

FEBRUARY'19 INDIRECT TAX LAW REPORT

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GST SKETCH on “REVERSE CHARGE MECHANISMS W.E.F. 1ST FEBRUARY, 2019”

The provisions of **section 9 (4) of the CGST Act, 2017** deals with the applicability of reverse charge mechanism, wherein, the goods or services or both is being procured by the registered person from the unregistered person.

Due to its wide implication, the said provisions has already undergone various amendments, however, the entire provisions of section 9 (4) has been recently substituted by **the CGST (Amendment) Act, 2018** which is effective from **1st February, 2019**.

RELEVANT NOTIFICATION	RELEVANT AMENDMENTS
Notification no. 8/2017-Central Tax (Rate) dated 28th June, 2017	Central tax payable on reverse charge basis on Intra-state supplies of goods or services or both received by the registered person from the unregistered person is exempted till an aggregate value of INR 5000 per day.
Notification no. 38/2017-Central Tax (Rate) dated 13th October, 2017	Entire central tax payable on reverse charge basis on Intra-state supplies of goods or services or both received by the registered person from an unregistered person is exempted (i.e. exemption up to INR 5000 replaced and the entire transaction was exempted) till 31 st March, 2018.
Notification no. 10/2018-Central Tax (Rate) dated 23rd March, 2018	The above exemption was extended till 30 th June, 2018
Notification no. 12/2018-Central Tax (Rate) dated 29th June, 2018	The above exemption was extended till 30 th September, 2018
Notification no. 22/2018-Central Tax (Rate) dated 6th August, 2018	The above exemption was extended till 30 th September, 2019

GST Notifications

Central Tax Notifications

Notification No.	Date of Issue	Subject & Description
1. Notification No. 9/2019- Central Tax	20-02-2019	<p style="text-align: center;"><u>Filing of return Form GSTR-3B has been extended</u></p> <p>The due date for furnishing FORM GSTR-3B has been extended for the month of January, 2019 to 28.02.2019 for registered persons having principal place of business in the State of J&K; and 22.02.2019 for the rest of the States.</p>
2. Notification No. 8/2019- Central Tax	08-02-2019	<p style="text-align: center;"><u>Filing of return Form GSTR-3B has been extended</u></p> <p>The time limit has been extended for furnishing the return by a registered person required to deduct tax at source in FORM GSTR-7 for the month of January, 2019 till the 28th day of February, 2019.</p>

Central Tax Circulars

Circular No.	Date of Issue	Subject & Description
1. Circular No. 91/10/2019 (Central GST)	18-02-2019	<p style="text-align: center;">Clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018</p> <p>i. Attention is invited to Circular No. 3/1/2018-IGST dated 25.05.2018 whereby it was enunciated that from 1st of April, 2018 the supply of warehoused goods before their clearance from the warehouse would not be subject to the levy of integrated tax.</p> <p>ii. Supply of warehoused goods while deposited in custom bonded warehouses had the character of inter-State supply as per the provisions of Integrated Goods and Services tax Act, 2017.</p> <p>iii. Suppliers who have paid central tax and state tax on such supplies, during the said period, would be deemed to</p>

		have complied with the provisions of law as far as payment of tax on such supplies is concerned as long as the amount of tax paid as central tax and state tax is equal to the due amount of integrated tax on such supplies.
2. Circular No. 90/09/2019 (Central GST)	18-02-2019	<p>Compliance of rule 46(n) of the CGST Rules, 2017 while issuing invoices in case of inter- State supply.</p> <p>i. After observing that few of the tax payers (majority of banking, insurance and telecom sectors) are not specifying the Place of supply (POS) for the IGST invoices in accordance with Rule 46(n) of the CGST Rules, 2017 the circular has been issued to clarify that the POS and name of the state as a mandate.</p> <p>ii. It is also clarified that the non-compliance would lead to levy of penalties u/s 122 or 125 of the act.</p>
3. Circular No. 89/08/2019 (Central GST)	18-02-2019	<p>Mentioning details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1</p> <p>i. A registered supplier is required to mention the details of inter -State supplies made to unregistered persons, composition taxable persons and UIN holders in Table 3.2 of FORM GSTR-3B. Further, the details of all inter-State supplies made to unregistered persons where the invoice value is up to Rs 2.5 lakhs (rate-wise) are required to be reported in Table 7B of FORM GSTR-1.</p> <p>ii. Contravention of any of the provisions of the Act or the rules made there under attracts penal action under the provisions of section 125 of the CGST Act.</p>
4. Circular No. 04/01/2019 (Central GST)	01-02-2019	<p>Rescinding of Circulars issued earlier under the IGST Act, 2017 to be effective from 01.02.2019</p> <p>i. The provisions of the CGST (Amendment) Act, 2018 and SGST Amendment Acts of the respective States have been brought into force w.e.f. 01.02.2019. Schedule III of the CGST Act, 2017 has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the “supply of warehoused goods to any person before clearance for home consumption” shall be neither a supply of goods nor a supply of services.</p>

