

# OCTOBER'17 INDIRECT TAX LAW REPORT

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# GST NOTIFICATIONS

## CENTRAL TAX NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No.- 45/2017-CT	13-10-2017	<p style="text-align: center;"><b>Central Goods and Service Tax (Ninth Amendment) Rules, 2017</b></p> <p>In the Central Goods and Service Tax Rules, 2017 the following changes are as follows:-</p> <p>i. In Rule 3, for sub-rule (3A), the following rule shall be substituted: <b>(3A)</b> A person who has been granted registration on provisional basis u/r 24 and a person who has been granted certificate of registration u/r 10 may opt to pay tax u/s 10 w.e.f. the first day of the month immediately succeeding in which he files an intimation in Form <b>GST CMP-02</b> and shall furnish the statement in Form <b>GST ITC-03</b> within a period of ninety days from the day on which such person commences to pay tax.</p> <p>ii. After Rule 46, the following rule shall be inserted: <b>46A. Invoice-cum bill of supply-</b> where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single “invoice-cum-bill of supply” may be issued for all such supplies.”</p> <p>iii. In Rule 62(1), the following proviso shall be inserted: “Provided that the registered person who opts to tax u/s 10 shall furnish the return in Form <b>GSTR-4</b> for that period of the quarter for which he has</p>

		paid tax u/s 10 and shall furnish the returns as applicable to him for the period of the quarter prior to opting to pay tax u/s 10.”
2. Notification No.- 44/2017-CT	13-10-2017	<p><b>Extension of time limit for submission of Form GST ITC-01</b></p> <p>The Commissioner extends the time limit for making a declaration in Form <b>GST ITC-01</b> by the registered persons who have become eligible during the month of July, 2017, August, 2017 and September, 2017 <b>till the 31<sup>st</sup> October, 2017.</b></p>
3. Notification No.- 43/2017-CT	13-10-2017	<p><b>Extension of time limit for filing of Form GSTR-6</b></p> <p>The Commissioner extends the time limit for furnishing the return by an Input Service Distributor in Form <b>GSTR-6</b> u/s 39(4) read with Rule 65 of the CGST Rules, 2017 for the months of July, 2017, August, 2017 and September, 2017 <b>till the 15<sup>th</sup> day of November, 2017.</b></p>
4. Notification No.- 42/2017-CT	13-10-2017	<p><b>Extension of time limit for filing of Form GSTR-5A</b></p> <p>The Commissioner extends the time limit for furnishing the return in Form <b>GSTR-5A</b> for the month of July, 2017, August, 2017 and September, 2017 by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient <b>till the 20<sup>th</sup> day of November, 2017.</b></p>

5. Notification No.- 41/2017-CT	13-10-2017	<p><b>Extension of time limit for filing of Form GSTR-4</b></p> <p>The Commissioner extends the time limit for furnishing the return by a composition supplier in Form <b>GSTR-4</b> for the quarter July to September, 2017 till the <b>15<sup>th</sup> day of November, 2017.</b></p>
6. Notification No.- 40/2017-CT	13-10-2017	<p><b>Payment of tax on issuance of invoice by registered having aggregate turnover less than Rs. 1.5 crores</b></p> <p>The Central Government notifies the following persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in Section 12 (2)(a) of the said Act.</p> <ul style="list-style-type: none"> <li>a) Registered person whose aggregate turnover in the preceding financial year did not exceed <b>one crore and fifty lakh rupees</b> or</li> <li>b) Registered person whose aggregate turnover in the year in which the person has obtained registration is likely to be less than <b>one crore and fifty lakh rupees</b> and who did not opt for composition levy u/s 10.</li> </ul>

## INTEGRATED TAX NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No.- 10/2017-Integrated Tax	13-10-2017	<p><b>Exemption to persons making inter-State supplies of taxable services from registration u/s 23(2)</b></p> <p>The Central Government hereby specifies the persons making inter-State supplies of taxable services and having an aggregate turnover, not exceeding an amount of <b>twenty lakh rupees</b> in a financial year as the category of persons exempted from obtaining registration under the said Act.</p> <p>In case of “special category supplies” other than the state of J&amp;K the aggregate value of such supplies shall not exceed an amount of <b>ten lakh rupees</b>.</p>

