. 17/2011-ST and Notfn No. 40/2012-ST and were denied refund claim of service tax paid on the grounds that mere maintenance of account showing total quantum of tax paid cannot be construed as availment of CENVAT. The appellant reflected in their ST-3 returns that no credit was availed by assessee and that there is no violation of the conditions of the Notfn. Appeal of assessee was allowed. **2018-TIOL-3417-CESTAT-MUM.**
- 12. Trading Activity -** The Show Cause Notice invokes Rule 3 of CENVAT Credit Rules (CCR, 2004) to disallow the credit for the reason that no credit can be availed on trading. The appellants have split their books of accounts into different Business Units so as to demarcate the taxable/ exempted service to be availed by a specific unit. This type of separation of accounts is not envisaged in Rule 6 of CCR, 2004. Therefore, credit cannot be recovered when wrongly availed, the appeal stands dismissed. **2018-VIL-735-CESTAT-CHE-ST.**
- 13. Show Cause Notice-** Where SCN does not indicate any allegation with regard to fraud, collusion, willful misstatement, suppression of fact nor contravention of any provisions or rules to evade payment of service tax u/s 73 of the Finance Act, the Tribunal is correct in rejecting the appeal of the Revenue. The ingredients of Section 73 of the Act are conspicuously absent in the show-cause notice, appeal was disposed of. **2018-TIOL-2361-HC-KAR-ST.**
- 14. CESTAT-** Value of SIM is includible in services of telecommunication. The real test laid down by the Apex Court is that if the SIM is used for identification of the consumer on network of the mobile operator, then provisioning of SIM is incidental to the service being provided by the operator. **2018-TIOL-3371-CESTAT-MUM.**

Central Excise Judgments

- 1. Condonation of delay (COD)-** An application has been filed seeking condonation of delay of 215 days in filing the appeal. Held, in case of delay, appellant has to explain and thereafter only a COD can be allowed. In absence of any plausible and just cause of delay, supported by necessary affidavits and document COD application should be dismissed. The matter is placed before the President for reference to the third Member. **2018-TIOL-3657-CESTAT-MUM.**
- 2. Waiver of pre-deposit-** The contention of the petitioner company that it was declared as sick unit cannot be considered for waiving pre-deposit. It was found out on judicial scrutiny that the goods manufactured by the petitioner company were sold by using the names of some fictitious units. The activity involved fraud, criminal wrong. Held, by filing applications for waiver, the petitioner has misused the process of law and avoided the payment of huge amount of duty, penalty and interest for more than 10 years. The petition was dismissed. **2018-TIOL-2530-HC-MUM-CX.**
- 3. Maintainability of appeal before High Court -** The issue relating to the assessment of goods being time barred is not maintainable before High Court u/s 35G of the Central Excise when there is no dispute with regard to the rate of duty and valuation arrived at by the Tribunal accepted by both the parties. The order of the Tribunal was challenged only to the extent of the demand being barred by limitation. Matter referred to Larger Bench on questions of law. **2018-VIL-526-BOM-CE.**
- 4. Refund claim of excess duty paid-** The value that was agreed upon between the buyer and the seller at the time of clearance, determines the assessable value and both of them intended alteration of the specification of the product. Accordingly, the discharge of duty liability in excess is held to have been established. This amount is eligible to be refunded in consequence of refund claim. **2018-VIL-762-CESTAT-MUM-CE.**

5. **CSR as input service-** CSR is considered as input service and included within the definition of "activities relating to business" and has been a mandatory requirement for both public and private sectors. **2018-TIOL-3257-CESTAT-MUM.**
6. **High Court- Rebate-** The petitioner being the export manufacturer of Gutkha (tobacco) claimed the excise rebate under Central Excise Rules r/w Notfn 32/2008-CE (NT) to which the Commissioner (A) reversed the rebate granted on the premise that manufacture, sale and storage of Gutkha is entirely prohibited. Held by HC that in so far as the Central Govt. is concerned, gutkha per se is not prohibited at least for export, whereas for the purpose of Notfn even export of gutkha is prohibited. Therefore, orders of the appellate authority was quashed and writ petition allowed. **2018-TIOL-2425-HC-DEL-CX.**
7. **Printing of logo-** The appellants are manufacturers of table diaries. In the present case LIC Logo printed on diaries do not establish any connection between the goods and the logo, hence the same cannot be said to be in the course of trade. The diaries manufactured by the appellant for LIC have not been traded by LIC. Accordingly, the appellant is entitled to exemption under Notification No. 8/2003-CE. **2018-TIOL-3435-CESTAT-MUM.**
8. **CESTAT-** The Revenue appeal filed against the order of CCE dropping the demand of duty and vacating the seizure in respect of goods seized. The review committee having two Chief Commissioner could have done a better job if they could have at least pointed out a single circumstance which has been wrongly assessed by the Commissioner in his order dropping the demand. Held, the manner in which this appeal has been filed appears to be very mechanical without application of mind to the case. Since, there are no merits in the appeal filed by the Revenue; the

same was dismissed as unsubstantiated. **2018-TIOL-3424-CESTAT-MUM.**

- 9. High Court- Penalty-** The order of the Tribunal imposing penalty of Rs. 5 lakhs u/r 25 of Central Excise Rules, 2002 was set aside as there was no mens rea in evading payment of duty. From the factual position the assessee is in deep financial distress and are before BIFR. **2018-TIOL-2379-HC-MAD-CX.**
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