

JANUARY'19INDIRECT TAX LAW REPORT

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Whether Intermediary Services are export of Services?

1. It is a general trade practice for the Indian entities to provide intermediary services to the recipient located outside the Indian territory. The discussion aims to determine whether the "supply of services" by the intermediaries to the recipients located outside India amounts to export of services or not?

2. **Section 2(13) of IGST Act, 2017**, 'intermediary' has been defined to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

3. **Example:** If XYZ is a company registered in UAE and taking services of finding prospective customers in India by an Indian ABC company registered at Delhi. ABC co. is providing intermediary services to this UAE co. and charging commission for the same.

4. As per Section 13(8)(b), the location of supplier shall be the place of supply in case of intermediary services. Since, the location of the supplier is Delhi and place of supply is also Delhi in given case, therefore this transaction will not be covered within the definition of export of services (as provided in Section 2(6) of IGST Act) as it is not satisfying one of the conditions of place of supply being outside India, which are reproduced herein below:

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8

Therefore, going by the strict interpretation of Section 13(8) of IGST Act, the supply of services by the Intermediaries to the recipients outside India are not export of services.

5. Recent Judicial Advance Ruling: Global Reach Education Services Pvt. Ltd - 2018-VIL-06-AAR:

In this case, the applicant was promoting the foreign university and was helping them in enrolling Indian students. In providing the promotional services, the promotional company was charging commission/fee from the foreign university. In this very case, the authorities found that the Indian representative was an intermediary acting as an independent representative. Citing Section 13(8)(b) of the IGST Act, the Hon'ble West Bengal Advance Ruling Authority ruled that the place of supply shall be the place of supplier of service and such intermediary services would not be termed as export of services.

GST Notifications

Central Tax Notifications

Notification No.	Date of Issue	Subject& Description
1. Notification No. 1/2019- Central Tax	15-01-2019	<p><u>Amendment to Notification No. 48/2017-Central Tax dated the 18th October, 2017</u></p> <p>In the said notification,</p> <p>(i) In the Table, the column number (2) against S. No.1, after the entry, the following proviso shall be inserted, namely: -</p> <p>“Provided that goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply,;</p> <p>Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.”;</p> <p>(ii) In the Explanation against serial number 1 the words “on pre-import basis” shall be omitted.</p>
2. Notification No. 79/2018- Central Tax	31-12-2018	<p><u>Amendment to notification No. 2/2017 – Central Taxes dated 19.06.2017.</u></p> <p>The central tax officer specified in column (3) of Table I and the officers subordinate to him shall exercise powers under sections 73, 74, 75 and 76 of CGST Act for the territorial jurisdiction of Central tax officer mentioned in column (2) of Table I.</p>
3. Notification No. 78/2018- Central Tax	31-12-2018	<p><u>Extension of due date for furnishing FORM ITC-04 for the period from July, 2017 to December, 2018 till 31.03.2019.</u></p> <p>The time limit for furnishing the declaration in FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to December, 2018 till the 31st day of March ,2019.</p>

4. Notification No. 77/2018- Central Tax	31-12-2018	<p><u>Seeks to fully waive the amount of late fees leviable on account of delayed furnishing of FORM GSTR-4 for the period July, 2017 to September, 2018.</u></p> <p>The Late fees is waived off on GSTR-4 being filed for period from July, 2017 to September, 2018 between 22nd Dec 2018 to 31st Mar 2019.</p>
5. Notification No. 76/2018- Central Tax	31-12-2018	<p><u>Seeks to fully waive the amount of late fees leviable on account of delayed furnishing of FORM GSTR-1 for the period July, 2017 to September, 2018 in specified cases.</u></p> <p>Reduced late fees of Rs 50 per day of delay(Rs 20 for NIL return) is applicable for those who filed the GSTR-3B beyond the due date stipulated for months July 2017 to September 2018 before 22nd December 2018. The Late fees is waived off on GSTR-3B being filed for period from July, 2017 to September, 2018 between 22nd Dec 2018 to 31st Mar 2019.</p>
6. Notification No. 75/2018- Central Tax	31-12-2018	<p><u>Seeks to fully waive the amount of late fees leviable on account of delayed furnishing of FORM GSTR-1 for the period July, 2017 to September, 2018 in specified cases.</u></p> <p>Late fee is waived off on GSTR-1 being filed for period from July, 2017 to September, 2018 between 22nd Dec 2018 to 31st Mar 2019.</p>
7. Notification No. 74/2018- Central Tax	31-12-2018	<p><u>Seeks to make amendments (Fourteenth Amendment, 2018) to the CGST Rules, 2017.</u></p> <ol style="list-style-type: none"> 1. A person applying GST registration in REG-7 as TCS deductor must mention the name of the State/UT of a place he chooses where he does not have physical presence in India in Part-A and the principal place of business in Part-B. 2. Reporting in ITC-04 will now exclude any challans issued with regards to goods supplied between two job workers. 3. Supplier or his representative need not put a signature or use DSC for the issue of the invoice issued electronically in adherence to IT Act 2000. 4. Supplier or his representative need not put a signature or use DSC for the issue of the bill of supply issued electronically in adherence to IT Act 2000. 5. Supplier or his representative need not put his signature or use DSC for the issue of the consolidated tax invoice by Bank or Ticket by supplier involved in passenger services which are in

