

TAXLAWGIST

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All Exports are
not 'Tax Free'

Downfall of
Indian Exports:
A Mathematical
Debacle

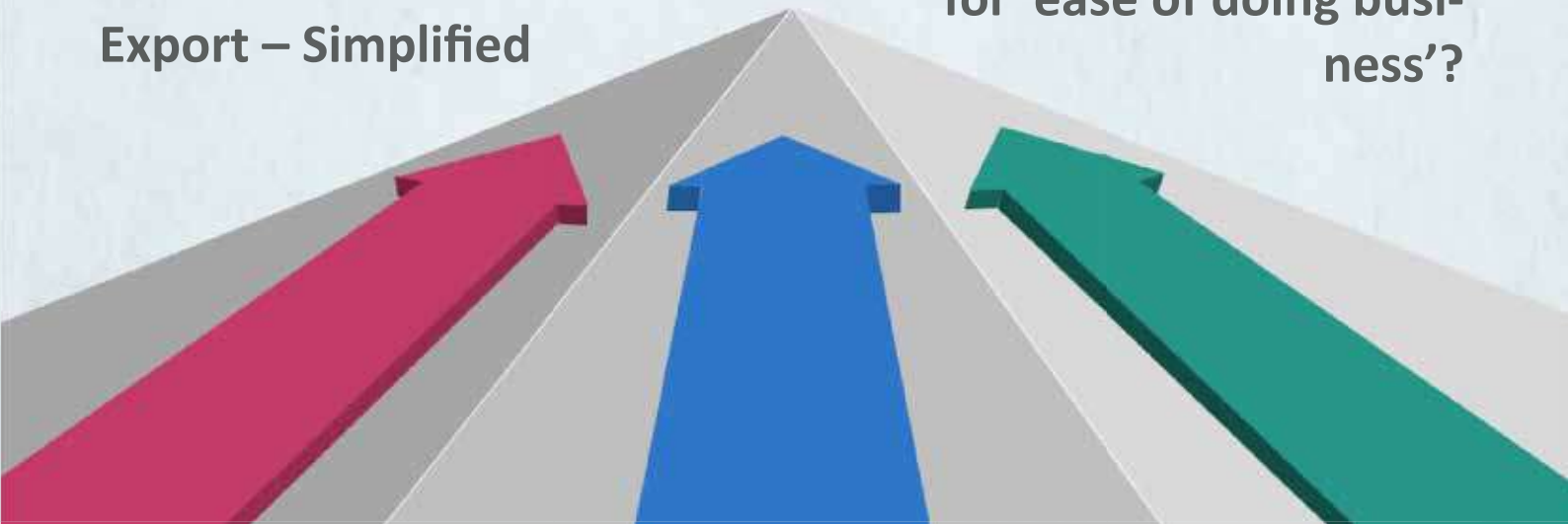
Refunds
under GST

Exports
under GST

EXPORT SPECIAL

Refund of IGST on
Export – Simplified

Whether 93 Amend-
ments to the Companies
Act, 2013 are adequate
for 'ease of doing busi-
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REFUND OF IGST ON EXPORT –
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Anand- Superintendent of
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Sindhu Mangat

We proudly present the third issue of “TAXLAWGiST” which is ‘export special’. The focus is on compliance under exports, key issues, interviews from export associations and industry.

As a prelude, let me say that in international trade scenario, VAT/GST is often described as a ‘border adjusted tax’- meaning VAT/GST on exports are rebated and imports are made liable for VAT/GST. The concept has much relevance since effective rebating system of exports and proper

taxing of imports would show where a country stands in the global trade market.

The impact of VAT on exports in Low Income/Middle Income and High Income Economies are studied worldwide. The general observation is that VAT is counter productive to exports than the old system of trade/-sales/turnover taxes. The main reason is that under the erstwhile trade laws, the procurement of goods/intermediate goods for export was straightaway exempted, whereas VAT scenario

provides for initial payment and subsequent refund subject to satisfactory proof of export.

Even in India, before advent of VAT, purchase for the purpose of export was exempted. There was no ordeal of incurring cost of tax initially and subsequent knocking at administrative doors of tax department for a refund. The Form 'H' system under Central Sales Tax Act, 1956 and CT1 procedure under Central Excise Act, 1944 are some instances which took care of exemptions on procurement for export.

Now, under the VAT Scenario which includes the present GST, the major problem faced by the exporters is the issue of delayed refunds. For a sound export economy as per global standards, refund of taxes paid on exported goods/services should flow within period of three months. Studies on subject has shown that in low and middle income countries the VAT refund mechanism on export is poor when compared to high income countries.

When we compare India, which is a middle income economy to other similar economies, there are certain factors which are contributing to the

already existing problems of exporters. Most countries have single rate of VAT/GST. But in India, GST operates across four different rates from 5%, 12%, 18% to 28%. Added is the burden of compensation cess. Therefore when 'pay and get back' model is followed, the quantum of refund pending is substantial on procurement side when compared to countries having single rate. The co-ordination required between two tax departments for refund, ie, the Central GST and State GST on one hand and Customs Department on other hand is further contributing to the problem.

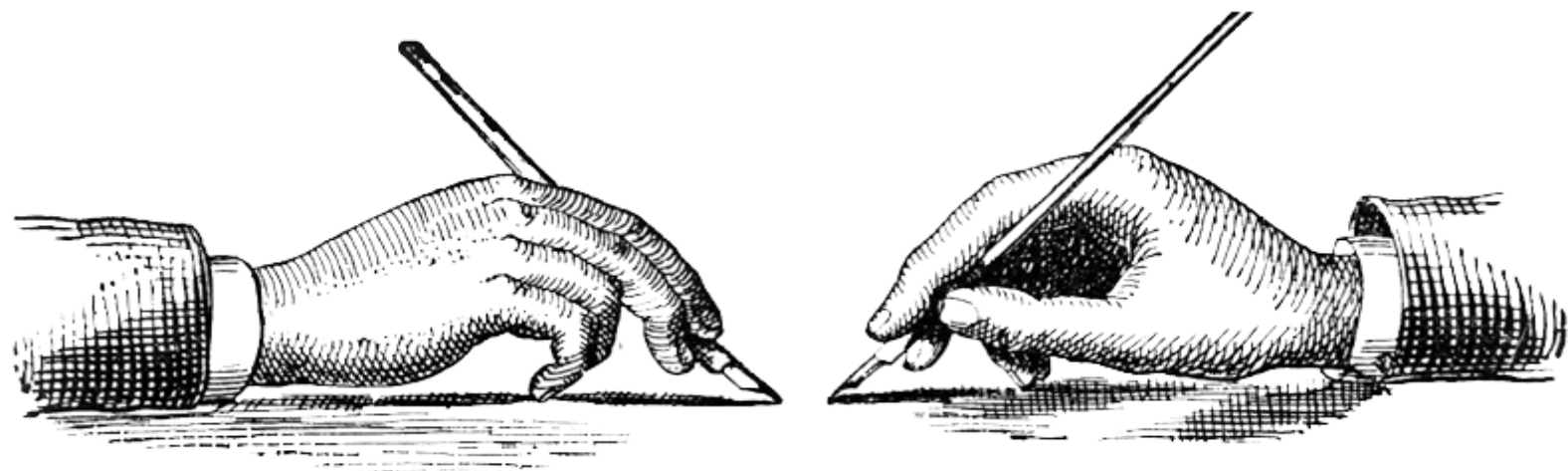
Coming next, is the complicated return system devised under GST. In a study conducted by Price Water House Coopers LLP, on a comparison of return process of different countries, it is found that the frequency of VAT returns, the quantum of information required in VAT returns, requirement to submit documents along with returns all have a direct



impact on system of refunds. We know that as on today, India will shamelessly rank among one of those countries, which has the most complicated return system devised under GST, with long list of columns to be filled, with added requirement of statement of invoices/credit/debit notes to be uploaded etc.

The pace at which refunds are processed and sanctioned would further show that degree of efficiency of tax administration and this would convey whether there is a favourable investment climate existing in the country.

Ofcourse, the government has given special attention to the issue and their efforts are laudable. But, it would be more beneficial , if the returns are made more tax payer friendly, devising an effective concessional rate scheme with minimum conditions and proper implementation of promise of 90% refund prior to scrutiny. These measures would save the exporter time –value of money blocked in the hands of tax Department without interest or any other relief for delay whatsoever.





REFUNDS UNDER GST

Anand

Superintendent of Central Tax & Central Excise

GST is all about a smooth flow of funds and compliances till the end. But the system related issues and due to heavy taxpayer base the transition from erstwhile taxation to the present one has not been very easy. In this article, the GST refund process in detail so that it will mitigate and make your refund process smoother

There are certain events where generally a refund arises.

- In case of exports (including deemed exports), where there is a

cumulative balance of input credit arising out of such exports or under a claim of rebate.

- Where there is an excessive payment of tax due to an inadvertent mistake.
- When there is an accumulation of credit resulting due to the output tax being less or nil or exempted from tax.
- A refund may arise after a provisional assessment.
- Where an appeal is for a respondent,

then the amount made as a deposit towards holding such appeal shall be refunded to the appellant

- Refund after investigation or findings by an adjudicating officer.

- Refund can be provided to foreign embassies or bodies of United Nations when the purchases are made by them.

- When there is an accumulation of credit resulting due to the output tax being of a lesser rate than the input.

- Suppliers receiving discounts or credits through the issuance of credit notes.

- GST paid by foreign or international tourists are subjected to refund.

The taxpayers have to make an application and follow the correct procedure for fetching the refund amounts in their bank accounts.



Refund Application Process Under GST

The refund application has to be made in **Form RFD-01 (to be certified by a Chartered Accountant)** within a period of 2 years from the “relevant date.” This relevant date is different for different scenarios.

1. When the goods are exported through air or sea, then relevant date shall be the date on which such ship or aircraft leaves India.

2. When the goods are carried by a land vehicle, then relevant date shall be the date when the goods cross the land frontier of the country

3. When goods are sent through post, then relevant date shall be the date of despatch of goods from the Post Office.

4. When the supply includes services, and when the same is completed before receipt of payment, then relevant date shall be the payment receipt date.

5. Similarly, when the services are performed after receipt of an advance, then relevant date shall be the invoice date.

6. Where refund claim is made for excess input tax credit left unutilised, then relevant date shall be the end of

the financial year for which such refund claim is being made.

7. Where the goods are supplied for deemed exports, i.e. supply to SEZ or 100% EOU, the relevant date shall be the return filing date related to such deemed exports was filed.

8. Where refund arises due to an order passed in favour of the appellant, then relevant date shall be the date of such order.

9. Where tax was paid following a provisional assessment and refund now arises, then relevant date shall be date at which such tax was adjusted.

10. When the person claiming refund is not the supplier, then relevant date shall be the date at which the goods are received by such person.

11. For all other cases, relevant date shall be the date of payment of tax.

It is mandatory to keep in mind these relevant dates as failure to file refund applications within mentioned time can lead to blockage of credit.

Once the application made, an acknowledgement in Form RFD-02 will be auto-generated for future references and sent across through an email

and an SMS. In case the system finds some deficiencies in the refund application, then Form RFD-03 shall be sent to the taxpayer to correct his application.

Moreover, there are certain documents that must be enclosed along with the electronic refund application. Where the refund application is below Rs. 5 lakhs, then a declaration shall be made by the taxpayer indicating that the amount of refund has not been utilised by or transferred to any other person. Where such application exceeds Rs. 5 lakhs, then apart from the declaration above, a document evidencing that the amount was paid by the taxpayer shall also be attached.

When the person filing refund claim is a United Nations' body, Consulate or a foreign embassy, then the application for refund has to be filed within 90 days from the end of the quarter for which the goods or services were procured. The application should be made in **Form RFD-10**.

Note: There shall be no refunds where the amount of refund is less than Rs. 1,000/-.

Scrutiny of the refund application

As per norms, it would take about 30 days to process a refund application.

Where the refund claim exceeds a prescribed amount, then the same shall be subjected to an audit process. If the same qualifies for a refund, then an order shall be passed to that extent, or if it meets the criterion for being “unjustly enriching” the taxpayer, then the amount shall be transferred to the Consumer Welfare Fund. The above declaration may be required to be certified by a Chartered Accountant.



When the taxpayer claims refund of monies arising out of exports of goods or services, then an authorised officer can issue a provisional refund order in Form RFD-04 of an amount of 90% of the refund claim. Such a provisional refund can be made when the taxpayer:

- Has not been prosecuted for evading taxes for an amount exceeding Rs. 250 lakhs over a period of 5 years.
- Has a GST compliance rating of more than 5 out of 10.

- Has no appeal or review pending with respect to refunds.

Where the authorised officer feels that documents are in consonance with law, then he may pass a final order to that effect.

The Government shall maintain a cash ledger for the taxpayer. It will be constantly updated with the figures as mentioned or declared in the returns. The credit must match with the ledger or else the credit cannot be availed. It is similar in lines of Form 26AS in case of Income Tax, where the amount of TDS and TCS matches with the Form.