		ii. Accordingly, Circular No. 03/01/2019-IGST dated 25th May, 2018 is hereby rescinded.
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Goods & Service Tax Judgments

- 1. Gujarat High Court- GST on supply of electricity-** The meaning of “transmission and distribution of electricity” does not change, either for the negative list regime or the GST regime. Providing electric line and electric plant are elements of service related to transmission and distribution of electricity naturally bundled in the ordinary course of business of the petitioner and are required to be treated as provision of the single service. Consequently, if the principal supply of transmission and distribution of electricity is exempt from levy of service tax, the tax liability of the related services shall be determined accordingly. **2019-TIOL-15-HC-AHM-GST.**
- 2. Gujarat High Court-** The petition challenging the show cause notice proposing for recovery of Service Tax under Section 73 of the Finance Act, 1994. It was held that the provisions relating to service tax in Finance Act, 1994 have been repealed by Section 173 of the CGST Act, 2017 and hence, the impugned show cause notice is without jurisdiction; further proceedings were stayed. **M/s North Western Carrying Corporation v. Union of India, 2019-VIL-36-GUJ**
- 3. GST- West Bengal AAR- Input Tax Credit-** The Applicant is constructing a warehouse and the technology used for the construction of the warehouse involves the application of pre-fabricated structures and also civil work for supporting the structure and developing the floor of the warehouse. Held, the warehouse is an immovable property, and the input tax credit is not admissible on the inward supplies for its construction, as the credit of such tax is blocked under section 17(5) (d) of the GST Act. **2019-VIL-47-AAR.**
- 4. Haryana AAR- Time of supply-** In case of invoices being raised by supplier in previous month and goods being received in the succeeding month, input tax credit on goods so received shall be available to the applicant, only when applicant has received the goods. **2019-VIL-40-AAR.**

5. **Bogus billing-** There are justifiable grounds to arrest the petitioners under Section 69 of the CGST Act which involves evasion of more than Rs. 80 crores of tax and offence is punishable with imprisonment for a period of five years. There is no valid ground to grant benefit of regular bail to the petitioners. The present petition is dismissed. **2019-VIL-67-P&H.**
6. **GST- Rajasthan AAR-** As the supplier of services and place of supply both are outside the State of Rajasthan, hence, Input Tax Credit of Central Tax paid in Haryana is not available to the applicant. Input tax credit of Central Tax paid in Haryana is not available to the applicant who is registered in State of Rajasthan. **2019-VIL-34-AAR.**
7. **Rectification of mistake-** When an assessee is seeking to correct Form GST TRAN 2 on its own, an opportunity should be afforded to such assessee to correct the same. The authorities are directed to allow the petitioner to file a revised Form GST TRAN 2, either electronically or manually, in accordance with law. The issue is answered in favour of the petitioners. **2019-VIL-59-CAL.**
8. **High Court-** The inspecting squad officers not to detain goods or vehicles where there is a bonafide dispute as regards exigibility of tax or rate of tax. The squad officer can intercept the goods, detain them for the purpose of preparing the relevant papers for effective transmission to the jurisdictional assessing officer. It is not open to the squad officer to detain the goods beyond a reasonable period. **2019-TIOL-28-HC-MAD-GST.**
9. **High Court-** The writ petition challenging Constitutional validity of entry 5(b) of Schedule II to the CGST Act, 2017 which envisages levy of tax on construction activities and deeming the value of the land at one-third of the total amount charged. Held, the petitioner involved in construction activity or works contract cannot examine the constitutional vires of the Act unless the cause of action emerges. Writ petitions at this stage held to be premature and dismissed as not maintainable. **2019-VIL-51-KAR.**
10. **Validity of detention of goods-** The Commissioner of Commercial Taxes, Chennai issued a circular to all the inspecting squad officers not to detain goods or vehicles where there is a bonafide dispute as regards the classification of goods. The squad officer can only intercept the goods and detain them for the purpose of preparing the relevant papers for effective

transmission to the jurisdictional assessing officer. The writ petition allowed. **2019-VIL-47-MAD**