		<p>adherence to IT Act 2000.</p> <p>6. In Rule 89(5) governing provisions of refund of GST under inverted duty structure, the words 'adjusted total turnover' and 'relevant period' must be same as defined under Rule 89(4).</p> <p>7. Audit under rule 101 can be made applicable to part of the financial year too.</p> <p>8. A new rule 109B for revision order and notice to person is inserted.</p> <p>9. Handicraft goods has been clearly defined under Rule 138 -e-way bill rules giving reference to Central tax notification 56/2018.</p> <p>10. A new rule 138E-Restriction on furnishing of information in PART A of FORM GST in inserted: Now taxpayers not filing GST returns for two tax periods consecutively, cannot generate Part-A slip of e-way bill.</p> <p>11. Section 75(12)- Tax remaining unpaid on GST returns filed- has been given reference to in Rule 142(5)- Tax demand cleared in Form DRC-07.</p> <p>12. A new form RFD-01 and RFD-01A now replace the old forms.</p> <p>13. Formats of GSTR-9, GSTR-9A and GSTR-9C are now revised to accommodate changes recommended at 31st GST Council meeting.</p>
8. Notification No. 73/2018- Central Tax	31-12-2018	<p style="text-align: center;"><u>Seeks to exempt supplies made by Government Departments and PSUs to other Government Departments and vice-versa from TDS.</u></p> <p>The supply of goods or services in between the persons notified as deductors of TDS like Government, departments, PSUs, Local authority, Boards established by Government is exempt from TDS provision with effect from 1st October 2018.</p>
9. Notification No. 72/2018- Central Tax	31-12-2018	<p style="text-align: center;"><u>Seeks to extend the time limit for furnishing the details of outward supplies in FORM GSTR-1 for the newly migrated taxpayers.</u></p> <p>Newly Migrated Taxpayers with turnover over Rs. 1.5 crores who are yet to file GSTR-1(Monthly) for the months July 2017</p>

		to February 2019, get an extension till 31st March 2019.
10. Notification No. 71/2018- Central Tax	31-12-2018	<p><u>Seeks to extend the time limit for furnishing the details of outward supplies in FORM GSTR-1(Quarterly) for the newly migrated taxpayers.</u></p> <p>Newly Migrated Taxpayers with turnover below or equal to Rs. 1.5 crores who opted but are yet to file GSTR-1(Quarterly) for the quarters beginning from July 2017 to December 2018, get an extension till 31st March 2019.</p>
11. Notification No. 70/2018- Central Tax	31-12-2018	<p><u>Seeks to extend the time limit for furnishing the return in FORM GSTR-3B for the newly migrated taxpayers.</u></p> <p>Newly migrated taxpayers get extended time to file GSTR-3B for months of July, 2017 to February, 2019 till 31st March 2019; Newly migrated taxpayers must be referred to Notification 31/2018 dated 6th August 2018 that gave time for some taxpayers to complete GST registration by 30th September 2018 (now extended to 28th February 2018 vide Notification 67/2018), if they had applied by 31st December 2017 but could not complete submission of REG-26 to obtain GSTIN; Notification 34/2018 notified the due dates of GSTR-3B for months from July 2018 to March 2019.</p>
12. Notification No. 69/2018- Central Tax	31-12-2018	<p><u>Seeks to extend the time limit for furnishing the return in FORM GSTR-3B for the newly migrated taxpayers.</u></p> <p>Newly migrated taxpayers get extended time to file GSTR-3B for months of July, 2017 to February 2019 till 31st March 2019 (earlier 31st Dec 2018); Procedure for Newly migrated taxpayers must be referred to in Notification 31/2018 dated 6th August 2018 that gave time for some taxpayers to complete GST registration by 30th September 2018(now extended to 28th February 2018 vide Notification 67/2018), if they had applied by 31st December 2017 but could not complete submission of REG-26 to obtain GSTIN; Notification 35/2017 and 16/2018 notified the due dates of GSTR-3B for months from August 2017 to December 2017 and April 2018 to June 2018.</p>

