

JUNE'18INDIRECT TAX LAW REPORT

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GST SKETCH on "REVERSE CHARGE"

- ✚ Ordinarily, the liability to pay tax lies on the supplier. However, as per Section 9(3) of the CGST Act and Section 5(3) of the IGST Act, the tax will be levied on reverse charge basis on specified categories of supply of goods and services or both as notified by the appropriate government on the recommendation of the GST Council.
- ✚ As per Section 2(98) of the CGST Act, reverse charge is defined as follows:
“reverse charge means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of Section 9 or under sub-section (3) or sub-section (4) of Section 5 of the Integrated Goods and Services Tax Act.”
- ✚ As per Section 9(4) of the CGST Act and Section 5(4) of the IGST Act, any CGST and IGST, respectively on any supply of taxable goods or services or both, by an unregistered supplier, to a registered person, shall be paid by the recipient(i.e. the registered person) on reverse charge basis.
- ✚ Accordingly, under the reverse charge mechanism, the liability to pay tax is on the person receiving the goods or services or both in place of the person supplying such goods and/ or services, in respect of categories of supply of goods or services as notified by the Central Government or State Government on the recommendations of the Council. All the provisions of the GST Act and the IGST Act, shall apply to such recipient as if he is the person liable for paying the tax in relation to such goods and/or services.

GST NOTIFICATIONS

CENTRAL TAX NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No. 24/2018- Central Tax	28-05-2018	Central Goods and Service Tax Act, 2017 and Central Goods and Services Tax Rules, 2017 On a conjoint reading of Section 48 of the CGST Act, 2017 (12 of 2017) read with rule 83(3) of the CGST Rules, 2017, the Central Government notified the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, as the authority to conduct the examination as per the said sub-rule.

Goods & Service Tax Judgments

1. The Gujarat High Court has issued notice challenging Circular which says that IGST shall be payable at the sale of imported goods even before the Customs clearance, petitioner contention is that IGST shall be payable only when the goods have been custom cleared. **Liberty Chemtrade P. Ltd. v. Union of India, 2018 (12) GSTL 353 Guj.**
2. The High Court has set aside the order of the Tribunal when it merely says that the order of the lower authority is well reasoned and no reason to interfere, such order is bad in law. **Shri Samarth Associates v. CCE, 2018 (12) GSTL 366 Bom.**
3. **SGST- Advance Ruling-** Services provided of diagnosis, pre and post counseling therapy qualify to be health care services which is exempt

under Entry No. 74 of Notification 12/2017- Central Tax and attract Nil rate of Tax. **2018-VIL-38-AAR.**

- 4. Works Contract-** The applicant is engaged in execution of works awarded by M/s KPTCL for construction of power lines, erection of towers, and transformers under a single composite contract. Held, it is an indivisible contract which qualifies as works contract. The regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purpose of GST Acts. Therefore, M/s KPTCL cannot be a State Government and is not entitled for the benefit of concessional rate of GST @12% in terms of Notification No. 24/2017- Central Tax. **2018-VIL-39-AAR.**
- 5. Rental or leasing services-** The Applicant has taken the premises on lease and running exclusive heart care centre and providing health care services on commercial basis. Rental or leasing services involving own or leased non-residential property is classified under the heading (SAC) 997212 and is taxable under GST. **2018-VIL-40-AAR.**
- 6.** AAR Karnataka has ruled that GST is payable by the Hospital on the premises taken on rent, catering services, life saving services as there is no specific exemption is available to the supplier. AAR further ruled that there is no provision in GST to protect supplier from the levy of GST on input services. **Tathagat Health Care Centre, LLP 2018 (93) taxmann.com**

Service Tax Judgments

1. **Commercial and Industrial Construction Services-** All service provided to Maharashtra State Electricity Transmission Co. Ltd. in relation to transmission of electricity are exempted by Notification 45/2010-ST & 11/2010-ST. **2018-TIOL-1656-CESTAT-MUM.**
2. **Rectification of mistake-** The Respondent paid service tax under wrong assessee code. The issue is not of classification or refund which is of legal and/ or recurring in nature. The same was dismissed. **2018-TIOL-1647-CESTAT-MUM.**
3. **Air travel agent services-** Any activity in relation to booking of passes by air travel agent would be covered under air travel agency services whether ticket is bought directly airline or through General Sales Agent and is not a component of Business Auxiliary Services. **2018-TIOL-1583-CESTAT-MUM.**
4. **Returns-** Late fee for delay in furnishing returns- The appellant has no ground to seek relief which is not available under Rule 7C of the Service Tax Rules, 1994 which deals with the amount to be paid for delay in furnishing prescribed return. **2018-TIOL-1613-CESTAT-MUM.**
5. **Negative list of services-**The Appellants are imparting training for various national entrance tests which are integrated to their intermediate courses as prescribed by the Board. Therefore, the predominant nature of the service will be imparting formal education which stands excluded from the tax net. **2018-TIOL-1504-CESTAT-HYD.**

