

JULY'17 INDIRECT TAX LAW REPORT

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GST HIGHLIGHTS

1. GSTN portal to be ready for invoice uploading from July 24-

The businesses can start uploading their sale and purchase invoices generated post July 1 on the GSTN portal from July 24. Generating invoices for dealings above Rs. 200 and keeping invoice records in serial number even if maintained manually, are pre-requisites for claiming input tax credit under the GST regime.

The GSTN had last month launched an office Excel format for businesses to keep their invoice records and from July 24 this Excel Sheet can be uploaded on the portal. The offline Excel tool can upload 19,000 invoices data on GSTN portal at one go and the process takes just half a minute.

While uploading invoice on the GSTN portal, a business would need to mention the invoice number and date, customer name, shipping and billing address, customer and taxpayer's GSTIN, place of supply and HSN code. Also, the taxable value and discounts and rates of CGST, SGST and IGST would have to be filled, along with item wise details like description, quantity and price.

2. Important Information relating to Invoicing under GST-

Now we all know that GST has been implemented in India (including J&K), we must take care of below mentioned important things of issuing and receiving any invoices:

- a) Under GST, there are only two types of invoices one can issue i.e.
- Tax Invoice- to be issued by all registered dealers
 - Bill of Supply- to be issued by composite dealers and dealers who makes sale of exempted goods only.
- b) There is no concept of issuing Retail Invoice or Sales Invoice. Registered Dealers has to issue Tax Invoices only for all of their supplies of Taxable goods or services.
- c) Registered dealers are required to show IGST, CGST or SGST rates and amounts separately in their invoice.
- d) Buyer's registered address and place of delivery may be different and such different addresses should be mentioned separately in the invoice.
- e) In case of unregistered buyers, sellers need to mention complete name of buyer with his address and PIN code including State Name and State Code if issuing invoice over Rs. 50,000/-. For below Rs. 50,000/- it is not mandatory to mention Buyer's State name and code.
- f) It is mandatory to mention whether tax is payable under "Reverse Charge Mechanism" or not.
- g) Invoice should be signed manually or digitally by Seller or his authorized representative.
- h) HSN Code related requirements are mentioned as under:
- Upto Turnover of Rs. 1.5 crs- NIL
 - 1.5 crs to 5 crs- 2 digits HSN
 - Above Rs. 5 crs- 4 digits HSN
- (Notification No. 12/2017- 28th June, 2017)

- i) In case of Retail sellers of goods below Rs 200 per buyer, a consolidated invoice may be raised for the whole day collection at day end.
- j) For all advances received Advance Voucher need to be issued.
- k) Bills to be prepared in triplicate, in case of supply of goods. Original will be for Buyer, Duplicate for Transporter and Triplicate for seller's record. In case of supply of services, Bills to be prepared in duplicates.

3. Last date for opting Composition Levy would be July 21, 2017-

The rules related to Registration, Composition Scheme have been notified on 19th June, 2017. These Rules have been brought into effect from 22ND June, 2017. The intent of notifying these rules is to start the process of issue of registration certificate, called Goods and Service Tax Identification Number (GSTIN), to taxpayers who have already been issued provisional ID for registration (PID) as well as taxpayers.

Any person who has been granted PID and who opts for composition scheme, should submit an intimation of option in a prescribed form on GSTN on or before 21st July, 2017. It is clarified that a period of three months is allowed to complete the procedure i.e. on or before 22nd September, 2017.

SERVICE TAX NOTIFICATIONS

NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No. 18/2017-Service Tax	22-06-2017	<p>Service Tax (Fourth Amendment) Rules, 2017 Amendment in Rule 7 of the Service Tax Rules, 1994- The return for the period from 01.04.2017 to 30.06.2017 shall be submitted by 15.08.2017 in Form 'ST-3' or 'ST-3C'.</p> <p>Amendment in Rule 7B of the Service Tax Rules, 1994- The return for the period from 01.04.2017 to 30.06.2017 shall be submitted within a period of 45 days from the date of submission of return under Rule 7.</p>

SERVICE TAX JUDGMENTS

Supreme Court Ruling:

- 1. Cash Management-** The Supreme Court held that cash management does not amount to chit fund business. In common parlance as well as in banking field, cash management is understood as managing the surplus cash of a person or a company. It has two goals: a) to provide cash needed to meet the obligations and b) to minimize the idle cash held by the business. Chit fund whereas, is somewhat like the recurring deposit with the bank. **2017-TIOL240-SC-ST.**