INTEGRATED TAX NOTIFICATIONS

Notification No.	Date of Issue	Subject& Description
1. Notification No. 3/2018-Integrated Tax	31-12-2018	<u>Seeks to amend the IGST Rules, 2017</u> To notify the rules for determination of place of supply in case of inter-State supply under sections 10(2), 12(3), 12(7), 12(11) and 13(7) of the IGST Act, 2017

Goods & Service Tax Judgments

- 1. National Anti-Profitereing Authority (NAA)-** The Respondent did not pass on the benefit of reduction in the GST rate on detergents from 28% to 18% but increased the base prices so that there was no reduction in the prices to the recipients. The Authority holds that the Respondent has violated the provisions of section 171 and are directed to reduce the sale price of the said products immediately and deposit the profiteered amount into the Consumer Welfare Fund along with interest.
2019-VIL-02-NAA.
- 2. Gujarat GST- High Court- Seizure of goods and attachment of Bank accounts-** The petitioner contended that he is not in a position to carry on its day to day business and make payment of statutory dues on account of seizure of goods and attachment of bank accounts. It was held that Revenue should keep in mind that bringing the business of a dealer to a grinding halt does not in any manner serve the interest of the revenue and was directed to forthwith release the bank accounts as well as the seized goods of the petitioner – answered in favour of assessee. Therefore, while taking any action under section 83 or 67(2) of the GGST Act, the equities are maintained and petitioner should be in a position to continue with the business.
2019-VIL-14-GUJ.
- 3. West Bengal AAR- Works Contract-** The Applicant's supply of works contract services to Inland Waterways Authority of India for construction of

the Multi-modal IWT Terminal attracts GST at 18%. The predominant nature of the project is that it creates infrastructure for commercial utilization of the national waterway and facilitate commerce and business. **2019-VIL-05-AAR.**

- 4. GST West Bengal AAR- Input Tax Credit on lease rent-** The lease rental paid during the pre-operative period for the leasehold land should be treated as part of the cost of goods and services received for the purpose of constructing an immovable property. Input tax credit is, therefore, not admissible on such lease rental in terms of section 17(5)(d) of the CGST Act. **2019-VIL-08-AAR.**
- 5. Madhya Pradesh AAR- Works Contract-** The Government of Madhya Pradesh is having full control over the applicant who is a Government Entity. The benefit of concessional rate of 12% is not available to the applicant on works pertaining to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration, which are carried out in respect of projects under the schemes of government as the same is undertaken for the business purpose. The contract entered by the applicant is squarely falls under the works contract and the applicable rate of tax is 18%. **2019-VIL-04-AAR.**
- 6. National Anti-Profitteering Authority (NAA)-** The supply of four models of Motor Car, namely, 'Wagon R VXI AMT', 'Swift VXI', 'Alto 800 LXI' & Wagon R VXI' (HSN code- 8703). Held, the rate of tax on Motor Car was 15.63% in the pre-GST era which was increased to 29% in the post-GST era. The Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017, hence there is no merit in the application and the same is dismissed. **2019-VIL-01-NAA.**
- 7. GST - Karnataka AAAR -** The services of the employees at the Corporate Office in the course of employment for the units located in the other states, shall be treated as Supply of service by one distinct person to another, and by virtue of the Entry 2 of Schedule I, supply of services between distinct persons even if without consideration is a "supply" within the scope of Section 7 and is liable to GST. The impugned Order is upheld the appeal is dismissed. **2018-VIL-30-AAAR.**