In all other cases, the refund application shall be processed within 60 days from the application date. Once the authorised officer adjudges the refund to be true, then he will issue a final order within a period of 60 days from the application date. If the officer fails to pass an order within the said 60 days, then the taxpayer shall receive an interest @ 6% p.a. for the period exceeding the expiry of 60 days until the receipt of refund.

When the refund has to be adjusted against the taxable amount, then Form RFD-06 shall be passed.

Other forms that are important for refund claims:

- RFD-07: this is a show cause notice for complete rejection of a refund application
- RFD-08: Payment advice
- RFD-09: In case of delayed payments, this is an order for interest on late payments.

Refund of Input Tax Credit

There are 3 cases against which a refund claim can be made with respect to input tax credit. All the above scenarios covered refund emanating from certain specified transactions.

1. Input tax credit left unutilized when the goods or services being supplied are zero rated or exempted from GST.

2. When input goods or services have a higher rate of tax and the same goods or services have a lesser output tax, then the accumulated input tax credit can be claimed as refund.

3. In case of a partial reverse charge, where the input tax credit cannot be used completely against the output tax.

Furthermore, no refund against unutilized input tax credit can be given when:

- Input arises out of GST paid against goods exported out of India, that were taxable to excise duty
- The supplier has already availed the benefit of duty drawback paid with respect to excise duty.





EXPORTS UNDER GST

AN OVERVIEW



S. Raja Pandian
Head - Audits - Coimbatore
Swamy Associates

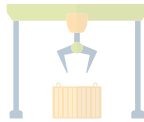
Exports are referred as ‘zero rated supplies’ under GST.

Zero rated supplies include supply of goods or services outside India as well as supplies to SEZ Developer or unit. It is the policy of every government that ‘taxes’ should not be exported. Therefore , exports are made ‘tax free’. The concept of ‘GST’ provides for refund of taxes incurred on

procurement of goods/services for export as well as taxes, if any , paid on actual exports.

Goods can be exported with payment of tax and without payment of tax. For exports with payment of tax, on each export IGST will have to be paid. IGST can be paid through using input credit and if credit balance is insufficient, by payment through cash. Such IGST paid is eligible for refund subject to conditions prescribed.

On the other hand, goods can be exported without payment of tax by executing Letter of Undertaking (LUT for short). Exports under LUT is also subject to certain conditions. In respect of goods/services exported under LUT, the tax paid on procurement of inputs/services are eligible for refund.



Export under Letter of Undertaking

The facility of export under LUT has been extended to all registered persons who intend to supply goods or services for export without payment of IGST. The Letter of Undertaking shall be furnished on the letter head of the registered person, in duplicate, for a financial year in the annexure to FORM GST RFD – 11 referred to in sub-rule (1) of rule 96A of the Central Goods and Services Tax Rules, 2017. The LUT shall be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor.

Facility of export through LUT is restricted to those who have been prosecuted for any offence under the

CGST Act, 2017 (12 of 2017) or the IGST Act, 2017 (13 of 2017) or any of the existing laws in force where the amount of tax evaded exceeds two hundred and fifty lakh rupees (Notification No.37/2017 dated 04.10.2017 : link :



<http://www.cbec.gov.in/resources//htdocs-cbec/gst/not-fctn-37-central-tax-english.pdf>).

The registered person shall fill and submit LUT in Form GST RFD-11 on the GST portal. An LUT shall be deemed to be accepted once the Application Reference Number (ARN) is generated online. No documents need to be physically submitted to the jurisdictional office for acceptance of LUT.

If it is found that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of Bond as per Notification No.37/2017 dated 04.10.2017, then the Exporter's LUT will be liable for rejection. Reference is also drawn to Circular No. 40/14/2018-GST dated 06.04.2018 (link : <http://www.cbec.gov.in/resources//htdocs-cbec/gst/circular-no-40-cgst.pdf>;jsessionid=8B87F7A23DDAE41EEC9EFDB5CB6E40BE).

Refund under LUT: As per the scheme of GST law, all applications for refund is to be submitted online.

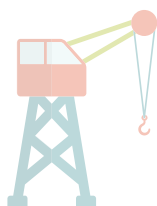
Due to incapability of GST portal to provide for online applications for refund, GST council has recommended for application and processing of such refunds manually.

The application for refund in respect of unutilized ITC on inputs or input services used for zero-rated supplies shall be filed in GST RFD-01A on the common portal gst.gov.in and the amount claimed as refund shall get debited from the amount in the electronic credit ledger maintained at portal. The GST portal shall generate a proof of debit in ARN (Acknowledgement Receipt Number). A Print out of Form GST RFD-01A submitted along with mention of ARN number shall be submitted to the jurisdictional proper officer and with all necessary documents as prescribed under Rule 89 (2) of CGST Rules, 2017 as applicable, within the time stipulated for filing of such refund under the CGST Act, 2017.

Once such a refund application in FORM GST RFD-01A is received in the office of the jurisdictional proper officer, an entry shall be made in a refund register to be maintained for this purpose and all communications shall also be recorded

appropriately in the refund register. The proper officer shall validate the GSTIN details on the portal to validate whether return in FORM GSTR - 3 or FORM GSTR - 3B as the case may be, has been filed. The provisional refund will be sanctioned within seven days of receipt of application. The final order is issued within sixty days of the receipt of the complete application form.

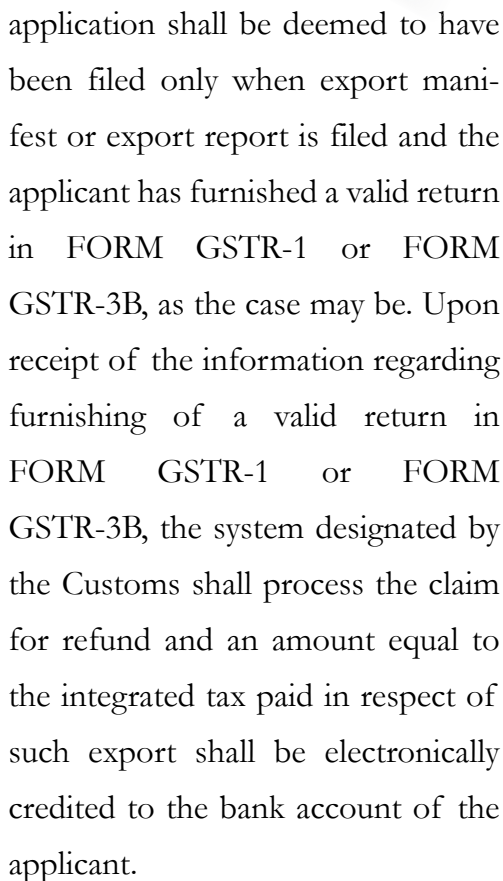
After the refund claim is processed in accordance with the provisions of the CGST Act and the rules made thereunder and where any amount claimed as refund is rejected under rule 92 of the CGST Rules, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03. The amount would be credited by the proper officer using FORM GST RFD-01B.



Export paying IGST and Refund

This refund pertains to cases where exports have been made paying applicable IGST.

The refund of integrated tax paid on goods exported out of India is governed by Rule 96 of the CGST Rules. **The shipping bill filed by an exporter shall be deemed to be an application for refund in such cases.** The



In case of this refund also, since GST portal is not ready, any order regarding withholding of such refund or its further sanction respectively in PART-B of FORM GST RFD-07 or FORM GST RFD-06 shall be done manually till the refund module is operational on the GST portal. An alternative mechanism with officer interface has been intro-

duced for invoice mis-match cases. Reference is invited to Circular No. 05/2018-Customs dated 23.02.2018 (link :<http://www.eepcindia.org/download/180224180901.pdf>).

Since the last few months had been the initial phase of GST , many mistakes had been committed inadvertently by taxpayer while declaring details of zero rated supplies in their return. Taking in to account such issues, the government has issued a comprehensive circular Circular F. No. 450/35/2018-Cus IV dated 28.03.2018 with measures to rectifying the errors. <http://ccobz.gov.in/scan/itgrievance.pdf>

Although the GST law is foolproof in providing mechanism for refund, the eligible amount of taxpayer is delayed due to belated initiation of refund process by the government and mismatch of details at the end of exporter. It is positively anticipated that the proactiveness of government is an indication of its intention to make exports hassle free under GST and thereby promote exports and exporters.



In conversation with:

PL Murugappan
Senior Chartered Accountant



Q. How GST has impacted export market of yarns, textiles and garments?

Initially little procedural delay and slowness in movement of goods, now the business is normal.

Q. Whether all pending refund claims of company so far has been cleared?

Partly cleared

Q. In the backdrop of experience of your company, is there co-ordination between Central and State Government in sanctioning refund of CGST and SGST?

Yes

Q. What are the main problems faced by manufacturer exporters under GST?

Time delay in refund of ITC

Q. Is it true that post GST, remission of state levies (RoSL) or the Merchandise Exports from India Scheme (MEIS) which allows duty credit scrips as rewards, has come down for textile sector?

MEIS increased from 2% to 4%,

ROSL reduced from 3.5% to 1.72%.
SGST allowed for ITC.

Q. Whether removal of CVD and SAD for imports has had any impact on textile sector?

NO

Q. What further measures do you feel would be required under GST for structuring the export sector?

Refund of ITC with 30 days of export would help the export sector

Q.. Whether the existing rate of duty drawback is revenue neutral?

Yes

Q. Whether under GST ,ease of interaction with concerned tax department has improved than erstwhile scenario?

No

Q. Whether e-wallet system as proposed would help resolve the present problems of exporters?

Yes





ALL EXPORTS ARE NOT ‘TAX FREE’

Job work transactions or ‘contract manufacturing’ has always played the dual role of providing employment opportunities and consequently contributing to economy of the whole nation. With globalization and focus on ‘make in India’ campaign, the role of job work sector is gaining more importance day by day.



R. Rajkumar
Head- Audits - Chennai
Swamy Associates

Jobwork transactions are undertaken for indigenous small companies to big corporates in India and Multinational companies in and outside India.

The Government of India vide notification 32/97- cus dated 01.04.1997 as amended, exempted import goods from customs duty &CVD, if the goods are imported for execution of an export order placed on the importer by the supplier of goods for job work and that the goods so imported, including resultant products, are re-exported to the supplier of the goods. In simple terms, the

job-workers who intend to do job for foreign companies can import raw-materials, components, semi-finished goods, consumables, packing material etc., without payment of duty by following procedure set out in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2016.

1.1 After the implementation of GST, the exemption under the above notification is available only for customs duty and the job-workers are liable to IGST for import of goods for job work.

1.2 The job-work is defined under sec 2(68) of CGST/SGST Act, 2017 which reads as follows;

“job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly;

1.3 As per the above definition, any type of process is amounting job work irrespective of the fact as to whether it amounts to manufacture or not. Further as per para 3 of the schedule II of the CGST/SGST Act, 2017 “Any treatment or process which is applied to another person’s goods is supply of service.”

1.4 For carrying out job work for

foreign companies, obviously the job-workers would get job charges in convertible foreign currency. However, the tax liability depends on the place of supply of service. The place of supply of service rendered by the job-worker to foreign companies is falling under sec 13(3) (a) of IGST Act, 2017 which reads as follows;

(a) Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;



1.5 As per the said section, the place of provision of supply of service with reference to performance based service shall be the location where the services are actually performed. Since the job work is carried out in taxable territory (i.e., India), the job charges received from foreign companies attract GST. Only, the repair activities are excluded from the scope of the above provision.

1.6 In the erstwhile service tax regime, a similar provision existed under rule 4 of the place of provision of service Rule 2012 which reads as follows;

4. Place of provision of performance based services

The place of provision of following services shall be the location where the services are actually performed, namely:-

(a) Services provided in respect

of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair.

(b) Services are provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which requires physical presence of the receiver or the person acting on behalf of the receiver, with the provider of the service.

1.7 However, in case if the job-work which results into a manufactured product, the job worked goods attracted excise duty under erstwhile central excise law, and not service tax. Therefore under pre-GST regime the job-workers availing exemption under notification 32/97 cus dated 01.04.1997 had cleared the job worked goods without payment of duty by following the ARE-1 procedure and also avail the export benefits.

1.8 Several job workers who undertake job work for foreign companies which amount to manufacture are now in deep trouble since the foreign companies are not willing to reimburse the GST paid on job-work. To avail the export benefits, the job workers should satisfy all the conditions stipulated under export of service as defined under sec 2(6) of IGST Act, 2017 which reads as follows;
“export of services” means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

1.9 Since the place of supply of service is in India, the job work carried out by the job worker to foreign companies would not fall under export of service. Consequently, the job workers are liable to pay GST for job work carried out to foreign companies and also not entitled for any export benefits. No foreign companies are willing to reimburse the IGST payable on such job work. Unless the Government of India addresses the issue immediately, several job-workers who undertake job work to foreign companies may go out of business.