6. **Refund claim-** Date of filing of refund online through ACES portal of CBEC website should be reckoned as date of filing of refund claim. **2018-TIOL-1520-CESTAT-MUM.**
7. **High Court-** Where the petitioner is squeezed between two government departments, instead of a case of unjust enrichment, it would be a case of unjust impoverishment. **2018-TIOL-887-HC-AHM-ST.**
8. **Voluntary Compliance Encouragement Scheme (VCES)-** The CBEC has clarified that notice of rejection of VCES-1 declaration should be issued within 30 days. Notice issued after 1.5 years is clearly time barred. **2018-TIOL-1607-CESTAT-MUM.**
9. **Tax Liability-** The appellants have failed to file ST-3 returns for 3 years although they had taken registration. If the tax not paid for another two years, the liability to pay tax would go beyond the period of limitation. The amounts paid by the appellants in cash also take the shape of duty only when the same are adjusted by filing the return against the duty liability. In the absence of such adjustment, the said payments do not take the shape of payment of service tax. **2018-TIOL-1563-CSETAT-MUM.**
10. The activity undertaken by the appellant of **Optional Extended Warranty Service** is classifiable under 'Works Contract Service' and therefore, the appellant is not required to pay any amount as pre-deposit. Held, not liable to pay service tax under the category of 'Repair and Maintenance Services.' **2018-TIOL-1451-CESTAT-CHD.**
11. **CESTAT-** It is not in the jurisdiction of the Tribunal to adjudicate on the leviability of VAT or otherwise. The Tribunal is competent to adjudge regarding leviability of Service Tax under the Finance Act, 1994 only. **2018-TIOL-1564-CESTAT-MUM.**

12. **CENVAT Credit-** The appellant engaging sub-contractors for providing erection, installation and commissioning services. The appellant has rightly taken the CENVAT Credit on the input service provided by the sub-contractors and they have paid the applicable service tax on the output service provided by them. Therefore, eligible to take the CENVAT Credit. **2018-TIOL-1557-CESTAT-MUM.**

Central Excise Judgments

1. **SC Ruling-** Both Section 3 and 4 of the Central Excise Act, 1944 operate in their respective fields. Measure of levy contemplated in S.4 of the Act will not be controlled by nature of levy. Section 3 is a charging section providing for levy of excise duty whereas Section 4 provides for the valuation of excisable goods. **2018-TIOL-181-SC-CX-CB.**
2. **Rule 16 of Central Excise Rules, 2002-** Where the goods are returned from the customers and brought to the factory for repair or reconditioning, not eligible for CENVAT Credit. **2018-TIOL-1608-CESTAT-MUM.**
3. **Cost & Freight Agency Services-** The appellant is engaged in the sale of cement. After sale, the goods were cleared by the C&F agent and handed over to the transport for despatch to the buyer. Merely routing billing transaction through appellant will not make appellant as recipient of C&F service. Held, service stands received by the buyer and not the appellant. **2018-TIOL-1580-CESTAT-MUM.**
4. **Valuation- S.4 of the Central Excise Act, 1944-** Price prevailing for sale at depot immediately 'prior' to clearance from factory gate has to be adopted. **2018-TIOL-1576-CESTAT-MUM.**

- 5. Site Transfer activity** involves production or processing of goods which does not amount to manufacture, and therefore, same are taxable under Business Auxiliary Services. The services partly performed outside India is also export, rebate available in respect of such services. **2018-TIOL-1570-CESTAT-MUM.**
- 6. Reversal of CENVAT Credit-** If an input is cleared on reversal of CENVAT Credit availed, the question of invoking the provisions of Rule 6(3A) of CCR, 2004 does not arise. Rule 6 applies on trading activity only in a case when the goods are purchased and sold without taking credit and without payment of duty. **2018-TIOL-1541-CESTAT-MUM.**
- 7. Manufacture activity-** Purchasing engine/ pump/ base frames, undertaking inspection/ testing for proper alignment and packing all three items in master carton for selling as pump sets, the activity amounts to manufacture. **2018-TIOL-1491-CESTAT-CHD.**
- 8. No denial of credit-** Allegation is that invoices were arranged for availing credit. Where no investigation was done at transporter's end, the denial of credit should not be allowed. It is settled in the law that for taking the Cenvat credit on the inputs, the inputs should be received in the factory and they should be duty paid and used in the final product. **2018-TIOL-1477-CESTAT-CHD.**
- 9. Inputs sent to job worker returned as rejected/spoiled-** CENVAT Credit is also admissible in respect of the amount of inputs contained in any of the waste, refuse or bye product so long as the inputs are used or in relation to the manufacture of final products, whether directly or indirectly. **2018-TIOL-1492-CESTAT-CHD.**

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