

OCTOBER'18 INDIRECT TAX LAW REPORT

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GST SKETCH on “INPUT SERVICE DISTRIBUTOR”

Key takeaways on Input Service Distributor (ISD):

1. **Meaning:** ISD means an office of the supplier of goods or services or both which receives tax invoices towards receipt of input services and issue a prescribed document for the purposes of distributing credit of central tax (CGST), State tax (SGST)/ Union territory tax (UTGST) or integrated tax (IGST) paid on the services to a supplier of taxable goods or services or both having same PAN as that of the ISD.
2. **Requirements for registration as ISD:** An ISD is required to obtain a separate registration even though it may be separately registered. The threshold limit of registration is not applicable to ISD. The registration of ISD under the existing regime would not be migrated in GST regime. All the existing ISDs will be required to obtain a fresh registration under the new regime in case they want to operate as an ISD.
3. **Documents required for the distribution of credit by the ISD:** The distribution of credit would be done through a document especially designed for this purpose. The said document would contain the amount of input tax being distributed.
4. **Returns:** ISD is required to file monthly return by 13th of the following month.
5. **Company to have multiple ISD:** Different offices like marketing division, security division etc. may apply for separate ISD.
6. **Credit distribution:** CGST credit can be distributed as IGST and IGST credit can be distributed as CGST by an ISD for the recipients located in different States. An ISD can distribute SGST/UTGST credit as IGST for the recipients located in different States. CGST and IGST credit can be distributed as CGST credit by an ISD for the recipients located in same State. ISD can distribute SGST and IGST credit as SGST/ UTGST credit for the recipients located in same State.
7. **Common credit distribution among all the recipients of ISD:** The common credit used by all the recipients can be distributed as ISD on pro rata basis i.e. based on the turnover of each recipient to the aggregate turnover of all recipients to which credit is distributed.
8. **Excess credit:** Excess credit distributed can be recovered along with interest only from the recipient and not ISD. Section 73 or 74 would be applicable for the recovery of credit.
9. **Consequences for contravention:** The credit distributed in contravention of the provisions of Act could be recovered from the recipient to which it is distributed along with interest.

GST Notifications

Central Tax Notifications

Notification No.	Date of Issue	Subject
1. Notification No. 52/2018-Central 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 intra-State taxable supplies</p> <p>Pursuant to Section 52 of the CGST Act, 2017, TCS to be collected at the rate of 0.5% under CGST Act on the value of net taxable supplies. Similarly, Rate of 0.5% under SGST Act. Total rate of TCS will be 1%.</p>
2. Notification No. 51/2018-Central Tax	13-09-2018	<p>Seeks to bring section 52 of the CGST Act (provisions related to TCS) into force w.e.f 01.10.2018</p> <p>TCS provisions under GST will be effective from 1st Oct 2018.</p>
3. Notification No. 50/2018-Central Tax	13-09-2018	<p>Seeks to bring section 51 of the CGST Act (provisions related to TDS) into force w.e.f 01.10.2018</p> <p>TDS provisions under GST will be effective from 1st Oct 2018. The Council has also specified such persons or category of persons who will be liable to these provisions :</p> <p>a. an authority or board or any other body:</p> <p>i. set up by an Act of parliament or a state legislature or</p> <p>ii. established by any government with fifty-one percent or more participation by way of equity or control.</p> <p>b. The society established by the central government or state government or any local authority</p> <p>c. Public sector undertakings</p>

4. Notification No. 49/2018-Central Tax	13-09-2018	Central Goods and Services Tax (Tenth Amendment) Rules, 2018. Format of GSTR-9C i.e. reconciliation statement to be furnished along with annual returns is released.
5. Notification No. 48/2018-Central Tax	13-09-2018	Seeks to make amendments (Ninth Amendment, 2018) to the CGST Rules, 2017. Extension of the due date of filing GSTR TRAN 1 by the taxpayers who couldn't file the declaration due to technical difficulties on the GST portal till 31st March 2019. Also, the registered taxpayers filing GSTR TRAN 1 may submit GSTR TRAN 2 by 30th April 2019.

Integrated Tax Notifications

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

Goods & Service Tax Judgments

- 1. Confiscation of goods-** The Karnataka High Court has held that confiscation of goods under GST law is permitted only if there is violation of law and not mere breach of technical procedure of not uploading aforesaid transport document in respect of non taxable supply i.e. supply of construction material to its own site. Confiscation set aside. **CCE VS Indus Towers Ltd 2018 (16) GSTL 531.**

