

NOVEMBER'18 INDIRECT TAX LAW REPORT

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GST SKETCH on “PROSECUTION & PUNISHMENT”

Offences which warrant prosecution under the GST Act:

1. **Meaning:** Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines “prosecution” as the institution and carrying on of the legal proceedings against a person.
2. **Offences liable for prosecution:** Section 73 of the CGST/SGST Act codifies the major offences under the Act which warrant institution of criminal proceedings and prosecution. 12 such major offences have been listed as follows:
 - (a) Making a supply of goods/services without issuing an invoice in order to evade tax or upon issuance of false/ incorrect invoice;
 - (b) Issuing an invoice without making any supply of goods/ services, thus taking input tax credit or refund by fraud;
 - (c) Not paying any amount collected as tax to the Government treasury within three months;
 - (d) Availing or utilizing credit of input tax without actual receipt of goods/services;
 - (e) Obtaining any fraudulent refund of CGST/SGST;
 - (f) Submits fake financial records /documents or files fake returns to evade tax;
 - (g) Obstructing the proper officer or any official in the discharge of his duty by hindering the officer during the audit by tax authorities;
 - (h) Dealing with the goods liable to confiscation;
 - (i) Receiving/ dealing with the supply of services in contravention of the Act;
 - (j) Tamper with or destroys any material evidence or documents;
 - (k) Does not provide information/ gives false information during proceedings;
 - (l) Attempting to commit or abetting the commission of any of the offences listed in this category of offences.
3. **Punishment for the conviction of offence-** categorized u/s 132(1) of the CGST/SGST Act:

Offence involving-	Punishment
Tax evaded exceeding Rs.5 crore	5 years and fine
Tax evaded between Rs. 2 crore and Rs. 5 crore	3 years and fine
Tax evaded between Rs. 1 crore and Rs. 2 crore	1 year and fine
<ul style="list-style-type: none">• False records• Obstructing officer• Tamper records	6 months

4. **Cognizable and non-cognizable offences under GST:**
 - (i) All offences where the evasion of tax is less than Rs. 5 crores shall be non-cognizable and bailable,
 - (ii) All offences where the evasion of tax exceeds Rs. 5 crores shall be cognizable and non-bailable.

GST Notifications

Central Tax Notifications

Notification No.	Date of Issue	Subject
1. Notification No. 60/2018-Central Tax	30-10-2018	<p style="text-align: center;">Central Goods and Services Tax (Thirteenth Amendment) Rules, 2018.</p> <p>In the Central Goods and Services Tax Rules, 2017, after rule 83, the following rule shall be inserted which relates to the “Examination of Goods and Services Tax Practitioners.”</p> <p>“83A. Examination of Goods and Services Tax Practitioners.-</p> <p>(1) Every person referred to in clause (b) of sub-rule (1) of rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule, shall pass an examination as per sub-rule (3) of the said rule.</p> <p>(2) The National Academy of Customs, Indirect Taxes and Narcotics “NACIN” shall conduct the examination.</p> <p>(3) Frequency of examination.- The examination shall be conducted twice in a year as per the schedule of the examination published by NACIN every year on the official websites of the Board, NACIN, common portal, GST Council Secretariat and in the leading English and regional newspapers.</p> <p>(4) Registration for the examination and payment of fee.- (i) A person who is required to pass the examination shall register online on a website specified by NACIN. (ii) A person who registers for the examination shall pay examination fee as specified by NACIN, and the amount for the same and the manner of its payment shall be specified by NACIN on the official websites of the Board, NACIN and common portal.</p>

(5) **Examination centers.**- The examination shall be held across India at the designated centers. The candidate shall be given an option to choose from the list of centers as provided by NACIN at the time of registration.

(6) **Period for passing the examination and number of attempts allowed.**- (i) A person enrolled as a goods and services tax practitioner in terms of sub-rule (2) of rule 83 is required to pass the examination within two years of enrolment:

Provided that if a person is enrolled as a goods and services tax practitioner before 1st of July 2018, he shall get one more year to pass the examination:

Provided further that for a goods and services tax practitioner to whom the provisions of clause (b) of sub-rule (1) of rule 83 apply, the period to pass the examination will be as specified in the second proviso of sub-rule (3) of said rule.