Downfall of Indian Exports: A Mathematical Debacle



Ajay Ratnan

4th yr Student,
Govt. Law College, Kozhikode

History has taught us that India, once was a major exporter. Trade was essentially ingrained in the economic history of India. Even after becoming an Independent nation, India maintained its streak. April 2008 marked the highest export growth, when Indian goods & services flooded the world market. India's global merchandise exports were growing at an impressive rate before the financial crisis occurred in the United States. In May 2009, export growth plunged into an all-time low of (-) 34%. But such an impact was already predicted and the world as well as the country was prepared.



Then the Goods and Services Tax happened. The impact of GST on export was felt during October 2017 when India's goods exports growth declined by (-)1.12%. This decline was after 14 consecutive months of positive growth. The main reason behind such decline could be pointed out to the issues faced by the exporters while complying with GST process.

The exporters have to pay GST on two fronts. Firstly, they pay GST on purchase of raw materials (also called inputs) and secondly when they export the finished goods. Under GST, exports are treated as zero rated supply and any person making zero rated supplies are eligible to claim refund under either of the following two options: -

- (1) the exporter may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or
- (2) the exporter may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act, 2017 and the Refund Rules made thereunder.

Exporters face many issues in receiving both the IGST and ITC refunds. Prior to GST, the exporters were not required to pay any duties at the time of export. But now, under GST, they have to first pay the tax and later claim refund. As per GST implementation, exporters were supposed to get 90% of the input tax refund within 7 days of filing their returns. The delay in refunds has led to massive stagnation of the Working Capital of exporters. Recently the RBI published a paper titled 'Working Capital Constraints and exports: Evidence from the GST roll-out'. The paper concedes to the view that export contributing sectors with high working capital/sales ratio are affected the most due to these liquidity constraints.

Even though IGST refund requires no calculation, still many exporters have to wait months. Sometimes firms forget to add invoice number or amount on the shipping bill, even though they may have paid the IGST, the refund claims are rejected. The refunds were also delayed due to confusion over exchange rates to be used, however, it was resolved later.

With respect to Input Tax Credit (ITC) refunds are delayed on account of confusing criteria for calculation.

As per Rule 89, sub-rule 4, in the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula: –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

$$\text{Refund} = \text{TOTAL INPUT TAX CREDIT} \times \frac{\text{EXPORT TURN OVER}}{\text{TOTAL TURN OVER}}$$

From the above formulae, it is evident that refunds are allowed on the total ITC available and not the actual GST paid on the exports. But a GST Circular No.17 dated 15th November 2017, stated that refund would be available only on the amount of unutilized ITC in relation to exports. This clearly needs to be addressed as both these directions have created perplexing situation. The other major concern is related to the GST Network as the network

prevents exporters from claiming of ITC if purchase happens in one month and exports happen in the next month. It seems that GSTN doesn't favour carry forward of ITC in such kind of situations.

The PHD Chamber of Commerce & Industry recently published a study on 'Impact of GST on Business, Industry and Exporters'. While releasing the study on 'Impact of GST on Business, Industry and Exporters', PHD Chamber President Anil Khaitan said that various structural and domestic factors such as after-effects of demonetization and teething problems of GST have significantly impacted the potential of exports growth. "Despite being the fastest moving emerging economy in the world, we are struggling to contribute to the global value chains across the world. Apart from the IGST refund issues, inadequate transport infrastructure facilities have adversely affected timely shipments and have hindered the true growth potential of Indian exports," he said.

The Financial Year 2017-18 is known for market revival of the world economy, especially the mammoth US & EU market. Many countries had utilized this positive change to their benefit while Indian exporters were struggling

to sustain their business. South Korea, Indonesia and Malaysia registered robust export growth during 2017. South Korea's exports grew by 16 percent, Indonesia by 17 percent and Malaysia by 15 percent during 2017. While India's exports grew by just 10 percent to USD 302.8 billion against expectations of USD 325 billion. The roadblocks due to the IGST/ITC refunds has undoubtedly hampered labour intensive exports, such as textiles, footwear, farm products, and gems and jewellery where India had a stronghold.

One of the main objective of GST is to spear head Indian Exports. Perhaps this objective would have to wait, till the issues of the exporters are resolved. The panacea for refund issues are proposed by the Government in the form of E-Wallet, which is expected to be introduced from 1st October 2018. But can E-Wallet smoothen things out? Only time will tell. For that long, let's hope for the best.





REFUND OF IGST ON EXPORT – SIMPLIFIED

Q. What is zero rated supply under GST?

Ans. Under GST, exports and supplies to SEZ are zero rated as per Section 16 of the IGST Act 2017. By zero rating, it is meant that the entire supply chain of a particular supply is tax-free, i.e., there is no burden of tax either on the input side or output side.

Q. What are the options for getting refunds for persons making zero rated supplies?

Ans. As per Section 16(3) of the IGST Act 2017, a registered person making a zero-rated supply is eligi-

ble to claim refund in accordance with the provisions of Section 54 of CGST Act 2017 under either of the following options, namely:

- He may supply goods or services or both under bond or letter of undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit of CGST,SGST UGST or IGST as the case may be; or
- He may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax

and claim refund of such tax paid on goods or services or both supplied.

Q. What is IGST refund?

Ans. The second category, mentioned above, pertains to refund of integrated tax paid for the zero-rated supplies made by suppliers who opt for the route of export on payment of integrated tax and claim refund of such tax paid. There can be two sub-categories of such suppliers namely:

- Exporter of goods
- Service exporters and persons making supplies to SEZ

Q. Who can get IGST refunds from Customs?

Ans. The registered persons who have exported goods out of India on payment of IGST are eligible to get the refund of integrated tax so paid subject to certain conditions related to filing of correct and sufficient information in both GSTN and Customs system.

Q. How to file application for getting IGST refund from Customs?

Ans. As per Rule 96 of the CGST

Rules 2017, dealing with refund of IGST paid on goods exported out of India, the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India once both the export general manifest (EGM) and valid return in GSTR 3B as the case may be, has been filed. Thus, once the shipping bill and the EGM is filed and a valid return is filed, the application for refund shall be considered to have been filed and refund shall be processed.

Q. Who would process IGST refund claim?

Ans. The IGST refund module has been designed to have an in-built mechanism to automatically process and grant refund after validating the shipping bill data available in ICES against the GST return data transmitted by GSTN. Manual intervention would be limited to only exceptional cases where automatic validation becomes impossible due to some technical errors. Such exceptional cases would be only those which would be approved by the Board and the procedure in those cases would be separately laid out.

Q. I have filed my GST returns but still my refund is not sanctioned.

Ans. The IGST refund would not be processed if it fails any validation at the level of either GSTN or customs system. Validation errors occur due to various deficiencies, which are enumerated here-in-after.

Q. What are the reasons for data not being transmitted from GSTN to customs system?

Ans. it has been observed that a number of records have not been transmitted by GSTN to the Customs system which could be on account of various errors that have occurred in the validation carried out by the GSTN. It is understood that cases where such validation fail are on account of:

1. Table 6A of GSTR 1 and GSTR 3B have not been filed for that supply or there are missing invoices in GSTR 1 for the supply.
2. Invoices provided in Table 6A of GSTR 1 are incomplete, e.g, details of shipping bill and port number/code are not mentioned.
3. IGST paid under Table 3.1(b) of GSTR 3B being less than total IGST claimed in Table 6A of GSTR 1 of

the same period. The claim cannot be more than that of the amount of IGST paid.

Q. What steps are to be taken in cases of errors mentioned above and who should be contracted in such cases?

Ans. Correction of errors need to be done in the GST return filed. Table 9A has been provided to carry out those corrections. If the exporter finds that even after the correct filing of return, their shipping bills do not reflect in Customs system (reflected in ICE-GATE login exporter), they may write to HELP DESK

Q. How can i find whether my refund data has been successfully transmitted by GSTN to customs or not?

Ans. GSTN is reportedly working on a feedback/message system so as to inform the exporters about such failed validation. At present, the Customs system does not have any information about the reasons for which validation at GSTN has failed, However, for all those records which have been successfully transmitted to Customs system, the report can be generated at the end of field officers. Even the exporter has

the option to check the GST validation status for his shipping bills in his ICEGATE website login for all records transmitted by GSTN.

Q. I have filed correct information in GST RETURN but still my refund is not sanctioned.

Ans. In cases where the exporter has filed correct information in the Returns and it gets successfully validated by the GSTN, it is thereafter transmitted electronically to the Customs system wherein the GST return data is matched with the shipping bill data. If the matching is successful, ICES processes the claim for refund and the relevant amount of IGST paid with respect to each shipping bill or bill of export is electronically credited to the exporter's bank account as registered with the Customs authorities. But, wherever the matching fails on account of some error, the refund do not get sanctioned.

The matching between the two data sources is done at invoice level and any mis-match of the laid down parameters results in one or more of the following errors/responses:

Code	Meaning
SB000	Successfully validated
SB001	Invalid SB details

SB002	EGM not filed
SB003	GSTIN mismatch
SB004	RecoSrd already received and validated
SB005	Invalid invoice number
SB006	Gateway EGM not available

Q. What should be done for error code SB001?

Ans. This may occur due mention of wrong shipping bill number furnished in GSTR 1/Table 6A. The possible reason for such mismatch could be a clerical error made by the exporter at the time of filling of GSTR 1/Table 6A, which can be rectified by making amendments in GSTR 1 by using Form 9A. Form 9A has been made available by GSTN w.e.f. 15.12.2017 in exporter's login at the GST common portal.

Q. What should be done for error code SB002?

Ans. Exporter has to approach their shipping line/airline/carrier to file the EGM immediately.

Q. What should be done for error code SB003?

Ans. This error occurs when GSTIN declared in the SB does not match with

the GSTIN mentioned in the corresponding GST return. In this case too, the exporter has to make necessary changes in GSTR 1 by use of amendment Form 9A. Exporters should note that there is no provision of amendment in the shipping bill once the EGM is filed.

Q. What should be done for error code SB004?

Ans. This error occurs due to duplicate/repeat transmission of shipping bill-invoice record from GSTN. The previous transmission would have already been validated for IGST refund by ICES.

Q. What should be done for error code SB005?

Ans. This is the most common error committed by the exporters, which occurs due to mis-match of invoice number as declared in the invoices table for the shipping bill and that declared in the GSTR1 for the same supply. This can happen due to :

1. Typographical mistake while entering data in GSTR 1 or the SB.
2. The exporter uses two sets of invoices, one invoice for GST and another invoice for exports resulting in mismatch of invoice numbers.

After the implementation of GST, it was explained in the advisories that the details an exporter is required to enter in the “invoice” column while filing the SB pertains to the invoice issued by him compliant to GST invoice Rules. The invoice number shall be matched with GSTN to validate exports and IGST payment. It was conveyed and reiterated that there should not be any difference between commercial invoice and GST invoice after implementation of GST since as per the GST law, IGST is to be paid on the actual transaction value of the supply between the exporter and the consignee, which should be the same as the one declared in the commercial invoice.

If SB005 is due to a data entry mistake in GSTR 1, it can be amended in Form 9A. But any mistake in the SB cannot be amended once EGM is filed. Also, if the exporter has used a separate invoice in the SB, he cannot include that in his GSTR 1 in lieu of his GST invoice. Thus, SB005 error, as of now, cannot be corrected by any amendment either in GSTR 1 or in the shipping bill.

For these cases, a mechanism is being considered by the Board to make the requisite corrections manually in line with the recent amendments in Rule 96 of the CGST Rules, 2017. The said

mechanism is expected to be available shortly. It may, however, be noted that these interim workarounds shall only be available as a one-time measure for the past SBs. It is advised that the exporters should take care so as not to repeat such mistakes in future and ensure that the same GST compliant export invoice is declared at both ends.

Q. What should be done for error code SB006?

Ans. In case of exports through ICDs, if the gateway EGM is not filed electronically or It contains some error, response code SB006 appears. It is noticed that gateway EGM In case of many ICD shipping bills have been manually filed, leading to such refunds not being processed. While the Customs at gateway ports are pursuing this matter with the shipping lines, the exporters can also approach their shipping line to file the EGMs electronically.

Q. What are the exporters' role In case of IGST refunds?

Ans. Exporters have to ensure that only correct as well as sufficient information is filed by them in both the GSTN and the Customs system.

(I) The exporter has the option to check the GST validation status for his SBs after logging into ICEGATE website. This report shows the response/error code for each of his SBs wherever data has been received from GSTN.

(ii) The exporter also has the option to view the SB details relevant for IGST validation on the ICEGATE website. The exporter can view this while filing the GST returns and ensure that the details are entered accurately in the returns as well so that no mis-match occurs.

(iii) In case, the exporter's account is not validated by PFMS, he may approach jurisdictional Customs Commissionerate with correct account details and get It updated in ICES.

(iv) If the exporter is not getting the refund due to suspension/alert on his IEC, he may clear his dues or submit e-BRC and have the suspension revoked.

Q. The Shipping bill has been transmitted by GSTN to Customs and there is no error In the refund claim. But still the refund has not been received In the bank account.

