

JULY'19 INDIRECT TAX LAW REPORT

PATRON

SH.V.K.AGARWAL

Formerly
Member-Customs, Excise & Service Tax
Appellate Tribunal, New Delhi
Mobile No. 9818903406
E-mail: agrawalnagrawal@yahoo.co.in

SH. L.P.ASTHANA

Formerly
Jt. Chief Departmental Representative,
Commissioner of Customs & Excise
Dy. Director, World Customs
Organisation, Brussels.
E-mail: lpasthana@gmail.com
asthanakhair@gmail.com

ADVISER

Mr. PRADEEP K. MITTAL

B.Com., LL.B., FCS, Advocate
PKMG Law Chambers
Past Central Council Member,
The Institute of Company Secretaries of India
E-mail: pkmittal171@gmail.com
www.pkmgcorporatelaws.com
Contact nos. +91-9811044365, +91-9911044365

ADVISER

Dr. SANJEEV KUMAR

M.Com. LL.B., Ph.D, PGDPIRL, AICWA, FCS
Former Executive Director– Bajaj Hindusthan Limited

ASSISTED BY

Ms. SEHRISH NAZ

GST SKETCH on “Amendments in CGST Rules”

Notification No. 31/2019-CT: Central Goods and Service Tax (Fourth Amendment) Rules, 2019

Following are the gists of amendment of the amendments made thereunder:

1. **Rule 10: Issue of Registration Certificate**

Rule 10A [newly inserted]: Furnishing Bank Account details post registration: After a certificate of registration in FORM GST REG-06 has been made available, the registered person shall furnish information with respect to details of bank account at the earliest, but not later than forty-five days from the date of grant of registration or the date on which the return required under Section 39 of CGST Act, 2017 is due to be furnished, whichever is earlier. However, such details are not required to be furnished by persons who have been granted registration by the department on its own in terms of Rule 16 or persons who have taken registration as Tax Deductor at source (u/s 51) or Tax Collector at source (u/s 52). Corresponding amendments are also made in Forms GST REG-01, GST REG-07 and GST REG-12.

2. **Rule 21: Registration to be cancelled in certain cases**

Rule 21(d) [newly inserted]: If bank account details are not furnished within the prescribed time in terms of rule 10A, then the registration so granted shall be liable to be cancelled.

3. **Rule 32: Determination of value in respect of certain supplies**

Rule 32A w.e.f. July 01, 2019 [newly inserted]- Value of supply in cases where Kerala Flood Cess is applicable- Kerala Flood Cess, where applicable, shall not form part of the value determined under section 15, rather it shall be leviable on value determined in terms of section 15 of the CGST Act/ Kerala Goods and Services Tax Act, 2017.

4. **Rule 46: Tax invoice**

Sixth proviso inserted - Generation of QR code for tax invoice: With effect from a date to be notified later, the Government may specify that the tax invoice shall have Quick Response (QR) code.

5. **Rule 49: Bill of supply**

Fourth proviso inserted - Generation of QR code for tax invoice: With effect from a date to be notified later, the Government may specify that the tax invoice shall have Quick Response (QR) code.

6. Rule 66: Form and manner of submission of return by a person required to deduct TDS

Amendment in Rule 66(2): Since "TDS and TCS credit received" column is specifically provided on GST portal under, Services>>Returns>>TDS and TCS credit received, this sub-rule has been amended accordingly. Earlier references of part C of Form GSTR-2A and GSTR-4 was mentioned under this sub-rule.

7. Rule 67: Form and manner of submission of statement of supplies through an e-commerce operator

Amendment in Rule 67 (2): Since "TDS and TCS credit received" column is specifically provided on GST portal under, Services>>Returns>>TDS and TCS credit received, this sub-rule has been amended accordingly. Earlier references of part C of Form GSTR-2A and GSTR-4 was mentioned under this sub-rule.

8. Rule 87: Electronics Cash ledger

Deletion of 2nd proviso to rule 87(2): Generation of challan in Form GST PMT-06 by a person providing OIDAR service from a place outside India to a non-taxable online recipient through the Board's payment system EASIEST was to be notified vide this proviso, now deleted.

Amendment made in Rule 87(9) to comply with current provision: Since GSTR-2 was never implemented, amount of TDS and TCS credit is not claimed through Form GSTR-2, rather a tab has been provided on the common portal to claim correct TDS and TCS credit. Accordingly, suitable amendment is made in this sub-rule.