(ii) A person required to pass the examination may avail of any number of attempts but these attempts shall be within the period as specified in clause (i).

(iii) A person shall register and pay the requisite fee every time he intends to appear at the examination.

(iv) In case the goods and services tax practitioner having applied for appearing in the examination is prevented from availing one or more attempts due to unforeseen circumstances such as critical illness, accident or natural calamity, he may make a request in writing to the jurisdictional Commissioner for granting him one additional attempt to pass the examination, within thirty days of conduct of the said examination. NACIN may consider such requests on merits based on recommendations of the jurisdictional Commissioner.

(7) **Nature of examination.**-The examination shall be a Computer Based Test. It shall have one question paper consisting of Multiple Choice Questions. The pattern and syllabus are specified in Annexure-A.

(8) Qualifying marks.- A person shall be required to secure fifty per cent. of the total marks.

(8) Guidelines for the candidates.- (i) NACIN shall issue examination guidelines covering issues such as procedure of registration, payment of fee, nature of identity documents, provision of admit card, manner of reporting at the examination center, prohibition on possession of certain items in the examination center, procedure of making representation and the manner of its disposal.

(ii) Any person who is or has been found to be indulging in unfair means or practices shall be dealt in accordance with the provisions of sub-rule (10). An illustrative list of use of unfair means or practices by a person is as under: -

(a) obtaining support for his candidature by any means;

(b) impersonating;

(c) submitting fabricated documents;

(d) resorting to any unfair means or practices in connection with the examination or in connection with the result of the examination;

(e) found in possession of any paper, book, note or any other material, the use of which is not permitted in the examination center;

(f) communicating with others or exchanging calculators, chits, papers etc. (on which something is written);

(g) misbehaving in the examination center in any manner;

(h) tampering with the hardware and/or software deployed; and

(i) attempting to commit or, as the case may be, to abet in the commission of all or any of the acts specified in the foregoing clauses.

(9) Disqualification of person using unfair means or practice.- If any person is or has been found to be indulging in use of unfair means or practices, NACIN may, after considering his representation, if any,

		<p>declare him disqualified for the examination.</p> <p>(10) Declaration of result.- NACIN shall declare the results within one month of the conduct of examination on the official websites of the Board, NACIN, GST Council Secretariat, common portal and State Tax Department of the respective States or Union territories, if any. The results shall also be communicated to the applicants by e-mail and/or by post.</p> <p>(11) Handling representations.- A person not satisfied with his result may represent in writing, clearly specifying the reasons therein to NACIN or the jurisdictional Commissioner as per the procedure established by NACIN on the official websites of the Board, NACIN and common portal.</p> <p>(12) Power to relax.- Where the Board or State Tax Commissioner is of the opinion that it is necessary or expedient to do so, it may, on the recommendations of the Council, relax any of the provisions of this rule with respect to any class or category of persons.</p>
2. Notification No. 59/2018- Central Tax	26-10-2018	<p>Seeks to extend the time limit for furnishing the declaration in FORM GST ITC-04 for the period from July 2017 to September 2018 till 31st December 2018</p> <p>Extension of the due date to file GST ITC-04 for the period of July 2017 to September 2018 till 31 December 2018.</p>
3. Notification No. 58/2018- Central Tax	26-10-2018	<p>Seeks to provide taxpayers whose registration has been cancelled on or before the 30th September 2018 time to furnish the final return in FORM GSTR-10 till 31st December 2018</p> <p>Taxpayers whose registration has been cancelled by the proper officer on or before September 30, 2018, shall be required to furnish the final return in Form GSTR-10 till December 31, 2018.</p>