2. The Bombay High Court observed that when appellant substantially complied with the conditions of stay order passed in 1997 but fully complied with terms of stay before dismissal of appeal in 2013 hence dismissal of appeal on the ground that there was delayed compliance of stay order is not tenable when admittedly duty fine and penalty paid before dismissal of appeal due to non compliance. The order of dismissal of appeal set aside; appeal to be heard on merits. **Techno Forge Ltd 2018 (16) GSTL 373 Bom. High Court.**
3. **Authorisation of officers of State tax or Union territory tax as proper officer-** Officers appointed under MPGST Act are authorized to be proper officers for purpose of IGST particularly under the provisions of Section 4 of the IGST Act. **2018-TIOL-126-HC-MP-GST.**
4. **No requirement of E-way bill-** Seizure orders and SCN were issued alleging petitioners that E-Way Bill did not accompany the goods when they were intercepted. The Allahabad HC observed the notifications dated 07.03.2018 and 26.03.2018 issued by CGST and UPGST respectively and Rule 138 (3) which provides that where goods are transported for a distance up to 50 Km within the State from place of business of consignor to place of transporter for further transportation, the transporter may not furnish the details of conveyance in 'Part B' of GST e-way bill-01. The entire seizure proceeding is held wholly illegal as also penalty proceedings. **2018-TIOL-127-HC-ALL-GST.**
5. **Supply-** Corporate office of the company is covered under one registration in the State and other units are also registered under different registration and hence corporate office and separate units are related person and by implication any goods or services supplied by corporate office to units shall be treated as supply (services rendered by the employees) shall be liable to GST and more particularly services such as accounting, administrative and IT maintenance system shall be treated as supply when rendered to its own units only when separately registered and hence liable to GST. **Columbia Asia Hospitals P Ltd 2018 (15) GSTL 722 AAA.**
6. **Brand under GST-** Mere mention of name of manufacturer on the carton or box or package (when legally required to be mentioned) does not

amount to branding and shall not be liable to GST but when name establishes a link between manufacturer and product, it shall be treated as branded and hence liable to GST even though it is food item (which otherwise is not subject to levy of GST). **Aditya Birla Retail Ltd 2018 (15) GSTL 742. AAA.**

7. **Input tax credit-** The Madras High Court has held that wind mill located outside the factory premises though used for generation of electricity which is used for manufacture of dutiable goods, party shall be entitled to input tax credit of duty on installation of wind mills. **Thiagarjar Mills P Ltd Vs CCE 2018(15) GSTL 649 Madras.**
8. The Kerala High Court has held Adjudicating authority must consider the Declaration now filed during adjudication though the same not be carried duration transportation since form of declaration was not available on the website. **Dhanaswaroopadas Vs STO 2018(15)GSTL 689 (Kerala).**
9. **Appeal before Appellate Authority-** The petitioner filed Writ Petition challenging assessment order passed by Assistant Commissioner without filing a statutory appeal before Appellate Authority, Allahabad High Court dismissed the petition but however liberty was given to file an appeal before Appellate Authority within a period of one month and further held that operation of assessment shall remain stayed upon payment of 25% tax and upon furnishing security. **Imtiaz Syed Hussain Vs UOI 2018(15) GSTL 690 All.**
10. Dealer could not produce E may bill though tax paid since had to resell the goods upon payment of tax. Single judge passed order for release of goods upon payment of Rs. 10,000 and furnishing bond for amount covered under detention order. Upon appeal by Deptt Division Bench modified order to give bond for value of goods and Bank guarantee for tax amount. **STO Vs Alfa Aluminium 2018(16) GSTL 23 Kerala**
11. When Tribunal has dismissed appeal due to non-compliance of condition of stay order, no appeal lie to the High Court challenging the order of pre deposit made by Tribunal when appeal itself stood dismissed due to non-deposit of amount of stay order. **Metal Weld Electronics Vs CESTAT 2018 (16)GSTL 39 Madras.**

12. For proving clandestine removal of goods the department had to prove excess purchase of raw materials, excess electricity consumption, excess manufacture and sale of goods by bringing statements of parties with sufficient evidence on records. No such things have been brought on records by the Department and hence appeal liable to be dismissed. **CCE v. Mittal Pigments P Ltd 2018 (16) GSTL 41 Raj.**

Service Tax Judgments

1. **No penalty on reasonable cause-** Once it is held that no penalty under Section 78 of the Act is imposable, as non-payment of tax was not for wilful misstatement or collusion etc. i.e. identical to the ingredients for invoking the extended period, then the same is to be applied and the demand for extended period be set aside.**2018-TIOL-2015-HC-MUM-ST**
2. **Show Cause Notice (SCN)-** Till time SCN is adjudicated, it cannot be conclusively stated that tax was paid by Petitioner on basis of forged/fabricated/bogus challans. Held, invocation of Section 87 of FA, 1994 (recovery of tax due to the Central Govt.) is premature. Orders quashed and set aside.**2018-TIOL-1977-HC-MUM-ST.**
3. Appellant provides 'time share' facilities at its resorts, service tax is demanded on Interest on installments sales. Interest on installment is not includible as it cannot partake the character of consideration for the services provided and is not taxable to service tax. The penalties set aside and appeal partly allowed. **2018-VIL-668-CESTAT-CHE-ST**
4. **One-time' maintenance charges** collected from flat buyers by builder are not taxable. Appellants cannot be held as provider of maintenance or repair service as they are only paying on behalf of various buyers of flats to various authorities (Municipal Corporation, Revenue authorities etc.) and various service providers (such as security agency, cleaning service providers etc.) and they are not charging anything on their own. **2018-TIOL-2028-HC-MUM-ST.**