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Exclusive CESTAT Cases:

2. **CENVAT Credit-** The Bench after extracting Rule 14 of CENVAT Credit Rules, 2004 observed that recovery of CENVAT can only be made when the CENVAT Credit has been taken or utilized wrongly. In the present case, the input service distributors have not taken any credit whereas they have already distributed the input service credit. Therefore, on these grounds, no show cause notice is issued to input service distributor. **2017-TIOL-2364-CESTAT-MUM.**

3. **Service Charge-** The appellant undertakes export of goods and the various components of sale value are recovered as 'trade margin' (which is the difference between sale and purchase price). It was contended that such proceeds of trade margin are taxable under 'business auxiliary services'. The CESTAT observed that appellant deducts service charges of 2% on exports, bank charges, trade margin etc. The appellant, does not at any stage become the owner of goods, the said income is not trading profit but is consideration for some specific services. **2017-TIOL-2283-CESTAT-MUM.**

4. **Business Auxiliary Service-** The respondents have registered under the Commercial Training and Coaching Services and instead of providing the service to the trainees, they are providing service to the Central/ State Government. The service held to be classified under the Business Auxiliary Service. Insofar as the benefit of notification 14/2004- S.T. is concerned which relates to the eligibility of exemption in case of agriculture, printing, education etc. Held, respondents are eligible to avail the benefit of notification as the activities conducted by them are in the nature of training for a particular purpose. **2017-TIOL-2181-CESTAT-MUM.**

5. Activity of export not taxable- The appellant being the service provider provided service to its client which is an overseas entity, such activity held to be beyond the pale of taxing jurisdiction and is exempted from levy if recipient of service is located outside India. **2017-TIOL-2131-CESTAT-MUM.**

6. Employer Provident Fund Organization- The appellant is an institution registered under Employees Provident Fund and Miscellaneous Provisions Act, 1952 against whom the demand of Rs. 688 crs was confirmed alleging that the appellants are providing taxable service in the nature of collecting contributions from employers, disbursing accumulated provident fund to its members etc. It was held that the relationship between the employer and the appellant is in discharge of statutory and compulsory obligations, coercively enforceable by the law and hence not taxable. The demand of Rs. 688 cr was set aside. **2017-TIOL-2111-CESTAT-DEL.**

CENTRAL EXCISE NOTIFICATIONS

EXCISE TARIFF NOTIFICATION		
Notification No.	Date of Issue	Subject
1. Notification No.- 19/2017-CE	01-07-2017	Rescinding Notification No. 16/2010-CE dated 27.02.2010 The Central Government rescinds Notification No. 16/2010-CE dated 27 th February, 2010 in exercise of Section 3A of Central Excise Act.

2. Notification No.- 18/2017-CE	01-07-2017	<p style="text-align: center;">Exemption Notification</p> <p>The Central Government provide exemption to all goods mentioned in the seventh schedule to the Finance Act, 2005 from the whole of the additional duties of excise leviable thereon.</p>
3. Notification No.- 17/2017-CE	30-06-2017	<p style="text-align: center;">Amendment in Central Excise Exemption Notifications</p> <p>The Central Government amend various Central Excise Exemption notifications relating to Export Promotion Schemes under Central Excise Tariff Notifications.</p>
4. Notification No.- 17/2017-CE	30-06-2017	<p style="text-align: center;">Exemption on manufactured goods</p> <p>The Central Government exempts excise duty on goods manufactured on or before 30th June2017 but not cleared from the factory of production before 1st July, 2017.</p>

EXCISE NON-TARIFF NOTIFICATION

Notification No.	Date of Issue	Subject
1. Notification No.- 21/2017-CENT	30-06-2017	Credit Transfer Document In Rule 15(2) of CENVAT Credit Rules, 2017, the Central Government directs a manufacturer registered under Central Excise Act to evidence the payment of duty paid on goods cleared by him under the cover of an invoice before 1 st July, 2017, may issue a document called 'Credit Transfer Document' to a person who was not registered under Central Excise Act, 1944 but is registered under the provisions of Central Goods and Services Act, 2017.
2. Notification No.- 20/2017-CENT	30-06-2017	CENVAT Credit Rules, 2017 The Central Government notifies CENVAT Credit Rules, 2017 in exercise of the powers conferred under Section 37 of the Central Excise Act, 1944.
3. Notification No.- 19/2017-CENT	30-06-2017	Central Excise Rules, 2017 The Central Government notifies new Central Excise Rules, 2017 in exercise of the powers conferred under Section 37 of the Central Excise Act, 1944.