4. Notification No. 57/2018-Central Tax	23-10-2018	<p align="center">Seeks to exempt post audit authorities under MoD from TDS compliance</p> <p>Post audit authorities under Ministry of Defence exempted from TDS compliance.</p>
5. Notification No. 56/2018-Central Tax	23-10-2018	<p align="center">Seeks to supersede Notification No. 32/2017-Central Tax, dated 15.09.2017</p> <p>The Central Government, on the recommendations of the Council and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 32/2017 – Central Tax, dated the 15th September, 2017 specifies the categories of casual taxable persons who shall be exempted from obtaining registration under the said Act-</p> <p>(i) such persons making inter-State taxable supplies of handicraft goods or;</p> <p>(ii) such persons making inter-State taxable supplies when made by the craftsmen predominantly by hand even though some machinery may also be used in the process.</p>
6. Notification No. 55/2018-Central Tax	21-10-2018	<p align="center">Seeks to extend the last date for filing of FORM GSTR-3B for the month of September 2018 till 25.10.2018 for all taxpayers.</p> <p>Extension of due date for filing Form GSTR-3B for the month of September 2018 till 25 October 2018 for all taxpayers.</p>
7. Notification No. 54/2018-Central Tax	09-10-2018	<p align="center">Seeks to make amendments (Twelfth Amendment, 2018) to the CGST Rules, 2017.</p> <p>This notification amends rule 96(10) to allow exporters who have received capital goods under the EPCG scheme to claim the refund of the IGST paid on exports and align rule 89(4B) to make it consistent with rule 96(10). Exporters who have received capital goods under the EPCG scheme are allowed to claim the refund of the IGST paid on exports.</p>

8. Notification No. 53/2018-Central Tax	09-10-2018	<p>Seeks to make amendment (Eleventh Amendment, 2018) to the CGST Rules, 2017.</p> <p>This notification restores rule 96(10) to the position that existed before the amendment carried out in the said rule by notification No.39/2018- Central Tax dated 04.09.2018. Amending the CGST rules 2017 to restore rule 96(10) i.e refund of IGST paid on exports out of India.</p>
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Integrated Tax Notifications

Notification No.	Date of Issue	Subject
1. Notification No. 02/2018-Integrated Tax	20-09-2018	<p>Seeks to notify the rate of tax collection at source (TCS) to be collected by every electronic commerce operator for inter-State taxable supplies</p> <p>TCS to be collected at the rate of 1% under IGST Act on the value of net taxable supplies.</p>

Goods & Service Tax Judgments

- 1. High Court-Transitional credit on capital goods-** Petitioner in an appeal declared that denial of credit of excise duty paid on capital goods which were in transit as on 01.07.2017 is violative of Art.14 and 19(1)(g) of the Constitution. Held, Section 140 of CGST Act, 2017 does not provide any facility in relation to the capital goods in transit. Even in the earlier statute right to claim credit would arise only on receiving capital goods at the place of manufacturer. Petition stands dismissed. **2018-VIL-477-GUJ.**
- 2. AAR- Works Contract-** Madhya Pradesh Power Generation Company Limited (MPPGCL) is a Government entity for the purpose of GST law and any work undertaken by them should have bearing on their work (such as power generation) in order to qualify for exemption under CGST Act. In the present case, works contract service of construction of residential quarters allotted by MPPGCL to applicant attracts GST @18%

because such activity doesn't relate to the principal work of power generation. **2018-VIL-237-AAR.**

3. Madras High Court has held that in the absence of charging section levy of interest is not automatic. Department sent notices which are in the nature of demand notice rather than SCN. SCN liable to be quashed as notice without jurisdiction. **TVL Hotel Peacock VS CTO 2018 (17) GSTL 385 Madras.**
4. **AAA Maharashtra** has held that liquidated damages falls under clause 5(e) of Schedule II attached to CGST Act liable to payment of GST at the rate of 18% payable as per Section 13 of CGST Act i.e. when the same is imposed on the defaulting subcontractor by the principal. **Maharashtra State Power Generation Corporation Ltd., 2018 (17) GSTL 451.**
5. **GST- High Court-** Where the distribution has not been possible on account of technical problems, the Petitioners would manually file with the Department a copy of its revised TRANS-1, ITC-01 and also GSTR-3B in physical form. On this basis the Petitioners will be entitled to take the input tax credit reduced at Mumbai and further distribute to its branches in Delhi, Gujarat and Karnataka subject to the satisfaction of the Commissioner having jurisdiction over those locations. **2018-VIL-468-BOM.**
6. **Maharashtra AAR** - Liquidated damages qualify as supply under GST law. Any consideration received with other names such as 'damages' or 'compensation' would clearly be taxable for the supply of services as per Sr. No. 5(e) of Schedule II of the CGST Act, 2018. The provisions of Section 13 of the CGST Act will determine the time of supply in cases of supply of services. **2018-VIL-236-AAR.**
7. **Tamil Nadu AAR- GST on real estate brokerage services-** The applicant is eligible to take input tax credit of the CGST & SGST charged by property consultant for real estate brokerage services for renting of property, subject to the conditions as per Section 16, 17 and 18 of CGST & SGST Act. (Eligibility and conditions for taking ITC). **M/s Adwitya Spaces Private Limited, 2018-VIL-221-AAR.**