- 11. GST- Karnataka AAAR-** The appellant is engaged in the business of providing marketing, sales promotion and post sale support services to their clients located outside India is appropriately classified as an 'intermediary service' u/s 2(13) of the IGST Act and the place of supply of such service will be in terms of Section 13(8) of the IGST Act. **2019-VIL-02-AAAR.**
- 12. Maharashtra AAR-** Input Tax Credit in view of S.17(5)(g) of the CGST Act, 2017 is not admissible in respect of GST paid for hotel stay in case of rent free hotel accommodation provided to General Manager and Managing Director of the company as providing of residential accommodation in a Hotel is not in furtherance of applicant's business and is only for the personal comfort of the GM/MD. **2019-VIL-25-AAR.**
- 13. GST- Tamil Nadu AAR-** The services of Management Consultant supplied to Chennai Metro Water Supply and Sewerage Board (CMWSSB), a Governmental Authority for the water related projects (industrial use and sanitation conservancy) falls under the ambit of "Pure Services" and exempt from GST in terms Notification No. 12/2017-Central Tax (Rate). **2019-VIL-22-AAR.**

Service Tax Judgments

- 1. Site formation and clearance service-** The site formation and clearance activities were undertaken before sale of land took place and has been done by the appellant by themselves, for themselves. Such activity was a self - service and hence the same cannot be exigible to service liability. The impugned order is set aside and the appeal is allowed. **2019-VIL-97-CESTAT-CHE-ST.**
- 2. CESTAT-** Once an Order-in-Appeal has been passed, the original order ceases to exist as it merges with the Order-in-Appeal and therefore no portion of that original order can be revised. **2019-VIL-101-CESTAT-HYD-ST.**

- 3. Warehousing services-** Warehouse abroad is held to be 'place of removal'. Tax paid by appellant on reverse charge basis in respect of warehousing services received in Spain is an 'Input Service. **2019-TIOL-470-CESTAT-MUM.**
- 4. Attachment of bank accounts** lifted provided monies are utilised entirely for petitioner's catering and housekeeping business and not diverted to any personal account. **2019-TIOL-286-HC-MUM-ST.**
- 5. Business Auxiliary Service (BAS)-** Under the True Value Scheme where the customers exchanged their pre-owned vehicle with a new vehicle approached the appellant, who evaluate the said vehicle and thereafter refurbish it, identify a new customer and transfer/sell the pre-owned car to the customer at certain amount. The demand was confirmed under BAS and the difference between the sale price for the old cars and the purchased price of the new ones was treated as remuneration for the service rendered. **2019-TIOL-432-CESTAT-MUM.**
- 6. Condonation of delay-** The delay of 79 days in filing appeal before Commr(A) condoned on the grounds that the person in charge of Excise matter left the job and the matter could not go to the commercial head of the company who was out of station in connection with audit appeared to be reasonable. The matter remanded back. **2019-TIOL-370-CESTAT-MUM.**
- 7. Life insurance services-** Investment of premiums is an integral part of life insurance service and is taxable entirely. **2019-VIL-92-CESTAT-HYD-ST.**
- 8. Transfer of right of possession and effective control-** The appellant is supplying the computers to client in which the absolute possession over the computers is with the Lessee. The statute definition u/s 65 (105) (zzzzj) of Finance Act is very clear to the effect that for tax liability, 'Supply of Tangible Goods' should be without transfer of right of possession and effective control of such computers. **2019-VIL-79-CESTAT-DEL-ST.**
- 9. Water piping or plumbing service** rendered by the appellant to the newly constructed building is part and parcel of the construction of building without which occupancy certificate to the building would not be issued by the local authorities. Held, plumbing service is not 'completion & finishing

work' but is essential for the construction of the building in the context of notification 1/2006-ST and is entitled for benefit. **2019-TIOL-357-CESTAT-MUM.**