Inserted rule 87(13) - Inter-transfer of balances lying in E-cash ledger: With a date to be notified later, a registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.

9. Rule 91, 92 and 94: Procedure of granting refund

Under Rule 91, 92 and 94, wherever the word 'payment advice' has been mentioned, the word 'payment order' has been substituted.

10. Rule 95: Refund of tax to certain persons

Rule 95A [newly inserted] w.e.f. July 01, 2019: Refund to retail outlets making tax free supply to an outgoing international tourist: Retail outlets established in departure area of

an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods.

Such persons are required to make application for refund in Form GST RFD-10B and submit invoices issued for inward and outward supplies.

11. Rule 128: Examination of application by the Standing Committee and Screening Committee w.r.t. profiteering

Extension of time period of examination: Standing Committee, which had to examine the receipt of profiteering application within a period of two months, time has been extended by maximum one month for reasons to be recorded in writing as may be allowed by the Authority.

Similarly, two months plus further one month time period shall be given to State level Screening Committee and the Screening Committee as well for examination of profiteering application.

12. Rule 129: Initiation and conduct of proceeding w.r.t. profiteering

Extension of time period of investigation by Director General of Anti-profiteering: The time period for investigation by Director General of Anti-profiteering has been increased from three months to six months.

Rule 129(5) has been inserted:

"(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry."

13. Rule 133: Order of National Anti-profiteering Authority ("NAA")

Extension of time period of investigation by NAA: The time period for investigation by NAA has been increased from three months to six months.

Payment of Amount along with interest: Where NAA has determined that, profiteering has been made, he may inter-alia order the deposit of an amount equivalent to fifty per cent. of the amount determined. This amount shall be collected along with interest @ 18% from the date of collection of higher amount till the date of actual deposit.

14. Rule 138: Information to be furnished prior to commencement of movement of goods and generation of e-way bill

Time limit for generation of E-way bill in case of multimodal shipment in which at least one leg involves transport by ship: The time limit as applicable for generation of E-way bill in case of over dimensional cargo shall as such apply for multimodal shipment in which at least one leg involves transport by ship.

Extension of E-way bill validity period [Inserted third proviso in rule 138(10):- Validity of the e-way bill may be extended within eight hours from the time of its expiry.

Restriction on furnishing information in Part-A of E-way bill: In clause (a), earlier only composition taxpayer registered under section 10 of CGST Act were barred from filling in details in Part-A of Form GST EWB-01, if they have not submitted Form CMP-08 for two consecutive quarters. Now this provision has been made applicable for such service providers as well, who are availing benefit of Notification No. 2/2019-Central Tax dated March 07, 2019.

Amendments made in Forms and their instructions

1. GSTR-4: Form GSTR-4 has been amended to include 'registered persons availing benefit of Notification No.2/2019-CT'

2. GSTR-9:

a. Wherever the word September 2018 was mentioned, the word March 2019 has been substituted.

b. Table 8A of GSTR-9 shall auto-populate the date of GSTR-2A as on May, 2019.

3. PMT-09: New Form has been inserted w.e.f. date to be notified for "Transfer of amount from one account head to another in electronic cash ledger.

4. RFD:10B: New Form has been inserted for 'Application for Refund by Duty Free Shops/Duty Paid Shops (Retail Outlets)

5. DRC-03: This Form has been substituted.

GST Notifications

Central Tax Notifications

Notification No.	Date of Issue	Subject & Description
1. Notification No. 32/2019-Central Tax	28-06-2019	<p><u>Extension of the due date for furnishing the declaration FORM GST ITC-04 to 31st August, 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 June, 2019 has been extended till the 31st day of August, 2019.</p>
2. Notification No. 31/2019-Central Tax	28-06-2019	<p><u>Central Goods and Services Tax (Fourth Amendment) Rules, 2019.</u></p> <p>The Central Government has notified Central Goods and Service Tax (Fourth Amendment) Rules, 2019 vide Notification No. 31/2019-CT.</p>
3. Notification No. 30/2019-Central Tax	28-06-2019	<p><u>Exemption from furnishing of Annual Return / Reconciliation Statement for suppliers of Online Information Database Access and Retrieval Services ("OIDAR services").</u></p> <p>The persons supplying online information and data base access or retrieval services from a place outside India to a person in India have been exempted from furnishing Annual Return in FORM GSTR-9 and Reconciliation statement in FORM GSTR-9C.</p>
4. Notification No. 29/2019-Central Tax	28-06-2019	<p><u>Seeks to prescribe the due date for furnishing FORM GSTR-3B for the months of July, 2019 to September, 2019 is 20th day of the month succeeding such month</u></p> <p>i. The return in FORM GSTR-3B for each of the months from July, 2019 to September, 2019 shall be furnished</p>