- 8. AAA UP** held that no GST is payable in case plot has been allotted for a lease of 30 years or more for industrial or infrastructure or financial business by State Industrial Development Corporation or by undertaking or by an entity if Central Government or State Government or Undertaking in which 50% or more ownership is held by Central Government or State Government or UT. **Yamuna Expressway Industrial Development Authority, 2018(17) GSTL 50.**
- 9. AAA Maharashtra** has held that in case of contract for supply of service and in that contract if the supply of goods does not exceed 25% of the total value such contract, it shall be treated as contract for supply of services and shall be exempt from levy of GST by virtue of Notification No. 20 dt. 25.01.2018. **Khilari Infrastructure P Ltd.,2018(17) GSTL 65.**
- 10. Taxability of lottery-** Since lotteries are generally speaking 'goods' and come within the definition of 'actionable claims', lottery is chargeable to tax under the CGST Act, 2017. The differential levy of tax (enhanced tax rate) is permissible. **2018-VIL-455-CAL.**
- 11. Petitioner prayer for rectification of GST TRAN-1-** The claims of carry forward of the existing duties and credit during the period of migration to GST has to be within the prescribed time. There is no scope to allow time to the petitioner to correct the TRAN-1 declaration since such time limit initially provided in the rules was extended from time to time. The writ petition is dismissed. **2018-VIL-454-GUJ.**
- 12. Odisha High Court-** Several writ petitions were filed on migration from VAT to GST where it has been noted that petitioners faced problems in uploading data on the GST portal to which they directed dealers to submit manual copies on account of which it was rejected by authorities. Held by HC that the Officer cannot blame the computer for the failure of uploading data which consequently lead to cancellation of registration. This is neither in the interest of the State nor of the dealer. Writ petition disposed of. **2018-TIOL-138-HC-ORISSA-GST**

- 13. Anti-profiteering-** The Respondent has no liberty to arbitrarily decide in respect of which products he would pass on the benefit and in respect of which products he would not pass such benefit. As per the provisions of Section 171 of the CGST Act the benefit has to be passed on to each recipient and the same cannot be selectively granted or denied. **2018-TIOL-09-NAPA-GST.**
- 14. Place of supply-** The applicant has filed application for advance ruling for determination of 'place of supply' while providing services of scientific testing and technical analysis on pharmaceutical products to foreign clients. The applicant is well aware that issue relates to 'place of supply'. Application is rejected on the ground of lack of jurisdiction without going into the merits of the case. **2018-VIL-182-AAR.**
- 15. Classification and taxability of services-** The applicant supplied services to 'educational institutions' for conducting examinations are exempted by Notification No.12/2017-CT. Supply of 'Printing of cheque books' by banks attracts 5% GST. Supply of 'Printing of Adhaar Cards for UIDAI' attracts 12% GST. **2018-VIL-185-AAR.**
- 16. Statutory powers and jurisdiction of Dept.-** DGST Dept. sealed the business premises of Petitioner. Held by Delhi HC that Section 69 of GST authorizes concerned officials to search premises and if resistance is offered, break-open the lock containing books and documents. The complete sealing of the premises, is per se illegal. Writ petition is allowed and direction is issued to hand over the premises to the petitioner. **2018-VIL-442-DEL.**
- 17. Gujarat AAR - SEZ supplies-** Service provided by SEZ, Co-Developer, from their hotel located in non-processing zone of SEZ to the clients located in SEZ for authorised operations will be treated as zero rated supplies u/s 16(1) of IGST Act, 2017 r/w S. 2 (m) of SEZ Act, 2005. **2018-VIL-181-AAR.**
- 18. Validity of GST (Compensation to States Act, 2017)-** The petitioner pleads that the Clean Energy Cess paid by him till 30th June, 2017 is entitled to be set off in the payment of Compensation to States Cess. Held by the SC that payment of Clean Energy Cess is for different