- 10. Club or Association Service** - The principle of mutuality of interest is not applicable to guests/non-members. Green fees/course reservation is collected from non-members for usage of golf course and hence not liable to be taxed under club or association service. **2019-TIOL-321-CESTAT-BANG.**
- 11. High Court-** Whatever be the constraint, the assessee was faced with, it was duty bound to remit amounts collected by it towards service tax, in a planned manner, and as required by law. Penalty was rightly imposed, it could be reduced if the assessee had deposited the reduced amounts of penalty within 15 or 30 days of receipt of the Show Cause Notice. **2019-TIOL-215-HC-DEL-ST.**
- 12. CESTAT-** In the absence of any consideration, there is no taxable service and, in absence of taxable service, leviability of tax would not arise. **2019-TIOL-272-CESTAT-MUM.**
- 13. Litigation in matter of lease deed-** The appellant rented its property to State Bank of India on lease basis against receipt of monetary consideration. Rule 6 of Service Tax Rules, 1994 and Point of Taxation Rules, 2011 mandates that service tax is liable to be paid on receipt of consideration towards rent. **2019-TIOL-215-CESTAT-MUM.**

Central Excise Judgments

- 1. Cenvat credit on Erection Commissioning and Installation services-** The original adjudicating authority as well as the first appellate authority have relied on the exclusion clause 'A' in Rule 2(l) of the Cenvat Credit Rules, for denying the credit on the erection, commissioning services used by the appellant. Held, there is no merit in the impugned order and the same is set-aside and the appeal is allowed. **2019-VIL-109-CESTAT-AHM-CE.**

- 2. Annual lease rental for lease and maintenance of industrial area** - The Cenvat credit on the maintenance charge paid by the appellant against the lease for establishing and running the factory cannot be denied since these are part of the same lease document. **2019-VIL-107-CESTAT-DEL-CE.**
- 3. Audit objection-** Only because audit party had found some credit availed as inadmissible in relation to civil works, pipeline fabrication work, electric installation, suppression of fact cannot be made out unless malafide intention is established. **2019-TIOL-445-CESTAT-MUM.**
- 4. Valuation-** The transportation costs beyond the factory of manufacture is not liable to be included in the assessable value of the accessible goods. Transportation cost is allowed to be included only upon establishing that the manufacturer continues to be the owner of the goods even at the site of assembly. **2019-VIL-89-CESTAT-MUM-CE.**
- 5. Condonation of delay-** The delay of 38 days in filing appeal before Tribunal and more than 60 days in filing appeal before Commissioner (Appeals) is condoned on account of the strike and unrest in the factory which attributes to be a 'sufficient cause'. **2019-TIOL-419-CESTAT-MUM.**
- 6. Place of Removal-** Definition of 'Place of removal' in S.4 of CEA, 1944 is relevant only for determination of assessable value and cannot be applied for determining rate of duty at the time of removal from the factory which is governed by rule 5 of CER, 2002 in pursuance of section 3 of CEA, 1944. **2019-TIOL-328-CESTAT-MUM.**
- 7. Validity of Circulars-** The writ petition challenging the show cause notices (SCN) on the ground that the SCN are in contravention with the circular issued by the Commissioner. Such circulars/instructs would not have any statutory enforceability as far as the statutory provisions are concerned. Undoubtedly, Circulars/instructions are issued for the purpose of clarifying certain procedures to be followed. However, if such circulars violates the provisions of the Statutes or rules, then the Act alone will prevail and not the

circular or the instructions. The writ petition is dismissed.
2019-VIL-38-MAD-CE.

- 8. Non-compliance cost-** The Commissioner(A) dismissed the appeal on the ground that the mandatory requirement of pre-deposit provided under Section 35F of the CEA, 1944 had not been complied with by the assessee. For seeking remedy from the appellate forum, the appellant filed a an appeal in just and casual manner on which cost was imposed to meet the ends of justice. The Bench directed the appellant to deposit a cost of Rs.5,000/- in Prime Minister's Relief Fund within a period of four weeks. The appeal was disposed of in above terms. **2019-TIOL-198-CESTAT-MUM.**
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