Ans. SB000 (Successfully Validated) is the response code which comes when all the decided parameters like GSTIN, SB number, invoice number etc. match between GSTN and Customs databases. This code implies that the SB is ready for inclusion in the IGST refund scroll. However, it might happen that even with SB000, the SB does not appear in the refund scroll. This could be due to:

- (i) The exports might have been made under bond or LUT, hence not eligible for refund. (A common mistake)
- (ii) If a shipping bill covers multiple invoices, few of the invoices might have been successfully validated with code SB000 whereas other invoices might be containing other types of error/s.
- (iii) Composite rate of drawback has been claimed for that SB during the transitional period between 01.07.2017 to 30.09.2017, thus making the SB ineligible for IGST refund.
- (iv) Where the IGST claimed amount is less than Rs. 1000/-.

In all the above cases, the scroll amount shall automatically become zero and the SB[^] shall not be included in the refund scroll.

There are two more reasons where the SBs will figure in the temporary IGST scroll but not in the final scroll. This could happen if there is an alert/suspension on the IEC in ICES or if the account of the IEC is not validated by PFMS.

Q. What is the course of action if there are multiple errors in the refund claim?

Ans. Each such error would be required to be corrected individually in order to get refund.

Q. In case of errors, where should I contact for necessary action?

Ans. The following steps could be followed in case of errors in processing of refunds:

1. When the records have not been transmitted by GSTN to Customs, exporters may contact GSTN helpdesk.
2. Wherever the error is SB002/SB006, exporter may approach their shipping line/airline/car-

rier to file the EGM immediately.

3. In cases where the temporary scroll is generated but it's not included in the final scroll, the exporters are advised to furnish correct bank account details to the proper officer (Customs field formation) in order to update the same in ICES,
4. As the status of refund claims is available in ICEGATE login, in cases where the corrective action has been already taken by the exporter, he may write to ICEGATE/gateway port Customs for redressal.
5. In general, any grievance related to the IGST refund claim may be brought to the notice of the Pr. Commissioner or Commissioner of the Customs of the gateway port for necessary action.

Common Errors and Rectification procedures

Code	Meaning	Rectification
SB000	Successfully validated	
SB001	Invalid SB details	Amend GSTR 1 by using Form 9A and fill correct SB details
SB002	EGM not filed	Approach shipping line for filing of EGM
SB003	GSTIN mismatch	Amend GSTR-1 by using Form 9A
SB004	Record already received and validated	No action required
SB005	Invalid Invoice Number	Amend GSTR-1 by using Form 9A and fill correct Invoice details



Anand

Superintendent of Central Tax &
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Whether 93 amendments to the Companies Act, 2013 are adequate for ‘ease of doing business’?

The Companies (Amendment) Act, 2017 has amended 93 sections of the Companies Act, 2013. The amendments are broadly aimed at addressing difficulties in implementation owing to the stringent compliance requirements, facilitating ease of doing business for promoting growth with employment, harmonization with Accounting Standards, SEBI Act and RBI Act. The objective of the amendments was also to rectify the omissions and inconsistencies in the Companies Act.

Some of the key amendments are simplification of procedure of incorpora-

tion of companies, elimination of the government approval for managerial remuneration, rationalization of the penal provisions relating to appointment of auditors and deposits, reconciliation of the competing objectives for improving corporate governance. One of the most significant amendments to the company law is identification of the ultimate individual owner(s) of the company through a disclosure mechanism. This move will certainly have an impact on all companies – whether private company or listed company. This amendment to the company law is introduced in line with the Benami property law. Howev-

er, there as quite a few interpretation and compliance issues in implementing such provision.

Another significant highlight of the amendment law is a complete overhaul of the provisions of relating to private placement. The amendment will have an impact on the investments by private equity and angel investors in a company. The provisions have been overhauled with an intention to ease raising of capital, bring in more clarity and address certain interpretation issues.

Based on industry representations, the Amendment Act has revamped the provisions relating to 'loans to directors'. The Companies Law Committee, formed by the government for finding out shoe-pinching issues in company law, acknowledged that there are difficulties being faced in genuine transactions due to the complete embargo on providing loans to subsidiaries with common directors. To some extent, the revamped provisions have ensured that genuine transactions are not affected and at the same time the route is not misused for siphoning of funds by controlling shareholders.

Out of the 93 amendments suggested in the Companies (Amendment) Act, 2017,

quite a few amendments were already notified by way of circulars, notifications, removal of difficulty orders or an amendment in the Rules. Few amendments in the Companies (Amendment) Act, 2017 have rectified certain grammatical errors in the Companies Act, 2013. Very few amendments have addressed interpretation issues in the extant provisions of the Companies Act, 2013. As on date, certain provisions having significant impact have not been notified, i.e. definition of 'associate company' and 'subsidiary company', provisions relating to issue of securities on private placement basis, loans to directors, significant beneficial owner of shares, etc.

The moot question is whether the 93 amendments to the company law are up to the industry expectations and are adequate for 'ease of doing business' in India? Whether the amendments have addressed majority of the lacunas and interpretational issues in the company law? In my view, the amendments to some extent have addressed the lacunas and interpretational issues in company law. The amendments have addressed critical issues relating to directors' participation in board meetings through video-conferencing. The amendments have also addressed certain corporate governance issues like – eligibility criteria for independent directors, role of audit committee and compliance of provisions relating to related party transactions.

The Companies Act may be further amended to align the provisions of related party transactions with the SEBI Regulations, introducing a mechanism for regulating transactions between a Company and limited liability partnership (being a 'body corporate' and not a 'firm') where there are common persons involved. Certain company law provisions may be further streamlined by providing some more exemptions to start-ups and private companies. Only easing of provision w.r.t. issue of sweat equity shares will not trigger investment in start-ups. 'Small companies', a class of companies introduced under the Companies Act, 2013, may be given more exemptions w.r.t. disclosures and maintenance of records. One Person Company, internationally and popularly known as One-member Company, has not gained momentum considering the taxation aspect.

The Companies (Amendment) Act, 2017 has amended provisions relating to disqualification of directors (section 164 of Companies Act) and vacation of office of directors (Section 167 of Companies Act), however, the amendments are not addressing the present scenario of disquali-

fied directors and de-registered companies.

The Companies (Amendment) Act, 2017 has liberalized the provisions relating to managerial remuneration. The company is not required to obtain the approval of Central Government in case of excess remuneration; however the company is required to obtain the approval of the stakeholders (i.e. shareholders by special resolution, banks or financial institutions, non-convertible debenture holders). The Government approval is substituted by the stakeholders' approval. This amendment, though having an impact only on public companies, will ensure ease of doing business in India.

However, there are certain interpretational issues in Companies (Amendment) Act, 2017 as well, e.g. whether exemption provided to private companies under section 185 of the Companies Act, 2013 (prior amendment) will be extended to the substituted provisions of section 185 (post amendment)? The Companies (Amendment) Act, 2017 has also amended certain provisions relating to Audit Committee, whereby Audit Committee can recommend certain transactions to the board of directors.

However, after going through the fine print, the Audit Committee can recommend very few transactions to the board directors.

In order to address the Government's initiative of 'ease of doing business', the amendments to the Companies Act, 2013 should aim at reducing the compliances and documentation for

start-ups and private companies. Law like Income Tax Act and GST may also be tweaked.



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**Drawback has to be Immediately
Re-Written. The Basic Principle of
Whether CENVAT Aailed or not is Not
Correct Always**

In conversation with:
Mr. Pravin Saraf

Mr. Pravin Saraf had served as board member of Federation of Indian Export Association for twelve years. He was also convenor of committee on Indirect Taxes responsible for advising Government during the implementation of GST.

Q. Whether the shift from existing regime of paying different taxes as excise and VAT/CST to a single tax GST, has helped exporters in international market?

No, it is applicable for exporters' purchases from the domestic market and has no impact on the prospects in the international market.

Q. Ever since introduction of GST, export is one area where government has issued most number of circulars and clarifications. Is this proving useful in obtaining refunds?

Govt has issued so many circulars and clarifications because there were many mismatches and the scheme was proving to be a big impediment for the exports. The repeated amendments were done to cover the problems of the scheme. Surely it has helped in obtaining refunds.

Q. As promised by government and GST law, whether 90% of

refund is sanctioned on submission of claims without scrutiny of documents? In other words, is manual scrutiny of documents dispensed with under GST ?

The manual scrutiny is still very much in place. The so much hyped refunds are all for IGST but nobody talks about the ITC refunds where not even 10% refund has been done and it constitute the major portion of GST to be refunded. The situation is more grave for the exporters whose files/claims are with the SGST officials as they are still in the ancient mind set and insist for a whole bunch of documents which are not required for refunds as per the GST rules.

Q. As per government reports, most refunds are pending for reason of wrong particulars furnished in GSTR 3B and consequent mismatch. Is this true?

It is 100% wrong statement and it is like passing the responsibility on the victims, i.e. the exporters.

Q. Whether interactive session held by government with industry is helpful in resolving the problem of Refunds?

Yes for sure.

Q. Whether members have reaped benefits under special drive refund sanction fortnight from March 15 , 2018 ?

Yes surely but it was aimed at clearing the IGST refunds only and had zero impact on the ITC refunds.

Q. Whether the concessional rate of 0.1% for merchant exporters is a beneficial scheme? There is a wide opinion that the restrictions makes it impossible for most merchant exporters to avail this scheme? Please comment.

This scheme although very beneficial for the exporters but it has hardly taken off. Most of the mfgrs are totally indifferent and they feel that the goods would be diverted to DTA instead of exports and then they will be held responsible. So they are not willing to supply @0.1%

Q. Whether e wallet system as proposed by government would prove more beneficial to exporters?

We have seen that there are too many glitches in the MEIS and not the GST system. The e-wallet shall add to the miseries of the exporters.

Q. What alternate measures can be

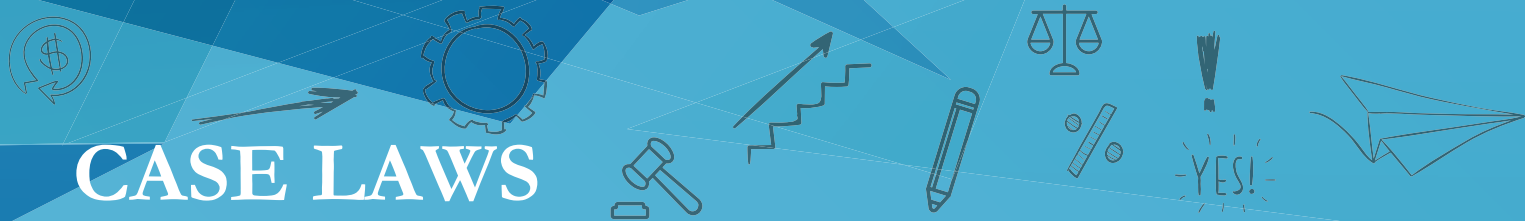
taken to ensure GST compliance on part of exporters without causing blockage of funds to them?

They have to find a way to exempt the exports as it was during the VAT + Excise regime. Any system wherein one has to pay and then seek refund will always have overheads, delays and losses. These are exporters money, even if there is a mistake in the application, why should he be denied to get back his own money ? As everyone knows, exporters works mostly on borrowed funds, who pays for the interest of the refund delays ? From where he will get the additional working capital as required for covering the GST amount ?

Q. Whether existing system of drawback is fine with scheme of GST. What are your suggestions in this regard.

The drawback has to be immediately re-written. The basic principle of whether CENVAT availed or not is not correct always. There are many products wherein the drawback was much lesser than the GST rates. The exporters who have claimed DBK are now suffering. A whole new rate schedule should be made keeping in mind such differences.





CASE LAWS

INCOME TAX

Professional Fee paid by Deloitte India to Its US and Singapore Entities Not Taxable in India, No TDS.

Granting tax relief to Deloitte India, the Mumbai bench of the Income Tax Appellate Tribunal (ITAT) held that the provisions relating to Tax deduction at Source (TDS) are not applicable to the professional fee paid by them to its Group Entities in US and Singapore. The division bench of the Tribunal further clarified that the said amounts are not taxable in India as per the Double Taxation Avoidance Agreements (DTAA) entered into by India with these countries.

After hearing both the sides and judicial precedents, the tribunal held the professional fees paid by the assessee to DTS and DTL were not taxable in India nor were subject to TDS provisions of Chapter XVII of the Act.

Income Tax Appellate Tribunal (ITAT) Mumbai - M/s. Deloitte Haskins & Sells vs. The Asst. CIT-11(2) - I.T.A./5095/Mum/2011 - dt.23-03-2018.

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A Family can possess up to 1450 gms Jewellery.

While hearing the case between Ritu Bajaj and Assistant Commissioner of Income Tax, Delhi bench of Income Tax Appellate Tribunal (ITAT), while following a circular issued by the Central Board of Direct Taxes (CBDT), held that a family can possess up to 1450 gms gold jewellery.

Income Tax Appellate Tribunal (ITAT) Delhi - Smt. Ritu Bajaj vs. The Dy. C.I.T. Central Circle 5 New Delhi - ITA No. 4101/DEL/2017 - dt.09-30-2018.

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Jewellery received by a Lady during the Span of 20 years of Marriage can't be treated as Unexplained.