purpose and has no bearing with States Compensation Cess. Giving credit or set off is a legislative policy and Compensation to State Act and Rules doesn't indicate giving of any credit or set off of Clean Energy Cess and hence, petitioner not entitled to set off. Accordingly, writ petition dismissed. **2018-TIOL-05-SC-GST**

- 19. Club or Association service-** The Calcutta High Court held that members club do not fall within the definition of Club or Association no service tax is payable. The Court ordered refund of ST already recovered. **Hindustan club Ltd Vs. CIT, 2018(17) GSTL 195 Cal.**
- 20.** The Bombay High Court has held that during investigation order for freezing of bank account cannot be passed routinely and grave and serious circumstances must exist and spelt out in the communication sent to the bank freezing the bank account. **Shanti Industries Ltd Vs. UIO 2018(17)GSTL 198 Bom.**

Service Tax Judgments

- 1. Export of Business Auxiliary Service-** The procedure of retaining the service charge/commission amount by the subsidiary company and only remitting the remaining portion of the proceeds in foreign exchange to its parent company will be treated as saving of foreign exchange and by implication is akin to receipt of monies in convertible foreign exchange. **2018-TIOL-3312-CESTAT-MUM.**
- 2. CENVAT Credit-** Scientific/Technical consultancy service provided for development of drugs to overseas recipient is 'export of service'. Held, refund is admissible u/r 5 of CENVAT Credit Rules, 2004. **2018-TIOL-3281-CESTAT-MUM.**
- 3. Payment of service tax dues in instalment due to financial hardship-** Held, circular dt. 28.02.2015 recognizes facility for clearing dues in instalments in case of genuine hardships and is to be deposited by 5th of

the month. In case of failure in depositing, at any stage, it would be open for authorities to carry out coercive recoveries. **2018-VIL-481-GUJ-ST.**

- 4. Business Auxiliary Service (BAS)-** In the context of BAS, the rent and cost of manpower is not a reimbursable expense but a cost of service. Just by terms of the contract, an assessee cannot convert a cost into a reimbursable expense. The appellants are not entitled to exclude the rent and salaries from the assessable value. **2018-VIL-717-CESTAT-AHM-ST.**
- 5.** Where the arrangement of transportation is only to facilitate delivery of excisable goods at buyer's premises, no service is said to be rendered under Business Support Service. Held, the activities undertaken by the appellant do not conform to the definition of taxable service for the purpose of levy of service tax. **2018-TIOL-3226-CESTAT-MUM.**
- 6. High Court- Audit-** The petitioner challenged the communication of Comptroller and Auditor General of India (CAG) to carry out its compulsory Service Tax Audit. The HC linking the provisions of Section 174 of the CGST Act, 2017 held that there is no saving clause in Rule 5A of Service Tax Rules which enables CAG to initiate fresh proceedings for audit. Held, CAG shall not carry out any further Service Tax audit of the petitioner. **2018-TIOL-2194-HC-AHM-ST.**
- 7. CENVAT Credit-** Once the department acknowledged that services rendered from the premises are both taxable and exempted services and demand reversal of proportionate CENVAT Credit. Denial of credit on input service (Renting of immovable property) is unsustainable. **2018-TIOL-3146-CESTAT-MUM**
- 8. Place of provision of service-** The appellant rendered Logistic Support service to the shipper (service receiver) and received consideration in convertible foreign exchange; transaction to be treated as export of service. The appellant is eligible for refund of CENVAT Credit availed on input services used for export of logistic services. The impugned order is set aside and appeal is allowed. **2018-VIL-691-CESTAT-CHE-ST.**