- 8. Export of goods and services-** The petitioner is supplying goods to Duty Free Shops (DFS) situated at airport and as per Section 2(5) of IGST Act, 2017 export of goods takes place only when goods cross territorial waters of India and the goods cannot be called to be exported merely on crossing customs frontier of India. As the supply to a DFS by an Indian supplier is not to 'a place outside India', therefore, such supplies do not qualify as 'export of goods' under GST and petitioner is liable to pay GST on supply of indigenous goods to DFS. **2018-VIL-577-MP.**
- 9. GST- Maharashtra AAR- Supply of service-** The activity of renting workwear (along with other services such as transportation and weekly washing) qualifies as 'transfer of the right to use' any goods for any purpose for cash, deferred payment or other valuable consideration and thus would be categorized as supply of services within the meaning of entry 5(f) of Schedule II of the GST Act. Such activity is a mixed supply u/s 2(74) of CGST Act. **2018-VIL-334-AAR.**
- 10. GST- Karnataka AAAR- Taxi aggregation service-** The booking for a taxi ride on the digital application is a part of the activity of the supply of the service of transportation of passengers. Without the booking no service can be supplied. The services of transportation of passengers supplied through the Appellant's electronic platform and digital network would be liable to tax at the hands of the Appellant. **2018-VIL-26-AAA.**

Service Tax Judgments

- 1. CESTAT-** Once an Order in Appeal has been passed, original order ceases to exist as it merges with Order in Appeal and, therefore, no portion of that original order can be revised in revision proceedings. **2019-TIOL-170-CESTAT-HYD.**
- 2. Valuation-** Whether the transaction charges received by a stock broker alongwith brokerage charges shall be included in the taxable value. Held, in terms of Section 67 of the Finance Act, any amount which is collected not for providing 'such' taxable service, the same cannot form part of that valuation. It also needs to be distinguished that whether appellant has provided services as pure agent on principal to principal basis or provided stock

brokerage services on its own behalf. Matter remanded back to Adjudicating Authority. **2019-VIL-32-CESTAT-DEL-ST.**

- 3. Amusement and Entertainment activities-** The appellants are having an amusement facility providing fun or recreation by means of rides, gaming devices in the amusement part are exempt from payment of service tax in terms of Section 66D of the FA, 1994 as they are exempted by notification 25/2012-ST under the negative list. **2019-TIOL-123-CESTAT-HYD.**
- 4. Show Cause Notice (SCN)-** Where the SCN itself suffers from an incurable deficiency with respect to the calculation of tax liability, the proceedings are vitiated by the said defect and remanding the matter for re-consideration by the adjudicating authority does not arise. **2019-TIOL-122-CESTAT-MAD.**
- 5. Service Tax - Classification under wrong heads-** The appellant paid service tax under the head of “Renting of immovable property” whereas the same should have been paid under “Port service”. Service Tax paid, though not under the correct head of service, cannot be considered as non-payment of service tax when entire service tax is paid along with interest. The department is free to make their internal adjustment in the account. Therefore, malafide intention to evade the payment of duty cannot be charged against the appellant. **2019-VIL-14-CESTAT-AHM-ST.**
- 6. Online Information and Data Base Access and Retrieval Services-** The activity of downloading the software through computer network is liable to payment of service tax on reverse charge basis which has been downloaded by assessee from foreign service providers. Therefore, if the service tax is paid on reverse charge basis, the same will be available to the appellant as Cenvat Credit in the form of input services. **2019-VIL-01-CESTAT-KOL-ST.**
- 7. Coaching services-** The appellant is engaged in providing Graduate and Post Graduate Diploma in the field of Design by charging fees for the said courses. Held, except training or coaching falling in exclusion category, all training or coaching falls under definition of 'Commercial training or coaching service' and is liable to tax. **2018-TIOL-3899-CESTAT-MUM.**
- 8. Refund claim-** A tax wrongly realized or paid on in excess of what is permissible in law, is a realization made outside the provisions of the Act.

Such amount cannot be retained by Revenue, being in conflict with Article 265 of the Constitution. **2018-VIL-834-CESTAT-DEL-ST.**

- 9. High Court- Refund-** Section 103 of Finance Act contains a self contained code, a complete mechanism for claiming refund. For claiming refund under the said provision, limitation period prescribed elsewhere cannot be adopted ignoring the period prescribed in S.103(3). Held, S.103 of FA, 1994 is not unconstitutional. **2018-TIOL-2644-HC-MUM-ST.**
- 10. Interest-** Refund claim cannot be treated as validly filed till it is filed along with all supporting documents. **2018-TIOL-3814-CESTAT-MUM.**
- 11. Maintenance charges-** One-time maintenance charges collected from flat owner by builder is not chargeable to tax under category of Maintenance and Management of immovable property. **2018-TIOL-3800-CESTAT-MUM.**
- 12. Port Services or Terminal services -** As per the agreement the appellant got the exclusive authority to provide the services of receiving delivering, transporting booking and dispatching the goods originating in the vessels in the Port. The Port Trust is paid by the Railways for providing such services. Held, the activity under taken by the appellant for Railways will be classifiable under the 'Business Auxiliary Services', and liable to payment of service tax. **2018-VIL-813-CESTAT-KOL-ST.**
- 13. Vocational training-** A coaching centre providing training and coaching of foreign languages such as French, German, Japanese, Spanish etc. falls under 'vocational training' and is consequently exempted under Notification No. 9/2003-ST. **2018-TIOL-3737-CESTAT-MUM.**