In a recent ruling, the Delhi bench of Income Tax Appellate Tribunal (ITAT) held that jewellery received by a lady during the span of 20 years of marriage cannot be treated as unexplained.

The division bench observed that that streedhan in the form of jewellery received during the span of 25 years cannot be said to be unexplained investment under section 69A of the Income Tax Act 1961.

Income Tax Appellate Tribunal (ITAT) Delhi - Suneela Soni vs. Deputy Commissioner of Income Tax, CC-20

- ITA No. 5259/DEL/2017 - dt.16-03-2018.

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Capital Gain Exemption can't be Denied merely on ground that Assessee has a Partial or Fractional Ownership of Residential House.

Mumbai bench of Income Tax Appellate Tribunal (ITAT) recently ruled that capital gain exemption under section 54F of the Income Tax Act cannot be denied to the Assessee even though he has only a partial or fractional ownership in the residential house.

The division bench observed that the Assessee in the present case is only a co-owner having fractional ownership in the said respective properties, therefore, the precondition of being the owner of more than one residential house, other than the new asset, on the date of transfer of the original asset was not satisfied.

Income Tax Appellate Tribunal (ITAT) Mumbai - DIT v. Dawood Abdulsain - ITA Nos. 3788/Mum/2016 - dt.31-01-2018.

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TDS not applicable to Off-Transactions.

Kolkata bench of Income Tax Appellate Tribunal (ITAT), recently held that the provisions relating to Tax deduction at source (TDS) under section 194C of the Income Tax Act are not applicable to off-transactions

made by the assessee.

“The transportation of goods by Sri Rama Roadlines thus was only one off transaction and in the absence of any written or verbal contract with the said party, the assessee was not under an obligation to deduct tax at source from the one-off payment made to Sri Rama Roadlines under section 194C of the Act.” said the bench.

Income Tax Appellate Tribunal (ITAT) Kolkata - In M/s. Sukumar Dutta vs. Income Tax Officer, Ward-2(3) - I.T.A. No. 2005/KOL./2017 - dt.23-02-2018.

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Deemed Rent from Unsold Flats Not Taxable as they are Stock-in-Trade of Assessee-Builder.

Mumbai bench of Income Tax Appellate Tribunal (ITAT) recently ruled that the Assessing Officer cannot take notional annual letting value in respect of unsold flats for the purpose of determining house property income as the same are stock-in-trade of Assessee's Business.

The division bench further held that “the unsold flats which are stock in trade when they were sold and they are assessable under the head income from business when they are sold and therefore the AO is not correct in bringing to tax notional annual letting value in respect to those unsold flats under the head income from house property”.

Income Tax Appellate Tribunal (ITAT) Mumbai - M/s. Runwal Constructions vs. Assistant Commissioner of Income Tax, Central Circle-4(1) - ITA No. 5408/Mum/2016 & ITA No. 5409/Mum/2016 - dt.22-02-2018.

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HUF can't be treated as a 'Donor' of Gift for the purpose of S. 56(2)(vii).

Ahmedabad bench of Income Tax Appellate Tribunal (ITAT) ruled that HUF does not come under the specified category of a relative under section 56(2) (vii) of the Income Tax Act in relation with the taxability of gift.

The bench held that no merit in the instant alternative plea as well since a gift sum which is not allowable under the relevant specific clause cannot be accepted to be an exempt income u/s.10(2) of the Act.

Income Tax Appellate Tribunal (ITAT) Ahmedabad - Gyanchand M. Bardia vs. Income Tax Officer, Ward-1(2)(2) - ITA No. 1072/Abd/2016 - dt.21-02-2018.

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Transfer Charges, Non-Occupancy Charges etc. collected by Co-operative Societies from Its Members are Exempt from Income Tax.

A two-judge bench of the Supreme Court held that the transfer charges, non-occupancy charges and common amenity fund charges

and certain other charges, collected by Co-operative Societies from Its members are not subject to income tax since the principle of mutuality applies to all these cases.

The bench observed that the doctrine of mutuality, based on common law principles, is premised on the theory that a person cannot make a profit from himself. An amount received from oneself, therefore, cannot be regarded as income and taxable.

Supreme Court of India - Income Tax Officer, Mumbai vs. Venkatesh Premises Cooperative Society Ltd. - Civil Appeal No. 2706 of 2018 - dt.12-03-2018.

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No TDS on Commission Paid to Non-Resident Agents for their Services outside India.

Agra Bench of the Income Tax Appellate Tribunal (ITAT) held that the assessee is not liable to deduct tax at source (TDS) when the non-resident agent provides services outside India on payment of commission.

The Bench noted that as per section 237 read with section 199 of the Act implies that only the recipient of the sum i.e., payee would seek a refund and no tax is deductible under section 195 of the Act on commission payments and consequently the expenditure on export commission payable to non-resident for services rendered outside India becomes allowable expenditure and the same as

outside rigors of the section 40a(ia) of the Act.

Income Tax Appellate Tribunal (ITAT) Agra - ACIT, Circle-1 vs. M/s. Manufax (India) - I.T.A Nos. 434 & 446/Agra/2015 - dt.11-04-2018.

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No Immunity from Income Tax Proceedings for Carrying Out Private Business at Consulate.

Karnataka High Court has held that private business carried out in a Consulate is susceptible to Income Tax Proceedings.

The Single bench of the High Court found out that the Ethiopian Consulate was carrying out private business activities which had nothing to do with the consular activities carried on in the Consulate without obtaining any permission from the Government of India. The bench agreed with the action of the Income Tax Department in sending a notice under Section 131.

High Court of Karnataka - Sri. Sai Ramakrishna Karuturi Vs. Union of India & Ors. - Writ Appeal No. 971 Of 2018 (T-IT) - dt.11-04-2018.

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Amount received on Cancellation of Auction is not subject to Income Tax.

The Delhi Bench of Income Tax Appellate Tribunal (ITAT) held that an amount refunded

to the assessee for consideration paid in an auction after its cancellation is a capital receipt.

The Tribunal after hearing both the parties went on to hold in favor of the assessee that the amount is not interest but compensation and hence is to be treated as 'capital receipt' for which no tax is payable under the Income Tax Act.

Income Tax Appellate Tribunal (ITAT) New Delhi - INS Finance & Investment P Ltd. vs. ITO, Ward-11(4) - ITA No. 505/Del/2016 & ITO, Ward-11(4) vs. INS Finance & Investment P Ltd. - ITA No. 3099/Del/2016 - dt.13-04-2018.

Read More

Proceeds to Cricketer Sameer Dighe from Benefit Match Not Taxable.

Mumbai bench of the Income Tax Appellate Tribunal (ITAT) recently granted tax relief to India's former wicket-keeper, Sameer Dighe by holding that the proceeds from a benefit match of around Rs 50 lakh cannot be taxed in the hands of the cricketer.

While answering the dispute in favour of the assessee, the Tribunal held that Dighe played cricket for India as his passion. Proceeds arising out of the benefit match were in the nature of an award and were not an income, thus the section invoked by the Income Tax official would not apply.

Income Tax Appellate Tribunal (ITAT) Mumbai - The Asst. Commissioner of Income Tax, Circle 19(3) vs. Sibri Sameer Sudhakar Dighe - ITA No. 1327/Mum/2016 - dt.13-04-2018.

Read More

ITAT confirms Assessment against District Judges as there is No Provision in IT Rules Exempting Medical, Conveyance and Sumptuary Allowances.

The Cochin bench of Income Tax Appellate Tribunal (ITAT) confirmed the assessment order passed by the Commissioner of Income Tax by holding that there is no provision in Income Tax rules exempting medical, conveyance and sumptuary allowances.

The Tribunal bench observed that “sumptuary” means as a private expenditure in the interest of the State. The sumptuary allowances paid to the District Judges were made part of the salary and the allowance following the Shetty Commission Recommendation on the pay and allowance which was approved by the Hon’ble Apex Court.

Income Tax Appellate Tribunal (ITAT) Cochin - Sri.Bathisha Kalam Pasba vs. The Pr. Commissioner of Income-tax, Thiruvananthapuram - ITA No.468/Coch/2016 & Sri.S.V. Unnikrishnan Nair vs. The Pr. Commissioner of Income-tax, Thiruvananthapuram - ITA No.469/Coch/2016 - dt.22-03-2018.

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Handing Over of Possession under Development Agreement would

amount to ‘Transfer’ for attracting Capital Gain Tax.

The Hyderabad bench of ITAT confirmed that handing over of possession under development agreement would amount to ‘Transfer’ for attracting capital gain tax.

The bench observed that Section 2(47) is clearly attracted since there is the part performance of the contract in nature referred to in Section 53 of Transfer of Property Act, 1882. *Income Tax Appellate Tribunal (ITAT) Hyderabad - K. Vijaya Lakshmi vs. Asst. Commissioner of Income Tax, Circle-11(1) - ITA No. 1561/Hyd/16 & N. Sireesha vs. Asst. Commissioner of Income Tax, Circle-11(1) - ITA No. 372/Hyd/17 - dt.28-02-2018.*

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Education Institutions can avail Exemption Only If Exist Solely for the Purpose of Imparting Education.

Uttarakhand High Court has held that education institutions can avail exemption only if exist solely for the purpose of imparting education.

The court observed the reasons for rejecting exemptions are because of the multiple objects stated in memorandum of association: in order to qualify for grant of exemption, under the provision, the assessee institution should exist ‘solely’ for educational purpose, Assessee’s disproportionate fee structure is devised to earn maximum from fee simply to

invest it for expansion of the institution and society is not registered under section 12AA of the Income Tax Act.

High Court of Uttarakhand - Chief Commissioner of Income Tax vs. M/s J.B. Memorial Manas Academy Management Society - CLMA Delay Condonation Application No. 991 of 2018 in Special Appeal No. 64 of 2018 - dt.19-03-2018.

Read More.

‘Roaming Charges’ and ‘Discounts Offered to Distributors’ not liable for TDS deduction.

Ahmedabad Bench of Income Tax Appellate Tribunal (ITAT) held that ‘roaming charges’ and ‘discounts offered on pre-paid vouchers to distributors’ are not liable for TDS deduction.

After considering various documents submitted before it, the Bench came to the opinion that Roaming services provided by the telecom operators were in the nature of use of standard facilities, which did not require any human interface and as such charges are not paid for rendering managerial, technical or consultancy services it could not be construed as fees for technical service under Section 194J of the Act.

Income Tax Appellate Tribunal (ITAT) Ahmedabad - The Dy. CIT, TDS Circle vs. M/s. Vodafone West Ltd. ITA Nos. 1317 & 1318/AHD/2016 - & - The Dy. CIT, TDS Circle vs. Vodafone Mobile Services Ltd. Cross

Objection No. 89/AHD/2016 - dt.04-04-2018.

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Deemed Dividend is different from ‘Dividends’: Kerala HC denies Exemption as No Additional Income Tax was paid.

A division bench of the Kerala High Court held that Deemed Dividend is different from ‘dividends’ under section 115(O) of the Income Tax Act, 1961.

The Court observed that deemed dividends are not exempted since there is no payment of additional tax under Section 115(O). it further noted that the revenue is right in contending that the exclusion under Section 10(34) would be applicable only for the amounts, which has suffered tax under Section 115(O).

High Court of Kerala - T.J. Jaikish vs. The Commissioner of Income Tax, Kozhikode - ITA No. 191 of 2013 - dt.08-03-2018.

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Section 40(3) of the Finance Act, 1983 is Constitutional.

A division bench of the Bombay High Court held that Section 40(3) of the Finance Act, 1983 to be constitutionally valid.

Section 40(3) of the said Act was passed by the then Parliament to revive the levy of

wealth tax in the case of closely held companies. According to the Section 40(3), all lands and buildings which are not used for business purposes by companies and in which public are not substantially interested can be charged under the Wealth Tax Act.

High Court of Bombay - Indian Express Newspapers & Anr. vs. Inspecting Assistant Commissioner & Ors. - Writ Petition No. 2983 of 1987 - dt.02-04-2018.

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Domain Registration Fee Taxable as Royalty.

Delhi bench of the Income Tax Appellate Tribunal (ITAT) held that the rendering of services for domain registration can be taxed as royalty because such rendering of services in connection with the use of an intangible property is similar to the trademark.

The Bench observed that the charges received by the assessee for services rendered in respect of domain name is royalty within the meaning of Clause (vi) read with Clause (iii) of Explanation 2 to Section 9(1) of Income-tax Act.

Income Tax Appellate Tribunal (ITAT) New Delhi - M/s Godaddy.com LLC vs. Assistant Commissioner of Income Tax, Circle 1(3)(1) - ITA No. 1878/Del/2017 - dt.03-04-2018.

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TDS applicable to Commission Paid

by TV channel to Advertisement Agencies for Securing Business.

Recently a bench of the Supreme Court held that the provisions relating to TDS are applicable to commission paid by TV channels to the advertisement agencies for securing more business.

On hearing the parties, the bench upheld the order of the High Court and observed that the payment in question was in the nature of “commission” paid by the appellant to the advertisement agencies to secure more business for the appellant.