		<p>electronically through the common portal, on or before the twentieth day of the month succeeding such month.</p> <p>ii. Every registered person furnishing the return in FORM GSTR-3B shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date (twentieth day of the month succeeding such month), on which he is required to furnish the said return.</p>
5. Notification No. 28/2019-Central Tax	28-06-2019	<p><u>Extension of the due date for furnishing FORM GSTR-1 for registered persons having aggregate turnover of more than 1.5 crore rupees for the months of July, 2019 to September, 2019</u></p> <p>The time limit for furnishing the details of outward supplies in FORM GSTR-1 by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from July, 2019 to September, 2019 has been extended till the eleventh day of the month succeeding such month.</p>
6. Notification No. 27/2019-Central Tax	28-06-2019	<p><u>The due date for furnishing FORM GSTR-1 for registered persons having aggregate turnover of up to 1.5 crore rupees for the months of July, 2019 to September, 2019 is 31st October, 2019</u></p> <p>The registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 for the quarter July-September, 2019 is 31st October, 2019</p>
7. Notification No. 26/2019-Central Tax	28-06-2019	<p><u>Extension of due date of filing returns in FORM GSTR-7</u></p> <p>The time limit for furnishing the return by a registered person required to deduct tax at source in FORM GSTR-7 for the months of October, 2018 to July, 2019 has been extended till the 31st day of August, 2019.</p>

8. Notification No. 25/2019-Central Tax	21-06-2019	<u>Extension of the date from which the facility of blocking and unblocking on e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force to 21.08.2019.</u>
---	------------	--

Goods & Service Tax Judgments

Exclusive Supreme Court & Authority for Advance Ruling (AAR) case laws:

1. **SLP-** The appeal challenging High Court judgment that held that a person can be arrested by the competent authority in the cases of GST evasion. Held, no interference required with the impugned High Court judgment. The special leave petition is dismissed. **P.V. Ramana Reddy v. Union of India, 2019-VIL-22-SC.**
2. **Adjustment of deposit with GST liability-** The adjustments by way of credit of Rs. 99,63,816/- being the net interest remaining due and payable, given under the Kerala State Goods and Services Tax Act, 2017 against future liabilities is the amount treated as “deposit” and not tax dues in terms of order of the Court. **2019-VIL-23-SC.**
3. **Odisha AAAR- Import of Scientific Equipment-** Held, for the purpose of exemption, the primary requirement is that the importer must be a Public funded research institution or any other institution as specified in the Notification No-51/1996-Customs. The Rulings pronounced by the Advance Ruling Authority, Odisha is correct and justified. The appeal filed by the Appellant fails as it does not fulfill the requirement of public funded research institution. **2019-VIL-49-AAAR.**
4. The Punjab Haryana High Court has directed the Tribunal to hear appeal on merits without insisting mandatory pre deposit since there are contradictory judgments of the Tribunal on the same issue and same on same facts. **IFB Industries Ltd. V. CCE, 2019 (366).ELT 977 P&H.**