Central Excise Judgments

- 1. Eligibility to Cenvat Credit on construction services of railway tracks-**
The services used for alteration, extension and siding of railway track and AMC of locomotive engine have nexus directly or indirectly to the manufacture of final product. The impugned order denying the CENVAT credit on the railway sidings or alterations of sidings and extension of siding is not sustainable. The impugned order is set aside by allowing the appeal of the appellant. **2019-VIL-28-CESTAT-BLR-CE.**
- 2. High Court- Rule 18 of CER, 2002-** If a claimant is in a position to substantiate its claim for rebate on the basis of any of the supplementary documents or by leading secondary evidence with regard to its claim, then such claim is required to be allowed and the revisional authority cannot disallow the claim by requiring the petitioner to produce further documents. **2019-TIOL-116-HC-KOL-CX.**
- 3. Central Excise- CENVAT Credit-** The essential condition for availment of credit is that the capital goods should be used in or in relation to manufacture of the final product and even if the same are used outside the factory for the said purpose the credit cannot be denied so long as the said capital goods are not alienated by the appellant. **2019-VIL-30-CESTAT-AHM-CE.**
- 4. Clandestine manufacture and removal-** It was held that unless the manufacture is established, Central Excise duty cannot be demanded. The revenue has failed to establish manufacture of goods in respect of which demand was raised. The impugned order is set aside and assessee appeal is allowed. **2019-VIL-18-CESTAT-ALH-CE.**
- 5. Re-packing/re-labelling not amounts to manufacture -** The appellant's activity being only re-packing/re-labelling of imported goods does not amount to manufacture, therefore, the clearance of such goods shall be treated as removal of input. The appellant was required to pay the duty

equal to the cenvat credit availed on such inputs. **2019-VIL-15-CESTAT-AHM-CE.**

- 6. Refund claim under Rule 5 of CENVAT Credit Rules-** Rule 5 makes it clear that a manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking which is exported without payment of service tax shall not be an exempted goods and as such shall be allowed refund of cenvat credit in view of Rule 5 of Cenvat Credit Rules. The Order rejecting refund claims are set aside and the appeals are allowed. **2019-VIL-13-CESTAT-DEL-CE.**
- 7. Captive Consumption-** The duty was demanded by the Department on captively consumed 'sugar syrup' (which is intermediate product) used in manufacture of biscuits.The appellants contended that 'intermediate goods' i.e. sugar syrup is used for production of final goods are exempt from duty but as long as final product is dutiable no duty can be demanded on clearance of sugar syrup which is intermediate product though exempt. **2018-VIL-835-CESTAT-MUM-CE.**
- 8. Unutilized credit** lying in the books of accounts on account of closure of factory should not be denied on the grounds that procedural requirements of Rule 5 of CENVAT Credit Rules, 2004 are not met.**2018-TIOL-2682-HC-MAD-CX.**
- 9. Valuation-** There is one price charged from individual customer at the depot, whereas in respect of certain class of customer, there are contract prices which are charged which is less than the price charged to the individual customer , keeping in view the volume of business, promptness of payment etc. Held, each contract price can be considered as applicable to a particular class of buyers and there is no infirmity in respect of such valuation. **2018-VIL-838-CESTAT-KOL-CE.**
- 10. Input Service -** A plot was leased out to the appellant. The substantial portion was used as a factory and small portion was used as depot. Held,

CREDIT of tax paid on Renting of Immovable property is deniable only to extent of area used for trading purpose. **2018-TIOL-3792-CESTAT-MUM.**

- 11. High Court-** The appellant's argument that they have no control over Depots is no answer to avoid demand because it is the duty of the appellant to maintain the records of the amounts received from the Depots. The additional amount recovered by depots is liable to be paid u/s 11D of CEA, 1944. **2018-TIOL-2571-HC-MAD-CX.**
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