Supreme Court of India - The Director, Prasar Bharati vs. Commissioner of Income Tax, Thiruvananthapuram - Civil Appeal Nos. 3496-3497 Of 2018 - dt.03-04-2018.

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ITAT allows Deduction to Eco-Tourism Units including Hotels.

A two-member bench of Income Tax Appellate Tribunal (ITAT) held that Eco-Tourism unit including Hotels specified under Schedule XIV of the Income Tax Act, 1961 is entitled to the deduction under Section 80IC of the Income Tax Act.

According to the ITAT bench, the claim of depreciation on hotel or building cannot be imported while deciding the claim of an assessee for deduction on account of substantial

expansion in “hotel”, if such hotel undertaking otherwise falls in the list of eligible undertakings for deduction under the provisions of section 80IC of the Act.

Income Tax Appellate Tribunal (ITAT) M/s Sirmour Hotels Pvt Ltd vs. The DCIT, Circle Parwanoo - ITA Nos. 374 to 376 /Chd/2017 - dt.19/03/2018.

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Assessee can't be Penalized for the Limitations in Dept.'s Online Portal.

In an assessee-favor ruling, the Delhi bench of Income Tax Appellate Tribunal (ITAT) ruled that the Assessee cannot be penalized due to limitations of the online portal provided by the department.

After analyzing the facts and circumstances of the case, the Tribunal bench observed that in the present case the online platform didn't permit the Assessee to register as a legal heir in order to e-file the appeal, thus the Assessee cannot be penalized for non-compliances which are a result of limitations of the platform provided.

Income Tax Appellate Tribunal (ITAT) New Delhi - Late Smt. Shureshtha Bagga vs. Income Tax Officer, Ward-63(3) - ITA No. 5292/Del./2017 - dt.22-02-2018.

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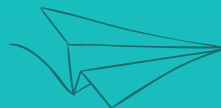
Warehouse Rent Taxable as Business Income.

The Bangalore bench of the Income Tax Appellate Tribunal (ITAT) held that the lease rental income earned by the assessee from warehouse constitutes business income of the assessee for the purpose of computing income tax.

The bench relied on the decision of co-ordinate bench of the Tribunal in Assessee's own case proclaimed in favour of himself and declared that the warehouses constructed by the assessee are commercial assets and leasing out commercial property constitutes business income under the Income Tax Act.

Income Tax Appellate Tribunal (ITAT) Bangalore - The Income-tax Officer, Ward-1(1)(2), vs. M/s Anjaneya Infrastructure Projects Pvt. Ltd. - ITA No. 2509/Bang/2017 - dt.23-03-2018.

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CASE LAWS

Kerala State GST Rules on Other State Lotteries Unconstitutional.

The Kerala High Court invalidated Rule 56(20A) (iii)(d) of Kerala State GST Rules which allowed tax officers to decide whether the lottery was being conducted as per the Lotteries (Regulation) Act, 1998 and the rules made thereunder.

The ruling by the High Court states that police is incapable of receiving complaints of wrongdoings based on the information furnished solely by tax officials. Powers of Police in this matter are confined to the Lotteries (Regulation) Act, 1998.

High Court of Kerala - M/s. Teesta Distributors & Anr. vs. State of Kerala & Ors. - W.P (C). No. 27158 of 2017 - dt.13-04-2018.

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Comments : The Judgment is relevant as it is an indication as to the nature of litigation that is likely to crop up in future between Centre and State and between different States in respect of the boundaries of their legislative powers. The Judgment has left open the question whether IGST would apply for the transaction of

sale of Mizoram lottery in State of Kerala. This question is left to be decided by the proper officer. Any Officer appointed by State government, while sitting to decide whether IGST/SGST would apply, will be tilted to decide in favour of SGST. These kinds of disputes are well anticipated and hence provision are made for resolving such issues by Supreme Court at the earliest.

Krishi Kalyan Cess paid Pre-GST rollout not admissible as Input Tax Credit.

The Authority for Advance Ruling, Mumbai recently held that accumulated credit by way of Krishi Kalyan Cess as appeared in the Service tax return of Input Service Distributor (ISD) on June 30 2017 cannot be considered as admissible input tax credit.

Authority For Advance Rulings, Mumbai – Order - NO.GST-ARA-18/2017-18/B - dt.05-04-2018.

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Comments: This ruling is in line with the twitter FAQ issued by the government clarifying credit of KKC is not eligible.

Joint Plant Committee not required to Register under GST

The Authority for Advance Rulings (AAR), Kolkata, in its order held that Joint Plant Committee is not required to be registered under the GST Act, if the committee is not otherwise liable to pay tax under reverse charge under Section 9(3) of the GST Act, 2017.

Joint Plant Committee is engaged exclusively in supplying goods and services that are wholly exempt from tax, and, therefore the AAR found that it is not liable to be registered in accordance with the provisions under section 23(1) of the GST Act, subject to the condition that the Applicant is not otherwise liable to pay tax under the Reverse Charge mechanism under Section 9(3) of the GST Act or 5(3) of the IGST Act.

Authority For Advance Rulings, West Bengal - Joint Plant Committee -Case No.- 2 of 2018 - dt. 21-03-2018.

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Comments: This ruling affirms that a person providing only exempted service/goods, and hence not registered, will not be liable to pay GST on reverse charge basis on receipt of goods and services from another unregistered party.

But, the ruling also implies that if such person is receiving any of the services /goods notified under Section 9 (3) of CGST Act or Section 5 (3) of IGST Act, then there is liability. This would mean, one instance of availing any of the goods/services as notified under Section 9 (3) of CGST Act or Section 5 (3) of IGST Act, then registration requirement would step in and once registered, Section 9 (4) of CGST Act or Section 5 (4) of IGST Act as the case may be would apply.

GST payable on Providing Intermediary Service to Foreign University

The West Bengal Authority for Advance Ruling, recently held that the intermediary services provided to foreign universities would attract Goods and Services Tax (GST)

After hearing the submissions from both sides, the authority noted that the main service provided by the applicant is facilitating recruitment of students and the consideration is paid as commission on the basis of course fee and recruitment through the applicant. Since the place of supply under the above legal framework is the territory of India and the condition under section 2(6)(iii) of the IGST Act is

not satisfied, the authority held that the Applicant-Company is liable to pay GST for the services provided by them.

Authority For Advance Rulings, West Bengal - Global Reach Education Services Pvt Ltd - Case No. 05 of 2018 - dt.21-03-2018.

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Comments : The ruling is given in clear disregard of the clauses of the agreement which specifically states that there is no principal-agent relationship. Agreement is the prime document from where evidence can be gathered about the intention of the parties. In clear disregard of terms of agreement which says the relationship is one of Principal to Principal, the advance ruling authorities have classified the service provider as an intermediary. The advance ruling has nowhere relied on Section 13 (5) of IGST Act which provides that in cases of admission to education and incidental services, the place of supply is where the event is actually held. Now 'Event' should be interpreted to mean the actual event of education, not event of admission. If so, the supplier of service is entitled for export benefits.

GST Rate of Rubber Wood is 18%

In an order by the Authority for Advance

Ruling, (AAR) Kerala, the authority clarified that rate of GST on rubber wood as 18% under the HSN4403.

The Authority observed that as per the definition of goods in Section 2(52) of CGST Act, 2017, "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which is agreed to be severed before supply or under a contract of supply. In this case, under the contract of supply, growing crops – i.e., rubber trees are agreed to be severed before supply and hence, comes under the definition of 'goods'. Thus, standing rubber trees no longer remain as such. There is no differentiation between softwood and hardwood in GST.

Authority for Advance Rulings, Kerala - Sri.N.C. Varghese - Order No. CT/3270/18-C3 - dt.26-03-2018.

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Food Expenses recovered from Employees for Canteen Services is subject to GST

In an order by the Authority for Advance Ruling (AAR), Kerala, has ruled that recovery of food expenses from the

employees for the canteen services provided by company would come under the definition of 'outward supply' as defined in Section 2 (83) of the Goods and Services Tax Act, 2017 and hence are taxable under the Goods and Services Tax (GST) laws.

The Authority observed that even though there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" as provided in Section 7(1) (a) of the GST Act, 2017. The applicant would definitely come under the definition of "Supplier" as provided in sub-section (105) of Section 2 of the GST Act, 2017.

Authority for Advance Rulings, Kerala - M/s. Caltech Polymers Pvt. Ltd. - Order No. CT/531/18-C3 - dt.26-03-2018.

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Comments : Please see link to article by Sri. G. Natarajan for a detailed analysis of the issue.

Merchant Trade Transactions Exempted from GST

The Authority for Advance Rulings (AAR) has ruled that Merchant Trade Transaction are exempted from Goods and Services Tax (GST).

While deciding the case, the Authority observed that the goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India.

Authority for Advance Rulings, Kerala - M/s. Synthite Industries Ltd. - Order No. CT/2275/18-C3 - dt.26-03-2018.

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Bombay High Court upholds GST on Long Term Lease Premium

The Bombay High Court has upheld the validity of Goods and Services Tax (GST) on Long-term lease premium.

The Bench noted that CIDCO is a person and in the course or in furtherance of its business, it disposes of lands by leasing them out for a consideration styled as one-time premium and therefore, if one refers to Schedule II, section 7, then, Item No. 2 styled as land and building and any lease, tenancy, licence to occupy land is a supply of service.

High Court of Bombay - Builders Association of Navi, Mumbai & Anr. vs. Union of India & Ors. - W. P. No.12194 of 2017 - dt.28-03-2018.

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Kerala HC to decide the Constitutional Validity of Savings & Repeal Provisions of Kerala GST Act, 2017

Admitting the challenge on the Constitutional validity of Savings and Repeal Provisions of Kerala GST Act, 2017, Justice A. Muhamed Mustaque of Kerala High Court has issued notice to the Revenue Department and has directed the State to file counter.

In the petition filed, the petitioner has questioned the constitutional validity of Section 174 of the Kerala State Goods and Service Tax Act, 2017. According to the petitioner, the Savings & Repeals Provisions under the said section is violative of clauses 2, 17 & 19 of the 101st Constitutional Amendment Act, 2016.

High Court of Kerala - Sheen Golden Jewels (India) Pvt. Ltd. vs. State Tax Officer & Ors. - W.P.(c) No. 11335 of 2018 - dt.04-04-2018

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Kerala HC directs KGST Authorities to allow Revision of VAT Returns subject to Dept Circular

The Kerala High Court, while disposing of a petition filed by M/s KNR Walayar Tollways Pvt. Ltd directed the Kerala

Goods and Services Tax (KGST) Authorities to consider the request for revision of returns by the petitioners on the basis of the circular issued by the department in November relating to the right of the assessee under the Act to submit revised returns.

The Circular No.14 of 2017 issued by the Commissioner of the State Goods and Services Taxes Department has clarified the issues relating to the right of the assessee under the Act to submit revised returns.

High Court of Kerala - KNR Walayar Tollways Pvt. Ltd. vs. The Commercial Tax Officer (Works Contract) & Ors. - W.P.(C). No. 8643 of 2018 - dt.14-03-2018.

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Comments : The circular permits only correction of clerical mistakes which has no impact on the turnover. And the purpose in seeking revision, in most instances would be to effect changes which will have an impact on the turnover.

Allahabad HC directs GST Dept. to release Goods on Strength of Security and Bank Guarantee.

While granting an interim relief to M/s LG Electronics India Pvt. Ltd, a

two-judge bench of the Allahabad High Court, directed the GST authorities to release the goods on furnishing security and Bank Guarantee as per the GST laws.

The sole issue before the Court was that whether Rule 138 of the Uttar Pradesh Goods and Services Tax Rules, 2017 as it stood originally before the 4th amendment would stand revived with the rescinding of the notifications dated 30/31.01.2018 enforcing the amended Rule 138 of the Rules with effect from 01.02.2018 with regard to the E-Way Bill.

High Court of Allahabad - M/s LG Electronics India Pvt. Ltd. vs. State of U.P. & Ors. - Writ Tax No. 454 of 2018 - dt.23-03-2018.

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Transitional Credit is Vested Right and can't be Denied

While admitting a petition challenging the provisions of Gujarat Goods and Services Tax (GGST) Act, the Gujarat High Court has issued notices to GST Council, GSTN, State Governments and Central Government and observed that the transitional credit is vested right which cannot be denied by the Government.

High Court of Gujarat - Willowood Chemicals Pvt. Ltd. vs. Union of India. - R/Special Civil Application No. 4252 of 2018 - dt.20-03-2018.

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Service Tax

CENVAT Credit available on Health Insurance Policy up to March 2011

The Mumbai Bench of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held that the cenvat credit is available on health insurance policy up to March 2011.

The appellants were served with show cause notice proposing to disallow the cenvat credit availed by them on Medi-claim Insurance Policy taken by them and for their employees and their family members on the ground that it didn't fall under the category of 'input services'

Customs, Excise and Service Tax Appellate Tribunal (CESTAT) - Toyo Engineering India Ltd. vs. Commissioner of Service Tax, Mumbai - Order No. A/85720/2018 - dt.23-03-2018.