5. The Division Bench of Calcutta High Court in an appeal has directed deposit of 50% of 7.5% (being the amount of pre-deposit) and for the balance 50% court directed furnishing of Bank Guarantee. (This is under Section 35F of Central Excise Act 1944 which is para materia to Section 112(7).of CGST Act. The High Court felt that in the facts and circumstances of that case the mandatory deposit will act too harsh and burdensome upon the appellant. **Brij Kishore v. CESTAT Kolkata 2019 (366) ELT 969 Calcutta High Court.**
6. **GST- Maharashtra AAR- Txability of second hand goods-**
(i) Paintings classified @ 12% GST on the sale value;
(ii) Old cars and motor vehicles attract 28%GST; (As per Notification No. 08/2018 CT, the lesser rate of tax i.e. 18% is applicable to old cars provided the conditions mentioned therein are fulfilled.)
(iii) Antique jewellery of age exceeding 100 years will be liable to tax @ 12% GST;
(iv) Old watches- Wrist watches, pocket-watches and other watches, including stop-watches taxable @18%; however with the benefit of the provisions of Rule 32(5) of CGST Rules i.e. tax will be paid on the difference between sale price and purchase price.
(v) Antique watches of age exceeding 100 years taxed @12%;
(vi) Antique books exceeding 100 years of age will be covered under 12% GST. **2019-VIL-158-AAR.**
7. **Maharashtra AAR- Place of supply-** In the present case, though the location of the service receiver is outside India, the services supplied are in respect of goods which are made physically available by the service receiver to the service provider for the services to be performed. The provisions of S.13 (3)(a) of IGST Act are applicable for supply. When 'place of supply' is in taxable territory, the applicant's supply cannot be considered as Export of Services as per the GST Law. Since the 'place of supply' and the 'service provider' are in the same State, CGST and SGST are applicable for this transaction. **2019-VIL-184-AAR.**
8. **Deeming provisions of Rule 9 -** Where the officer could not intimate the defects in the application within three days on account of technical snags, the petitioner's application cannot be rejected on any factors outside the scope of GST as there is no provision under the GST Act or Rules insisting production of any documents as listed by the Department. The writ petition is disposed of. **2019-VIL-235-KER.**
9. **National Anti-Profitteering Authority – Sale of ready-to-move-in villa-** Benefit of input tax credit was not passed by way of reduction in price. It was revealed that the ratio of Input Tax Credit to the taxable turnover during the pre-GST period was to the extent of 0.61% as compared to post GST period of 3.45% thus, there was net

benefit of 2.84% of Input Tax Credit to the Respondent. An amount of Rs. 41.82 lakhs has been computed as the profiteered amount. Held, such act of the Respondent appears to be conscious violation of S.171 of the CGST Act, 2017 by not only having collected extra amount from the buyers but also compelled them to pay more GST on the additional amount realised. Respondents are liable for penalty for an offence u/s 122 (1)(i) of the CGST Act. **2019-VIL-28-NAA.**

10.GST- Provisional Attachment- The authority committed an error in passing the orders of provisional attachment of goods and Bank Accounts under section 83 of the CGST Act. Before issuing any notice or undertaking any assessment, the authority straightway passed orders of provisional attachment of the goods as well as Bank Accounts. Such action is bad in law. The provisional attachment order is set aside and petition is disposed of. **2019-VIL-294-GUJ.**

11.Karnataka GST Act, 2017- Revocation of cancellation of registration- The petition challenging cancellation of Registration Certificate on account of non-filing of the required returns. Held, if returns are submitted by the petitioner within two weeks, the same shall be considered by the authority and the cancellation of the registration can be revoked in terms of Section 30 of the Act. Further, the Respondent shall assist the petitioner relating to the technical glitches, if any, in filing the returns for the tax periods October 2018 to April 2019 as well as for the subsequent tax periods. The writ petition stands disposed of. **2019-VIL-289-KAR.**

12.Works Contract- The supply of goods or services for 'setting up of network' for Indian Navy would qualify as Composite Supply of Works Contract as defined in section 2(119) of the CGST, 2017. The applicants are not only involved in erection, commissioning or installation of machinery belonging to some other person but are installing and commissioning the equipments supplied by them. It includes supply of both, goods and services. The subject contract is taxable at 18%. **2019-VIL-161-AAR.**

13.GST Kerala AAR- Protection of Environment 'Road' / Fire Services- The services for setting up fire lines, plantation of trees in forest, river maintenance in forest, clearing of truck path in forest are pure services that are clearly falling within the purview of the term "Protection of Environment 'Road' / Fire Services" as covered in 12th Schedule under Article 243W of the Constitution. Therefore, these services are exempted as per Sl.No.3 of the Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017. **2019-VIL-159-AAR.**