CENTRAL EXCISE JUDGMENTS

Exclusive High Court Rulings:

- 1. Suppression of facts-** The Madras High Court held that a mere non-disclosure of information does not amount to suppression of facts when there is no obligation in the law to furnish the same. The expression 'suppression of facts' has to take color from the words such as fraud, collusion or willful misstatement in order to trigger the meaning. **2017-TIOL-1274-HC-MAD-CX.**
- 2. Refund-** The observation that the period of limitation would commence from the date when the order was dictated in the Court is erroneous in law. The High Court held that it shall take effect when the order is signed and thereafter is received by the assessee. **2017-TIOL-1212-HC-MAD-CX.**
- 3. Penalty-** The waste and scrap emerged during the manufacture process and was cleared by the assessee without duty and declarations in RT-12 returns. The assessee contended that such goods were not excisable and there was no intention to evade duty as they had been raising debit notes as a clearance document. The HC rightly held that penalty u/s 11AC of the Central Excise Act is invocable only when there was an escapement of duty due to conscious and deliberate wrong doing on the part of the assessee. Mere failure to make disclosures does not make the penalty leviable. **2017-TIOL-1209-HC-MAD-CX.**
- 4. Refund claim-** Limitation u/s 11B of the Central Excise Act, 1944 of one year cannot be applied for refund claim under Notification No. 3/2001-CE. It is also supported by SC ruling in case of *Sarabhai M. Chemicals*,

2004-TIOL-104-SC-CX, which states that the notified time limit has to be strictly construed and there is no scope for liberty in implementation of the condition. **2017-TIOL-1136-HC-MAD-CX.**

CESTAT Cases:

5. **Manufacture-** Conversion of sugar into bura, makhana, mishri, hardas or battassa is manufacture under Section 2(f) of the Central Excise Act, 1944. **2017-TIOL-2253-CESTAT-DEL.**
6. **Debt Recovery-** The respondent having their own existing business, only purchased the land from the bank in auction and accordingly, they have not purchased the business either in whole or in part from the earlier owner, therefore, the old dues of the earlier owner is not recoverable from the present respondent under Section 11 of the Central Excise Act, 1944. It has been held conclusively in the proportion of the HC and the SC judgments that in case of purchase of property alone under auction from Bank/ FIs, Section 11 is not applicable. Applicable only in case where the buyer purchases the business in whole or in part from the earlier owner against whom central excise duties are pending. **2017-TIOL-2163-CESTAT-MUM.**
7. **Show Cause Notice-** Where the Show Cause Notice (SCN) has been issued without any evidence and legal basis, it can result in a fatal adjudication order. Highlighting the importance of SCN in Brindavan Beverages, the Supreme Court held that SCN being the foundation for the adjudication process and without any reasons stated therein, adjudication would be an empty formality and a futile exercise. **2017-TIOL-2259-CESTAT-MUM.**
8. **Manufacture-** Where the resultant goods have different characteristics, marketable under different names and classifiable under different headings, it was rightly concluded that the processes carried out on the raw materials are covered by Section 2(f) of the Central Excise. Two yardsticks cannot be followed for the same processes. **2017-TIOL-2243-CESTAT-DEL.**

9. **Job Work-** The appellant being a 100% EOU, manufactures brass parts of machines and further sent the brass scrap for conversion into brass rods. On the final product being processed and sent by the job worker to the appellant, it was found that there is a burning loss on such conversion and the department demanded duty on such difference. Held, whether there is burning loss of 7.5% or even 15%, that alone cannot be the reason to demand the duty and the department demand was set aside. **2017-TIOL-2144-CESTAT-MUM.**
10. **Penalty in case of under valuation-** Whether debit notes raised by the consignee are includible in assessable value of the goods manufactured since having nexus with manufacture. Where there is clear from the material facts and the evidence that there is a deliberate intention to evade duty without inclusion of debit note amount in the assessable value of goods, penalty u/s 11AC of the Central Excise Act can be invoked. **2017-TIOL-2151-CESTAT-MUM.**
11. **Free samples are CENVATable-** The photo frames were given as free gifts along with the supply of Diwali institutional packs. On these duty paid photo frames, the appellant availed CENVAT Credit. Held, such photo frames supplied along with the final product are CENVATable. **2017-TIOL-2124-CESTAT-MUM.**

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