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Service Tax not payable on Chit Transactions During 2012 to 2015.

The Kerala High Court relying on the decision of the Supreme Court held that chit transactions between the years 2012 and 2015 is not liable to service tax as arising from the Finance Act, 1994.

The bench comprising of Justice K. Vinod Chandran and Justice Ashok Menon observed that the Supreme Court had already in its judgement stated that no service tax was payable from July 1st, 2012 to June 14th 2015. According to them the issue was no longer res Integra.

High Court of Kerala - All Kerala Association of Chit Funds & Anr. Vs. Union of India & Ors - W.A. No. 273 of 2013 - dt.14-03-2018.

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Profit and Loss Accounts can't be relied for Determination of Service Tax Liability.

The Madras High Court held that profit and Loss Accounts cannot be relied upon for determination of the point of rendition and accrual of services for the purpose of imposition of service tax.

The issue before the court was whether the action of respondent in the determination of the point of rendition of service relying on the profit and loss account of the petitioner was justified.

High Court of Madras - Firm Foundations & Housing Pvt. Ltd. vs. Principal Commissioner of Service Tax - W.P. No. 21799 of 2017 and W.M.P. No. 22810 of 2017 - dt.06-04-2018.

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Amount Received towards Sale of Developmental Rights to Land is not Commission for Real Estates Agents' Services.

Delhi bench of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held that amount received towards Sale of developmental rights to land is not the commission for real estates agents' services.

Customs, Excise and Service Tax Appellate Tribunal (CESTAT) - CCE, Raipur vs. Shri. Banki Bihari Ispat Pvt. Ltd. - Appeal No. ST/51305/2014 - dt.03-04-2018.

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Sale of Prospectus not a Part of Commercial Training or Coaching Services,

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held that the sale of the prospectus is not a part of the Commercial Training or Coaching Services. The Revenue included the

sales value of the prospectus in the assessable value of services. Service Tax demands were raised and on failure to pay the same, penalties were imposed. The demands were affirmed by the adjudicating authority. The Tribunal found that the prospectus is only for the purpose of screening of students by way of Admission Screening Examination and is not a part of the services. The student only by filling of prospectus does not become entitled to get coaching from the Appellant. Hence the same cannot be considered as part of Commercial Training or Coaching Services’.

Customs, Excise and Service Tax Appellate Tribunal (CESTAT) - True Education Institute Pvt. Ltd vs. Commissioner of Service Tax - Appeal No. ST/89955 & 89956/14 - dt.21-03-2018.

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Mumbai Police is not Liable to Pay Service Tax for Providing Security Services to Banks, Cricket Matches.

The West Zonal Mumbai Bench of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held that Service Tax Demand on the charges recovered by Police for providing security services as unsustainable.

After considering the facts and argu-

ments, the Tribunal observed that the issue was no more res-integra and that it has been already dealt by various judgments of the Tribunal. They reproduced the decision of the Tribunal in Dy. Commissioner of Police, Jodhpur vs. CCE & ST which has held that the service tax demand is unsustainable.

Customs, Excise and Service Tax Appellate Tribunal (CESTAT) -Mumbai Police vs. Commissioner of Service Tax - Appeal No. ST/85424, 85425/2014 - dt.23-03-2018.

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Service Tax can't be levied on Services rendered in Jammu & Kashmir.

The CESTAT, Allahabad bench, recently ruled that service tax cannot be levied on services rendered in the State of Jammu and Kashmir as the Finance Act, 1994 is not applicable to the State.

While granting relief to the assessee, the division bench held that the provisions of service within the State of Jammu and Kashmir are beyond the scope of Chapter V of the Finance Act.

Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Allahabad - Bharat Petroleum Corporation Limited vs. C.C. & C.E. & S.T. Noida - Appeal No. ST/70453/2017-CU[DB] - dt.25-01-2018.

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Debit Notes are Valid Documents for Availing Credit.

While allowing relief to Ford Business Services Centre, the Chennai bench of the CESTAT held that the debit notes are valid documents for availing credit.

With regard to the claim of credit availed on Event Management Services, the CESTAT ruled that since they were availed for sales promotion, it is allowable. So also, the car parking was availed for the purpose of giving parking facilities to the employees as well as the management, therefore, the refund cannot be rejected, the bench said.

Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai - Ford Business Services Centre Pvt. Ltd. vs. Commissioner of Service Tax, Chennai-III - Final Order No. 40658-40671/2018 - dt.14-03-2018.

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Activities of IIPM fall under 'Commercial Training or Coaching Centre'

Delhi CESTAT, while upholding the service tax demand against Indian Institute of Planning & Management, (IIPM)

held that the activities undertaken by them would come under the ambit of "Commercial Training or Coaching Centre".

The bench after hearing both the sides held that there is no scope to exclude the Academic Courses conducted by IIPM from the purview of Service tax levy. The CESTAT bench further observed that the exclusion provided in Section 65 (27) is available to any institute or establishments which issue any certificate or any educational qualification recognized by law for the time being in force.

Customs, Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi - C.S.T. Service Tax, Delhi vs. M/s. Indian Institute of Planning & Management - Appeal No. ST/532/2012-DB & ST/CROSS/2349/2012 - dt.20-03-2018.

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No Service Tax Liability on Cricket Players on Promotional Activities during IPL Matches

While granting relief to famous cricket player Karn Sharma, the Ahmedabad bench of the CESTAT held that no service tax liability can be attributed to the cricket players for promotional activities provided by them during the Indian Premier League (IPL) prior to

01.07.2010.

Recently, while allowing relief to former Rajasthan Royal's player, Swapnil Asnodkar, the Mumbai CESTAT also took a similar view and held that no service tax is leviable on Brand Promotion Fee.

Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Ahmedabad - Shri. Karn Sharma vs. Commissioner of Central Excise & S.T., Meerut-I -Appeal No. ST/59766/2013-CU[DB] - dt.10-01-2018.

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Excise & Customs

Fixing Anti-Dumping Duty using RLV Method Acceptable.

The Delhi bench of the Customs, Excise and Service Tax Tribunal (CESTAT) recently ruled that method of fixing Anti-Dumping Duty (ADD) based on Reference Landed Value (RLV) is acceptable.

The Tribunal observed that there is no mandate either in terms of WTO agreement or AD rules for the DA to recommend AD duty in a particular form.

Customs, Excise and Service Tax Tribunal (CESTAT), New Delhi - M/s. JSW Steel Coated Products Ltd. & Anr. vs. Union of India/DA - Anti Dumping Appeal No. 50258 of 2018 with

Misc. Application No. 50217 of 2018 & Anti Dumping Appeal No. 50267 of 2018 with Misc. Application No. 50218 of 2018 - dt.27-03-2018.

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Choice of Option in Quasi-Judicial Matters is not Absolute and Unfettered.

Delhi High Court recently held that choice of option in quasi-judicial matters is not absolute and unfettered. The Court also asked the Customs, Excise and Service Tax Tribunal (CESTAT) to hear the appeal.

The division bench observed that the impugned order merely refers to the proviso and the discretion vested with the Tribunal. Discretion vested vide proviso to Section 129 A of the Act is an effective tool which enables the Tribunal not waste time and effort in deciding petty and small amount cases.

High Court of Delhi - Vaish Brothers Through Partner vs. Commissioner of Customs - CUSS.AA 56/2017 -dt.08-03-2018.

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No Penalty for Non-Accounting of Raw-materials since Assessee is not Manufacturer or Dealer of

such Material.

The Customs, Excise, and Service Tax Tribunal (CESTAT) ruled that non-accounting of raw materials would not attract penalty since the Assessee is not the manufacturer or dealer or availed any benefit out of such material.

While concluding the issue the Tribunal also observed that Rule 25 for raw material is not justified in the present case. Hence the seizure and confiscation of the raw materials are not sustainable.

Customs, Excise, and Service Tax Tribunal (CESTAT), New Delhi - M/s Anil Enterprises v. CCE - Excise Appeal No. 50108 of 2018 (SM) - dt.21-03-2018.

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No Excise Duty on Scrap Materials as they are not emerging due to a Manufacturing Process.

The Delhi bench of the CESTAT last day held that the excise duty is not payable on scrap materials as they are not incidental to a process of manufacture.

The bench noticed the decision of the Supreme Court in Union of India vs. Ahmedabad Electricity Co. Ltd wherein it was held that only on the fact that the

goods were marketed, excise duty cannot be automatically imposed.

Customs, Excise, and Service Tax Tribunal (CESTAT), New Delhi - M/s. Varun Beverages Limited vs. C.C.E. & S.T., Jaipur-I - Excise Appeal No. 51560 to 51563 of 2017 - dt.14-03-2018.

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Welding Electrodes are Integral part of Manufacture of Goods.

In a recent ruling, Bombay High Court held that welding electrodes are also the integral part of the ultimate manufacture of goods, hence the Assessee would be entitled to get CENVAT Credit.

The Court observed that in the present case the welding electrodes used for repairs and maintenance of machinery, do not fall within the definition of capital goods under Rule 2(b) of the Rules, they are nevertheless eligible for credit as 'inputs' within the meaning of section 2(g) of the rules. It is submitted that in order to be eligible for credit as inputs under Rule 2(g) of the rules, the only requirement is that the said goods must have been used in or in relation to the manufacture of the final product.

High Court of Bombay - ACC Limited vs. The Commissioner of Central Excise, Pune-II - Central

Excise Appeal No. 89, 99 of 2008 along with ACC Limited vs. The Commissioner of Central Excise, Nagpur Central Excise No. 227 of 2008 - dt.28-03-2018.

Read More

Amendment made to Section 25 of Customs Act has Prospective Application.

In, the Karnataka High Court held that prior to the amendment made by the Finance Act 2016, a notification under Section 25 of the Customs Act 1952 can come into force only after satisfying the conditions of publishing the notification in the official gazette & offering for sale on the date of its issue by Directorate of Publicity and Public Relations of the Board, New Delhi.

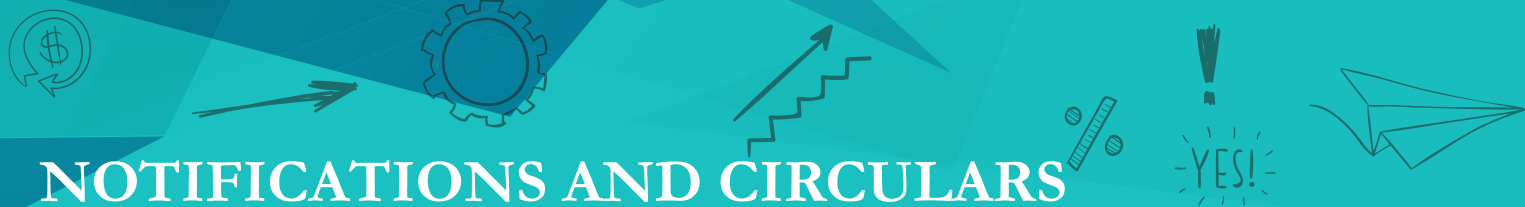
The Court after considering the arguments made before it pointed out that any amendment to the Statute is prospective unless it is explicitly made retrospective. It said that provisions of Section 25 before the amendment would be applicable in the case and for that reason, the court insisted compliance of both the conditions laid down in the said section.

High Court of Karnataka - M/s. Ruchi Soya

Industries Ltd. vs. Union of India & Ors. - Writ Petition No. 41394/2015 (T-TAR) -dt.06-03-2018.

Read More





NOTIFICATIONS AND CIRCULARS

GST Notifications and Circulars

CBIC clarifies Queries processing of Refund Applications for UIN Agencies

The Central Board of Indirect Taxes and Customs (CBIC), has issued a circular addressing the issues on the processing of refund applications for UIN agencies.

With regard to the issue of mention of UINs on Invoices, the Board pointed out a problem that many suppliers did not record the UINs on the invoices of supplies of goods or services to UIN agencies. It was, therefore, clarified that the recording of UIN on the invoice is a necessary condition under rule 46 of the CGST Rules, 2017. If suppliers/vendors are not recording the UINs, then action may be initiated against them under the provisions of the CGST Act, 2017.

Central Board of Indirect Taxes and Customs (CBIC) - Circular No. 43/17/2018-GST – dt.13-04-2018.

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CBIC lays down Norms for Interception, Detention, Release and

Confiscation of Goods in Movement.

The Central Board of Indirect Taxes and Customs (CBIC) has prescribed a detailed procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyance under the GST laws.

As per the Board's instructions, the jurisdictional Commissioner or an officer authorised by him for this purpose shall, by an order, designate an officer/officers as the proper officer/officers to conduct interception and inspection of conveyances and goods in the jurisdictional area specified in such order. He is empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods.

Central Board of Indirect Taxes and Customs (CBIC) - Circular No. 41/15/2018-GST – dt.13-04-2018.

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CBEC clarifies Procedure for

Recovery of Arrears and Reversal of Inadmissible Input Tax Credit.