14.Maharashtra AAR- GST on Advisory & Management services- The applicant has proposed to setup an Investment Vehicle-Alternative Investment Fund (AIF) and Advisory and management Services are provided to the AIF, which is a separate

legal entity and makes investment decisions on the advice of the applicant. Since AIF is not located outside India and the applicant are not providing any services to the Overseas Contributors; the transaction do not qualify to be an export of service as the condition u/s 2 (6)(iii) IGST Act, 2017 says that recipient of service should be outside India, is not satisfied, and therefore it is not a zero rated supply. **2019-VIL-157-AAR.**

15. Maharashtra AAR- Supply of Aluminium Alloy to Gas Turbine Research Establishment (GTRE)- Aluminium alloy supplied by the applicant to GTRE is not eligible for concessional rate of GST 5%. The subject supply will be liable to be taxed @18%. **Emmes Metals Private Limited, 2019-VIL-155-AAR.**

16. Maharashtra AAR- Input tax credit- The applicants contended that they are eligible to avail Input Tax Credit of GST paid on goods and services used for construction of Tie-in pipeline, for delivery of re-gasified LNG front Floating Storage Regasification Unit (FSRU) to the National Grid. Held, FRSU is a 'factory' and that the pipeline to be laid is 'outside the factory' and that the said pipeline does not qualify to be an 'equipment, apparatus or machinery' for the purpose of claiming ITC. Therefore, ITC is restricted u/s 17(5)(c) and 17(5)(d) of CGST Act. **2019-VIL-156-AAR.**

17. West Bengal AAR- Activity of irrigation- The recipient being department of the State Government, is engaged in the development of irrigation and waterways, which includes activities in relation to the function listed under Sl. No. 5 of the Eleventh Schedule. The Applicant's service to the recipient, therefore, is exempt under Sl. No. 3A of the Exemption Notification. **Neo Built Corporation, 2019-VIL-153-AAR.**

18. Levy of GST on parking fees collected in respect of parking lots under the Kolkata Municipal Corporation. The activity relates to Municipality function under Article 243W of the Constitution. Held, the petitioners and its employees and directors shall not be subjected to any coercive process for realization of GST for municipal parking lots which, prima facie, is not payable. The matter to appear before the Regular Bench. **2019-VIL-267-CAL.**

19. West Bengal AAR - Development of irrigation and waterways- The recipient certifies that the work awarded to the Applicant (which is panchayat under Article 243G of the Constitution) involving drainage of channels and riverbeds, is an activity undertaken in relation to the function under Sl. No. 5 of the Eleventh Schedule. The Applicant's service to the recipient, therefore, is exempt under Sl. No. 3A of the Exemption Notification. **2019-VIL-154-AAR.**

- 20. Bail application on activity of inter-State circular bill trading-** Offence punishable under Section 138 CGST Act, 2017- After taking into consideration the gravity of the offence and punishment which is liable to be involved, by imposing some stringent conditions, the accused are ordered to be released on anticipatory bail. The petition is allowed. **2019-VIL-264-KAR.**
- 21. Manual filing of TRAN-1-** The Respondents are directed to process the Petitioner's claim for the TRAN-1 credit if tendered manually, if found eligible, the credit will be allowed to the Petitioner in accordance with law, without undue delay. **Sushil Agencies v. Union of India, 2019-VIL-256-DEL.**
- 22. Detention of goods-** The petition challenging detention order as well as penalty notice under Rule 129 (3) of UPGST Rules, 2017. Held, the petitioner has an efficacious remedy and can move appropriate application before the competent authority for release of goods/vehicle on furnishing the bank guarantee to the satisfaction of the authority concerned. The writ petition is disposed of. **2019-VIL-255-ALH.**
- 23.** The Appellant is a club which organizes events which combine personal service, fundraising, fellowship and fun, to serve local community. The club accumulates funds through subscription, sponsorship fees, sale of souvenirs etc. The activities undertaken by the applicant is business and supply of services. **Appellate Authority for Advance Ruling (GST) West Bengal, In Re: Association of Inner Club of India MANU/AI/0022/2019.**
- 24.** The appellant is a manufacturer of sheet metal pressed components. The tools required to manufacture these components were designed and manufactured by the Appellant. These manufactured tools are billed to the customer and the payment is received but the tools are retained by the Appellant for manufacture of components. The issue involved whether the cost of the tools is to be added to arrive at the value of goods supplied. Held, GST is applicable on supply of goods. The term 'supply' also includes the supply made without consideration as specified under Schedule I, however the present activity does not fall under Schedule I, therefore can not be considered as supply. Further, CBIC vide Circular No. 47/21/2018 has clarified that cost of tools owned by customer supplied free of cost(FOC) shall not be included in the value of supply. Ruling, cost of tools supplied by the customer on FOC basis to the Appellant is not required to be added to the value of components supplied by the Appellant. **Appellate Authority for Advance Ruling (GST) MANU/AI/0016/2019, In Re. Nash Industries (I) Pvt. Ltd.**