## GST CASE LAWS

- 1. GSTN failure-** GSTN system dysfunctional, needs to be updated to meet requirements- no coercive action (such as penal interest, late fees and prosecution) shall be taken against any of the client petitioners. **2017-TIOL-1973-HC-RAJ-MISC.**
- 2. Condonation of delay-** Application seeking condonation of delay in filing appeal on the ground that staff was busy in GST training-reason satisfactory and application condoned. **2017-TIOL-3424-CESTAT-MUM.**

## SERVICE TAX JUDGMENTS

- 1. Goods Transport Agency (GTA)** - Since loading and unloading, handling and transportation of goods up to the destination was an integral part of C&F service, transportation charges received should form part of the consideration for C&F service and cannot be separately charged to tax under GTA. **2017-TIOL-3602-CESTAT-DEL.**
- 2. Taxable event** is time of provision of service and not date of receipt of payment. **2017-TIOL-3542-CESTAT-MUM.**
- 3. CENVAT Credit-** If the appellant is liable to pay service tax on reverse charge basis, they are legally entitled for CENVAT Credit of entire amount. **2017-TIOL-3504-CESTAT-MUM.**
- 4. Composite Works Contract-** The contract undertaken by the Appellant was a composite contract of construction which involved labor and service elements. No service tax could be charged on composite works contract prior to 1<sup>st</sup> June, 2007. **2017-TIOL-2028-HC-DEL-ST.**
- 5. Financial advisory services** provided by CRISIL does not fall under the category of 'Management Consultancy Services' and is rightly classified under 'Banking and other Financial Services.' **2017-TIOL-1993-HC-MUM-ST.**
- 6. CENVAT Credit-** When the cost of any input service forms part of cost of final product, then credit of service tax paid on such input services would be allowable. **2017-TIOL-2072-HC-MUM-ST.**

7. **Water supply not a trading activity-** Where 90% of water supplied through pipeline was to Gram Panchayats, Nagar Palikas and Nagar Panchayats at non-commercial and highly subsidized rates, there is no profit motive and hence, not taxable under 'Commercial or Industrial Construction Service (CICS)'. **2017-TIOL-2112-HC-AHM-ST.**
8. **Installation of plant-** The appellants are engaged in the activity of installation of plant (greenhouse), the Greenhouse is building and, therefore, would fall under the definition of plant- activity is liable to service tax. **2017-TIOL-3479-CESTAT-MUM.**
9. **Room rent** charged by hotels for short-term stay cannot be levied with service tax under category of Mandap Keeper Services. **2017-TIOL-3488-CESTAT-MUM.**

## CENTRAL EXCISE JUDGMENTS

1. **Refund-** Goods cleared to a project financed by Asian Development Bank enjoying exemption in terms of notification no. 108/95-CE are not specified in EXIM policy as 'deemed exports'- no refund u/r 5 of CENVAT Credit Rules is eligible. **2017-TIOL-3599-CESTAT-DEL.**
2. **CESTAT-** Motors, generator, engine, remnant oil arise during breaking up of ship. The sale of these cannot be considered as trading activity u/r 6 of CENVAT Credit Rules, 2004 as these items are recovered during breaking a ship and not purchased. **2017-TIOL-3608-CESTAT-MUM.**
3. **Denial of credit-** As lessee had not transferred business to the appellant, provision of Rule 10 of CENVAT Credit Rules, 2004 not complied with and the credit rightly denied. The appellant is not entitled to avail cenvat

credit on work in process, on capital goods and inputs. **2017-TIOL-3580-CESTAT-DEL.**

- 4. For its own fault, Department cannot take advantage-** Initially, the appellant was enjoying area-based exemption where they have not done the compliances. The Department never raised an objection towards such non-compliances. Now, the Dept. cannot demand duty on account of its failure. **2017-TIOL-3572-CESTAT-MUM.**
- 5. Cross examination of witnesses-** The Tribunal has failed to address issue regarding cross examination of witnesses, therefore, order set aside and matter remanded to CESTAT to consider and record a specific finding within two months from the date of receipt of a copy of this order. **2017-TIOL-2061-HC-MAD-CX.**
- 6. Scrapping is not different in case of re-manufacture-** Rule 16 of Central Excise Rules, 2002 does not exclude the possibility of scrapping (waste and scrap) during stage of re-manufacture and it is not in any way different from scrapping at stage of original manufacture. **2017-TIOL-3432-CESTAT-MUM.**
- 7. Notfn. 11/2002-CE (NT)** requires submission of Bill of Lading or Shipping bill or export proof duly certified by Customs officer- such documents are only available in case of actual export and not deemed export. **2017-TIOL-3484-CESTAT-MUM.**



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