In a circular issued by the Central Board of Indirect Taxes and Customs (CBIC), the procedures relating to recovery of arrears of central excise duty /service tax and CENVAT credit carried forward erroneously and related interest, penalty or late fee payable arising as a result of the proceedings of assessment, adjudication, appeal etc. initiated before, on or after the appointed date under the provisions of the Goods and Services Tax (GST) law has been explained by the Government.

Read More

Comments: Whether Credit under GST can be used for paying old dues of excise duty and service tax was a major doubt after GST, The issue is now been clarified.

LUT shall be deemed to be accepted on Generation of ARN, No Documents required to be Physically submitted to Jurisdictional Office.

In a recent circular issued by the Central Board of Indirect Taxes and Customs (CBIC), the board made clarifications on issues related to the furnishing of Bond /

Letter of Undertaking (LUT) for exports.

The circular clarified that a Letter of Undertaking (LUT) shall be deemed to be accepted as soon as an acknowledgement bearing the Application Reference Number, is generated online. It further clarified that no documents are required to be physically submitted to the jurisdictional office for acceptance of LUT.

Central Board of Indirect Taxes and Customs (CBIC) - Circular No. 40/14/2018-GST – dt.06-04-2018.

Read More

CBIC sets up IT Grievance Redressal Mechanism.

In a bid to address the technical glitches in the Goods and Services Tax (GST) portal, the Central Board of Indirect taxes and Customs (CBIC) has formed an IT Grievance Redressal Mechanism for the taxpayers.

A circular issued by the Board in this regard has stated that the relief could be in the nature of allowing the filing of any Form or Return prescribed by law or amending any Form or Return already filed.

Central Board of Indirect Taxes and Customs (CBIC) - Circular No. 39/13/2018-GST – dt.03-04-2018.

Read More

Identified Taxpayers can file TRAN-1 till 30th April.

The Central Board of Indirect Taxes (CBIC) has decided to give a fresh opportunity to certain taxpayers who could not file TRAN 1 on or before 27.12.2017 due to technical glitches in the official portal, Goods and Services Tax Network (GSTN). Such taxpayers identified by the GSTN can file TRAN-1 by 30th April, CBIC missive issued last day said.

The circular further clarified that the last date for filing of TRAN 1 is not being extended in general and only these identified taxpayers shall be allowed to complete the process of filing TRAN-1.

Central Board of Indirect Taxes and Customs (CBIC) - Circular No. 39/13/2018-GST – dt.03-04-2018.

Read More

Comments : Although a partial relief, there are many taxpayers who have committed genuine mistakes in TRAN 1. Government may afford an opportunity for them to correct such errors.

No E-Way Bill required for Supplies within Union Territories.

The Central Government today notified that irrespective of the value of the consignment, no e-way bill shall be required to be generated where the movement of goods commences and terminates within the Union Territories.

As per a notification issued, supplies made within the territory of Chandigarh, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep do not require E-Way Bill.

Department of Revenue – Notification No. 2/2018-Union Territory Tax – dt.31-03-2018.

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24 Schemes of Insurance exempted from GST.

The Insurance Regulatory and Development Authority of India (IRDAI) has exempted 24 schemes of insurance from Goods and Services Tax (GST) regime for reinsurance and entrusted the insurance firms to pass those benefit to the customers.

The Insurance Regulatory and Development Authority of India (IRDAI) has

further directed all the insurance firms to avoid any undue enrichment arising out of this act of exempting such schemes from tax.

Insurance Regulatory and Development Authority of India (IRDAI) - IRDA/F&A/CIR/MIS-C/052/03/2018 -dt.27-03-2018.

Read More

Due Date for GSTR 6 by Input Service Distributors Extended.

The Central Government today extended the last date for filing GSTR 6 by Input Service Distributors for the months of July 2017 to April 2018 until the 31st day of May 2018.

Central Board of Excise and Customs (CBEC) – Notification No. 19/2018-Central Tax – dt.28-03-2018.

Read More

Due Date for filing TRAN-2 Extended.

The Central Government has extended the due date for filing of TRAN-2. Earlier, the Government had amended the CGST Rules to prescribe that the due date for filing of TRAN-2 is 31st March 2018. However, due to glitches, the Government has now said that FORM

TRAN-2 can be filed till 30th June 2018.

Central Board of Excise and Customs (CBEC) – Order No. 1/2018-Central Tax – dt.28-03-2018.

Read More

Govt Extends Due Date for Filing GSTR-1.

The Central Board of Excise and Customs (CBEC) today extended the time limit for filing of GSTR-1 for both entities who have turnover up to 1.5 crores and more than 1.5 crores.

As per the Notification issued by the Board, persons having the aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year can file GSTR-1 for the months of April, May, and June in 31st May, 10th June and 10th July respectively.

Central Board of Excise and Customs (CBEC) – Notification No. 17/2018-Central Tax – dt.28-03-2018.

Read More

Govt Extends Due Date for Filing Refund Application by Notified Agencies.

The Central Government, extended the due date for filing of the refund applica-

tion by the notified agencies under section 55 of the Central Goods and Services Tax (CGST) Act.

A notification issued by the Board said that the specified persons as the class of persons who shall make an application for refund of tax paid by it on inward supplies of goods or services or both, to the jurisdictional tax authority, in such form and manner as specified before the expiry of eighteen months from the last date of the quarter in which such supply was received.

Central Board of Excise and Customs (CBEC) – Notification No. 20/2018-Central Tax – dt.28-03-2018.

Read More

CBEC Clarifies Issues related to Job Work.

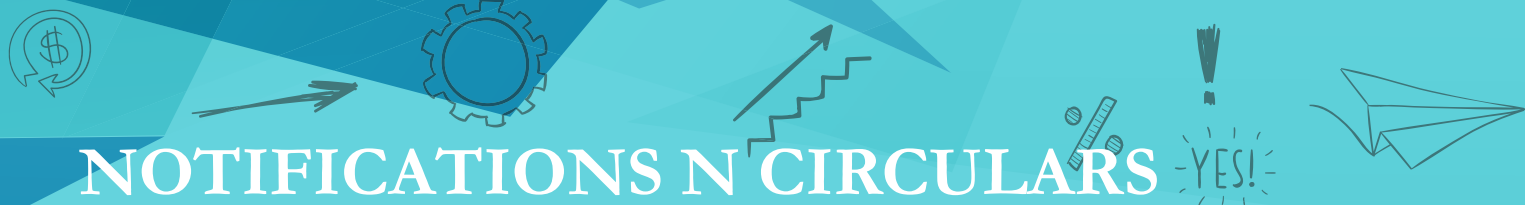
The Central Board of Excise and Customs (CBEC) clarified the issues related to job work under the Goods and Services Tax (GST) regime.

The circular clarifies that sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business / premises of the job worker within one/three years of being sent out.

Central Board of Excise and Customs (CBEC) – Circular No. 38/12/2018 – dt.26-03-2018.

Read More





INCOME TAX NOTIFICATIONS & CIRCULARS

Ceiling for Tax-Free Gratuity Increased.

The Central Government, recently notified that the tax-free gratuity has been raised from Rs. Ten lakhs to Rs. Twenty lakhs for private sector employees by following the changes in gratuity Act though the government could easily fix the ceiling of the retirement benefit through an executive order.

After the implementation of the 7th Central Pay Commission, the ceiling of tax-free gratuity amount for the central government employees was increased from Rs. 10 lakhs to Rs. 20 lakhs. The unions have been demanding for the inclusion of the change in the Payment of Gratuity Act.

Ministry of Labour & Employment - Notification Nos. S.O. 1419(E) to S.O. 1421 (E) - dt.29-03-2018.

Read More

New Column for Transgenders in PAN Application Form: Govt. Amends Income Tax Rules.

The Central Board of Direct Taxes (CBDT) has introduced a New Column for Transgenders in PAN Application Form i.e., Form 49A and Form 49AA by amending the Income Tax Rules, 1962.

By Amending the Income-tax Rules, 1962, in Appendix II, in Form number 49A and Form number 49AA, for column number 4 and entries relating thereto, there will separate column for Male, Female and Transgenders.

Central Board of Direct Taxes - Notification G.S.R. 352(E) - dt.09-04-2018.

Read More

CBDT releases Action Plan for the First Quarter in the FY 2018-2019.

The Central Board of Direct Taxes (CBDT) has released Central Action Plan for the First Quarter April 2018 to June 2018 of the FY 2018-2019.

The Key Result Areas of the Action Plan and the Time Frame in the which it is to be achieved has been categorically divided into the 8 heads.

Central Board of Direct Taxes - F. No. 380/1/2018-IT(B) - dt.02-04-2018.

Read More

Govt. notifies new Income Tax Return Forms for AY 2018-19.

The Central Board of Direct Taxes (CBDT) has notified Income Tax Return Forms (ITR Forms) for the Assessment Year 2018-19. For Assess-

ment Year 2017-18, a one page simplified ITR Form-1(Sahaj) was notified. This initiative benefited around 3 crore taxpayers, who have filed their return in this simplified Form.

Central Board of Direct Taxes - Notification G.S.R. 332(E) - dt.03-04-2018.

Read More

Startups with less than Rs10 cr Funding can seek Exemption from Angel Tax.

The Department of Industrial Policy and Promotion recently notified a new amendment for easing the norms of startups funding.

Startups with less than Rs10 crore Funding can seek Exemption from Angel Tax from an eight-member government board under Section 56 of the Income Tax Act.

As per the notification which explains that an entity shall cease to be a startup on completion of seven years from the date of its registration or its turns over exceed 25 crores. But in the case of startups in the biotechnology sector, the period of startups ends with the completion of ten years from the date of its registration or if its turnover for any previous year exceeds Rs. 25 crores.

Department of Industrial Policy and Promotion - Notification G.S.R. 364(E) - dt.11-04-2018.

Read More

Wrong ITRs: Income Tax Dept. warns Salaried Class, Employers to be

informed.

The income tax department warned the salaried class taxpayers against filing income tax returns containing wrong information. While cautioning the salaried class, the department clarified that stringent actions will be taken against persons using illegal means like under-reporting of income or “inflating” deductions while filing their returns.

The advisory came in the backdrop of the investigation wing of the department, in January, unearthing a racket of extracting fraudulent tax refunds by employees of bellwether information technology companies based in Bengaluru, in alleged connivance with a tax advisor.

Centralized Processing Center, Bengaluru, Income Tax Department - Advisory - dt.16-04-2018.

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MAD IN INDIA

**“Goods and services may be exported but not the taxes”
- Mahatma Gandhi**

Exports are the backbone of any economy. The forex they bring in, are the most valuable princely treasure to every nation, be it developed, developing or under-developed. In line with the global economic principles, every Government comes up with a variety of incentive schemes to neutralize the tax incidence and not to transmit the domestic levies across borders and India is no exception.

In the pre-GST era, there were loads of export schemes, whereby, import / domestic procurement of goods

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required for exports were allowed duty-free (e.g. Advance Authorisation (AA), EPCG etc.) apart from various incentives like Drawback / FPS etc.

With the roll out of GST, the entire export schemes are thoroughly rejigged. Like many of the GST related issues, the Government miserably failed in handling this key issue relating to exports too, owing to inadequate preparation / foundation, thus adding one more thorn to its already punctured flesh.

Under GST, there was a paradigm shift in the taxing policy relating to exports, whereby, instead of exempting at the procurement stage, the exporters were forced to pay the GST upon procurement and then get post-export refunds. This insensible rather insensitive proposition has led to a huge block of over-heads and thus resulting in serious cash-flow issues. The after-effects of this cash crunch started affecting the bottom line and thus started pressing the panic button among the exporters. Further, the non-availability of exemption to the job-workers, which was

available hitherto, also compounded the misery and the export community had slowly started bleeding to death.

When the bubble was about to burst, the GST think-tank, in their October gathering, burnt their midnight oil and came up with various ideas to resolve the emerging crisis, including a novel “e-wallet” scheme.

While the AA/EPCG/EOU were given “deemed exports” status with refund of the GST paid, the merchant exports were given a 0.1% rate. From October, as the drawback rates are slashed only to neutralize the Basic Customs duty component, presently, the only reasonable alternative to the export community is the refund route. Though the GST proclaimed automated refunds, with the GSTN shamelessly caving in, the exporters are currently navigated to “apply” for refunds with the department, which is literally jumping from frying pan to the fire.

In their March meeting, the GST council has reviewed the progress and had patted their back themselves claiming, “All is well”. They had also

“gracefully” extended the half-baked (refund schemes) and deferred the uncooked (e-wallet scheme) till October 2018. Along with the exporting community, I am at a loss to understand as to how the above measures had addressed or redressed the “cardiac block” (cash block) of the exporters. The export community, who got admitted in the emergency ward during July are presently ailing in the intensive care. Lets all be aware, unless immediate treatment is given, the morgue is

always very near to the ICU.

Whenever I address a gathering on export issues, I always refer to the opening quote, and that day, I did the same to a gathering at Kandla. Suddenly from the audience, an old gentleman rose and asked me in a very mild voice, “Sir, I have read the entire writings of Mahatma but when did he say this?”

That was my last meeting at Gujarat and my last reference to Mahatma.



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