Service Tax Judgments

- 1. Demand under 'technical inspection of certifying agency'**- The appellant is a 'buying agent' for various customers based abroad and grants final approval for the articles that are shipped by various suppliers directly to the overseas customers. The role of the appellant in the entire transaction is to act as the agent of the overseas entity for the limited purpose of approving the shipments on the basis of certain specifications from the overseas customers. Held, tax u/s 65(105)(zzh) of Finance Act cannot be levied. The appeal is allowed by remand. **2019-VIL-392-CESTAT-BLR-ST.**
- 2. Non-competition fee taxable-** The consideration received as non-competition fee to discourage competition in promoting the sales of the dealers/retailers is towards rendering Support Service of Business or Commerce. The appellant's activity is defined u/s 65(104c) r/w Section 65(105) of Finance Act, 1994 and therefore, the consideration received for the said services is accordingly taxable. The order is upheld and the appeal is dismissed. **2019-VIL-385-CESTAT-MUM-ST.**
- 3. Taxability of pure operation contracts-** The appellants are engaged in the 'Operation' of plant and 'Maintenance and Repair' is part of the said contract. The primary nature of the service is of Operation, and Maintenance and Repair is incidental. When the main activity relates to Operation and incidental activity is in the main process of 'Operation' demand cannot be sustained under the category of Maintenance, Management and Repair service. The appeal is allowed. **2019-VIL-370-CESTAT-AHM-ST.**
- 4. Non-payment of service Tax on account of financial difficulties-** The financial difficulties faced by the appellant can never justify the non-payment of tax to the Government. The above fact coupled with misrepresentation to its customers that the amount collected from them will be paid over to the Government, would clearly point to mala fide conduct on the part of the appellant. The appeal is dismissed. **2019-VIL-284-BOM-ST.**
- 5. Manufacture-** The appellant received raw milk and undertook various processes like chilling, pasteurization, homogenization and standardization etc. and finally converted milk is sent back to M/s. Mother Dairy. The process undertaken by the appellant are for the purpose of rendering the raw milk as marketable product for the ultimate consumption. The toned milk being separate and distinct from the raw milk has to be held as a manufactured item and not covered under Business Auxiliary Service (BAS). Revenue order is set aside and the appeal is allowed. **2019-VIL-344-CESTAT-ALH-ST.**

- 6. Consulting Engineer service-** The appellants are rendering services of soil testing, survey and map making services, site formation and clearance excavation, earth moving and demolition services to the main consultant who has paid the service tax and therefore, the appellants cannot be asked to pay the service tax once again on the same service. Held, once the contractor pays the service tax the subcontractor need not pay the service tax as it will amount to double taxation. The impugned order is set aside and matter remanded back to the adjudicating authority to pass a fresh order. The appeal is allowed by remand. **2019-VIL-341-CESTAT-BLR-ST.**
- 7. Cenvat Credit on input services of Mediclaim Policy & Accident Insurance Policy-** Held, the Medi-claim Policy for Employees and Group Personal Accident Insurance Policy services prior to 01.04.2011 were covered by the definition of 'input service'. Cenvat credit on input services as provided in the exclusion clause Rule 2(l)(C) is not available to the assessee post amendment. The appeal is dismissed. **2019-VIL-329-CESTAT-BLR-ST.**
- 8. Condonation of delay-** Where the limitation period stipulates the maximum period which can be condoned, cannot be condoned by the Apex Court. The Appellants cannot invoke the power under Article 226 of the COI as High Court do not have the power to condone the delay beyond the prescribed limit and is not assailable under any circumstances. Interference is declined and appeal is dismissed. **2019-VIL-237-CHG-ST.**

Central Excise Circular

Circular & Order No.	Date of Issue	Subject & Description
1. Circular No. 1070/3/2019-CX	24-06-2019	Implementation of CBIC (ICEGATE) E-payment portal from 1st July, 2019- Revised procedure for making e-payment of Central Excise and Service Tax arrears under the new CBIC-GST Integrated portal https://cbic-gst.gov.in - Reg.