- 5. Commercial or Industrial Construction Services (CICS)-** The appellant is engaged in the construction activities which are in the nature of composite works contract. Held, in respect of any contract which is a composite contract, service tax cannot be demanded under CICS or construction of complex service for periods prior or after 1.6.2007 since they do not come within the net of service tax. **2018-TIOL-2867-CESTAT-MAD.**
- 6. High Court-** Jurisdiction of High Court is determined by nature of order passed by Tribunal and not by manner in which question is proposed. **2018-TIOL-1892-HC-MUM-ST.**
- 7. Classification of services-** It is only after the service is classified into its appropriate head ("Cargo handling service") would the question of exclusion of export services from service tax would arise. High Court has no jurisdiction to entertain such an appeal in terms of Section 35G (1) of Finance Act. The appeal is disposed of. **2018-TIOL-1891-HC-MUM-ST.**
- 8. Rejection of prayer set aside-** The present case relates to the contention of the appellant who are seeking relief from imposition of service tax penalty on account of ill-health of his mother. The HC noted that the Tribunal had not recorded proper reasons and the Division Bench decision (in Raj Kumar Ora) cited by the assessee had been brushed aside by the single member of the Tribunal. Held, the Tribunal should maintain the consistency in the approaches while dealing with the appeals. Order set aside and the matter remanded. **2018-TIOL-1890-HC-KAR-ST.**
- 9. Orders cannot be sustained without principles of natural justice-** The Adjudicating Authority (AA) has not given any opportunity of personal hearing before passing order. The HC referred to S. 33A of Central Excise Act, 1944 and S.83 of Finance Act, 1994 which mandates the opportunity of being heard to the parties and therefore, set aside the orders and remitted the matter to AA for fresh orders after following the principles of natural justice. **2018-TIOL-2043-HC-MAD-ST.**

- 10. High Court- Penalty-** Section 80 of the Finance Act, 1994 provides for the non imposition of penalty if there is a reasonable cause. In the instant case, the tax amount on 'business support services' has been confirmed by the respondent before issuance of SCN, the penalties are non imposable. **2018-TIOL-2051-HC-MUM-ST.**

Central Excise Judgments

- 1. Strict interpretation of exemption notification-** The case relates to the eligibility of Notification No. 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 financial year. The assessee has miserably failed to prove that their case comes within the conditions stipulated in the exemption notification. It was held by the High Court that burden of proving the applicability is on the assessee to show that the case comes within the parameters of exemption notification. The case is rightly rejected by the Tribunal and Adjudicating Authority. **2018-TIOL-2075-HC-MAD-CX.**
- 2. Cash refund or encashment of CENVAT Credit-** The assessee is seeking cash refund of accumulated CENVAT Credit of Education and Secondary Higher Education Cess. The appeal is dismissed on the grounds that refund is allowed only in cases of export of final products or where duty is exempt or subject to nil rate of duty. Except for such a contingency, there is no provision for refund in the entire framework of CENVAT Credit Rules, 2004. **2018-VIL-438-RAJ-CE.**
- 3. Deemed exports-** When the fact of export by way of supplying to 'SEZ' unit is not in dispute and the fact of payment of duty by debiting the CENVAT account is also not in dispute, there is no question of denying one of the reliefs viz. the Rebate of duty u/R.18 or Export without payment of duty u/R.19, which ought to have been allowed. The writ petition is allowed in favour of assessee.**2018-VIL-431-KAR-CE.**

- 4. High Court- Pre-deposit-** As long as appeal is lodged within prescribed period of limitation, it cannot be dismissed on ground that mandatory pre-deposit was not made before expiry of limitation period. Section 35 contains that the Commissioner (Appeals) if satisfied that the appellant was prevented by sufficient cause from presenting the appeal within sixty days, allow the extension of further period of thirty days. **2018-TIOL-1948-HC-MAD-CX.**
- 5. Brand name or Trade name-** The appellant executed orders for printing of diaries on behalf of LIC. The appellant is entitled to the benefit of SSI Exemption and it was held that any brand/ trade name should be for the indication of relation between product and manufacturer in the course of trade. **2018-VIL-677-CESTAT-KOL-CE.**
- 6. High Court-** In case of clandestine removal, where there is an intention to evade duty, there may be cases where direct documentary evidence will not be available. If the Department is able to prima facie establish the case of clandestine removal and the assessee is not able to give any plausible explanation for the same, then the allegation of clandestine removal has to be held to be proved. **2018-TIOL-1924-HC-MAD-CX.**
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