- 9. Non-appearance by official respondents-** The Court is left with very poor assistance when the presence of Government advocates are not made who are representing respondents in their cases. HC permitted appearance of another Advocate and also imposed the costs on erring official. Accordingly, freezing petitioner's bank accounts suspended. **2018-TIOL-2159-HC-AHM-ST**
- 10. Club or Association Services" -** It was alleged that the appellant has collected the amounts over and above membership fees towards room rental, usage of telephone, interest on instalment payments which should be included in the taxable service. Held, Interest on instalment is only a financial arrangement for deferred payment and is not a taxable entity as it cannot partake character of consideration for services provided. Penalties are set aside by invoking s.80 of FA, 1994. **2018-TIOL-3052-CESTAT-MAD.**
- 11. High Court-** The petitioner challenges the vires to strike down Rule 10 of Place of Provision of Services Rules, 2012 being ultra vires to Section 66B read with Section 64 and 65B (52) and 66C(1) of the Finance Act, 1994 and restrain respondents from levying service tax. Held by HC that it is not appropriate and proper to issue notice to examine validity and vires of statutory provisions that are no longer in operation and where no proceedings are pending against the petitioner. The writ petition was dismissed. **2018-TIOL-2132-HC-DEL-ST.**
- 12. Works contract-** The assessee divided works contract into two parts, one for supply of goods (where no service tax has been paid) and second for construction of civil structure (on which service tax has been paid under composite work contract). Held, the value of both supply and service need to be added for the payment of service tax under work contract composition scheme. **2018-VIL-675-CESTAT-DEL-ST.**

Central Excise Judgments

- 1. CSR activity** can be considered as Input service since it is included within definition of 'activities relating to business'. CSR is not a charity since it has got a direct bearing on the manufacturing activity of the company which is largely dependent on smooth supply of raw materials and the same also augments the credit rating of the company as well as its standing in the corporate world. **2018-TIOL-3257-CESTAT-MUM.**
- 2. Assessable value-** The appellant was affixing MRP on the cartons on the goods sold by them and paying duty u/s 4 of the CEA Act, 1944 which is supposed to be paid u/s 4A of Central Excise. The assessable value has been arrived as per formula i.e. Price List + 35% value addition, whereas, in terms of Section 4(A) of the Act, the assessable value is to be arrived by adding 35% to the cost of the product. Held, the assessable value has to be arrived by adding 35% in the cost of the goods. **2018-VIL-711-CESTAT-CHD-CE.**
- 3. Manufacture-** Where the department has no strong inference that appellant has manufactured goods, demand of duty cannot sustain. Various machines are required to carry out operations at the time of manufacture which were missing at the premises of appellant during the period of inspection. Hence, the department orders were set aside. **2018-VIL-683-CESTAT-CHE-CE.**
- 4.** The jurisdiction of the High Court in a statutory appeal is determined by the terms of statute. Section 35G of the Central Excise Act excludes HC jurisdiction in respect of the orders of the Tribunal relating to rates of duty and valuation of goods for the purposes of assessment. **2018-TIOL-2083-HC-MUM-CX.**

- 5. CENVAT Credit-** The assessee seeks CENVAT Credit of countervailing duty (CVD) paid on import of non-coking coal (coal of higher ash content) on the grounds that "duty of excise" includes CVD. Held, the same cannot be treated as duty of excise per se; Rule 3 (1)(i) of CCR, 2004 restricts the right of availment of CENVAT Credit under certain circumstances. The appeal is dismissed. **2018-VIL-439-GUJ-CE.**
- 6. Strict interpretation of exemption notfn-** The case relates to the eligibility of Notfn 8/98-CE which canvasses that the aggregate value of clearances of excisable goods for home consumption is not above Rs.300 lakhs during the preceding FY. The assessee has miserably failed to prove that their case comes within the conditions stipulated in exemption notfn. Held by the HC that burden of proving the applicability is on the assessee to show that the case comes within the parameters of exemption. Case is rightly rejected by the Tribunal and Adjudicating Authority. **2018-TIOL-2075-HC-MAD-CX.**
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