Central Excise Judgments

- 1. Repair and maintenance attracts duty-** The appellant received back old used Cylinders from their customers and repair the same by replacing certain parts which they are manufacturing themselves. The appellant has paid the service tax which is more or less equivalent to the excise duty required to be paid by them. No excise duty can be demanded and the service tax paid by them is adjusted towards the excise duty. The impugned order is set aside and appeal is allowed. **2019-VIL-404-CESTAT-ALH-CE.**
- 2. Mis-declaration of product to take wrong benefit of exemption-** The appellant had the malafide intention while declaring its product as pharmaceutical product when the product is a talcum powder. In common parlance the product is a talcum powder, which can be used irrespective of any prescription. The effect of the talc is more of a cosmetic product that is the product for a better feel and look of body and skin. The penalties were rightly imposed upon the assessee and talc is classified under Central Excise Tariff Act. **2019-VIL-398-CESTAT-DEL-CE.**
- 3. Imposition of penalty on the appellant for the involvement in supplying goods to a non-functional EOU-** Held, It is the responsibility of the appellants to deliver the goods to the consignee's warehouse even the transporter hired by the appellant is performing the duty of transferring material on their behalf. Rule 156A of Central Excise Rules clearly indicates that the role of the consignee starts only after the arrival of the goods at the warehouse destination. In the present case, the appellants were aware of the diversion of goods en-route and hence penalty imposed on the appellant. **2019-VIL-388-CESTAT-AHM-CE.**
- 4. CENVAT Credit-** The appellant is entitled for Cenvat credit in respect of services of Annual Maintenance Charges of Coolers located at their Dealer / Retailer's premises. The AMC charges received by the appellant is in relation to their business activity as sales promotion and advertisement. The AMC service is an input service and accordingly, the Cenvat credit is admissible. The orders are set aside and both the appeals are allowed. **2019-VIL-382-CESTAT-AHM-CE.**
- 5. Suo Moto credit of Central Excise duty paid twice-** The appellants had paid duty twice, once at the time of removal of transformer from the factory and subsequently

on removal of the transformer oil and availed suo motto credit on duty paid twice. There is no statutory mandate for double payment of duty and in such cases, a manufacturer is permitted to claim refund of Central Excise duty paid in excess. The statute does not provide any mechanism for taking of suo motto credit in the CENVAT account by the manufacturer. The appeal filed by the appellants is dismissed.

2019-VIL-339-CESTAT-MUM-CE.

6. **Rejection of Refund claims-** When the refund claims have been returned and not rejected and when they have been filed again, such filing has to be considered as resubmission of the refund claims and not as fresh refund claims. The refund claims which are resubmitted by the appellant, are not barred by limitation. The impugned orders are set aside and the appeals are allowed. **2019-VIL-330-CESTAT-CHE-CE.**

7. **Factory to be the place of removal-** When the goods cleared from the factory for sale, even though on FOR basis, the place of buyer cannot be the place of removal. Accordingly, the freight charges, transportation charges is not includable in the assessable value in terms of Rule 5 of Central Excise Valuation Rules, 2000. Therefore, the demand on that count is not sustainable. The impugned order is set aside.

2019-VIL-310-CESTAT-AHM-CE.

Your suggestions and contributions are of great importance to us. Please give us your FEEDBACK, so that this Bulletin may be made of real use to you. Please write to us with your views and contributions at pkmittal171@gmail.com

DISCLAIMERS

All reasonable care has been exercised in compilation of information in this report. However, the PKMG Law Chambers, its members on panel(s) or advisors or employees shall not in any way be responsible for the consequences of any action taken on the basis of reliance upon the contents.

This report has been sent to you upon your being a client or associate of the PKMG Law Chambers or on the recommendation/suggestion of any of our client or associates. **This is not a spam mail.**

CIRCULATION BY

THIS REPORT IS CIRCULATED
FOR PKMG LAW CHAMBERS,
171 CHITRA VIHAR, DELHI-110092,
PHONES: (011) 22540549
E-MAIL : pkmittal171@gmail.com
Web-Site: www.pkmgcorporatelaws.com