

ISSUE - 1 FEBRUARY 1-28

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2018 BUDGET

**How GST Impacts
Transactions
between Employer
& Employee?**

► **Union Budget 2018 Demystified**

► **Budget Musings**



**Tax Treatment of
Leave Encashment:**

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Sindhu Mangat

On the Indirect Taxes side, this is the first budget after the roll out of the Goods and Service Tax. Excise duties to a large extent and service tax have been subsumed in GST, along with corresponding duties on imports. Hence, my budget proposals are mainly on the customs side.

- Sri. Arun Jaitley, Finance Minister, during his budget Speech 2018-19.

Till 1st of February 2018, the budget day used to be the most significant day of the year for a taxpayer, taxman and tax practitioner. The recent budget has proved otherwise for those living in domain of indirect tax. The budget passed without much euphoria to an indirect tax person except for the few changes in Customs Act. The silence of Finance Minister regarding indirect tax proposals could be attributed to a major power shift, where

the role of finance ministry has been taken over by the all empowered GST Council.

But the question is, can the nation's budget continue this trend of keeping GST away from its domain? We have witnessed almost eleven GST council meetings post introduction of GST. Invariably, every GST council meeting has brought about changes in GST, right from changes in effective rate of services and goods to suspension of operation of schemes as reverse charge and payment of tax on advances (for goods). The GST Council can only take decisions whereas any amendment to the ACT can be made only by Parliament. goods). The GST Council can only take decisions whereas any amendment to the ACT can be made only by Parliament.

More over, the CGST Act is abundant with lacuna and ambiguities that there was an expectation that budget would correct some of those anomalies. But unfortunately GST was not touched upon. It may be remembered that it is not a simple task to amend the CGST Act frequently, as any amendment in CGST Act would require corresponding amendment in 29 SGST Acts and 7 Union Territory GST Acts. Therefore the major amendments required for CGST Act can be part of union budget as a measure of convenience for States and Union Territories so as to align themselves and effect changes to their Acts only once in a year.

Leaving budget apart, the GST climate last month was robust with hype regarding roll out of e way bill system with effect from 01.02.2018 and its roll back with a caveat that the scheme would be operational from a future date to be notified. It is quite unfortunate that the government has not learned its lessons so far from gross failure of return filing system. Such a massive unpleasant experience should have prompted the authorities to exercise caution. The failure is more embarrassing as the attempt was to implement e way bill system partially, ie, only for inter state transactions and it was proclaimed through media that IT Prepared is fully prepared to take the load of tax payers. But the embarrassing turn of events on the first day itself which lead to rolling back the system to its shelves shows that the government has to work really hard at improvising its technological backbone in order to align the concept of unified tax with reality.

Each month since introduction of GST, is opulent with its own share of writ petitions before High-courts across the country challenging various aspects of the flaws in GST law. The Economic Survey 2018 points that almost 2,00,000 cases are pending in litigation in field of excise, service tax and customs alone. An equal, if not more, number of cases will be pending in tribunals and Highcourts in respect of VAT matters. GST, in its present form, is equipped with all the potential to double the number of litigation in coming years. The recent order of Honourable Highcourt of Mumbai observes loudly that "A tax like GST was highly publicised and termed as popular. These celebrations mean nothing. The special sessions of Parliament or special or extraordinary meetings of council would mean nothing to the assesees unless they obtain easy access to the website and portals. The regime is not tax friendly."

It can easily be predicted that, if the present trend continues, the future is going to be one of Judicial Activism for indirect tax.

Before Parting, it is well appreciated that the government, fortunately late THAN NEVER, is waking up to revamping the return filing system through special panel constituted for this purpose. There is no doubt that a SINGLE, SIMPLE RETURN instead of GSTR 1 to 3 would go a long way in making the law simpler for the common taxpayer.



Union Budget 2018 Demystified



**Siddharth P. Jani,
is a Chartered Accountant**

Our current Finance Minister (FM) is well known for breaking traditions while presenting the budget, this year, the tradition of using only English as the medium of presenting the budget was altered into bilingual speech with the use of English and Hindi combined. Even though English was prominent, many important announcements were made in Hindi, which of course is a great thing.

The speech started with stating Government's visions and key practices that the Narendra Modi government has achieved or at least tried to achieve in the past 4 years of the NDA tenure. This was an important budget in light of the 2019 general elections and is the last complete budget of the current elected government. As speculated, it was mainly focused on the elected government. As speculated, it was

mainly focused on the agricultural and **rural economy along with the less privileged sector and senior citizen** getting certain benefits. Healthcare, Infrastructure has been given a lot of importance, many major announcements are made in the same. (Major announcements are discussed later)

Major Direct Taxation aspects of the Finance Bill, 2018

The Finance Bill has not altered the Slab rate per se but there is some benefit in the form of Standard deduction to the salaried class of people.

The Important amendment of granting a Standard deduction of ₹ 40,000 to salaried persons is in lieu of (it is in place of / instead of) exemption of Transport allowance and exemption of medical reimbursement earlier allowed to salaried employees.

Transportation allowance is presently exempted @ ₹ 1,600 per month and medical reimbursement is exempted up to ₹15,000 per year so total $1,600 \times 12 = ₹ 19,200 + ₹ 15,000 = ₹ 34,200$ is already exempted as on date and instead of these two deductions /exemption standard deduction of ₹ 40,000 has been allowed. So net benefit of just $₹ 40,000 - ₹ 34,200 = ₹ 5,800$ /- is what will additionally be available to the taxpayer. However, the private employees who were not eligible for any transport allowance and medical reimbursement will surely be able to avail the benefit ₹ 40,000 /- standard deduction completely. However, the transport allowance at enhanced rate shall continue to be available to differently-abled persons. Also,

other medical reimbursement benefits in case of hospitalisation etc., for all employees shall continue.

The Education cess @ 2% and Higher Secondary Education Cess @ 1% is subsumed into a single cess called the Health and Education cess @ 4%. Thus, leading to an additional outflow of 1% cess on the amount of Tax and Surcharge.

The tax on Cooperative Societies, Firms/LLP, foreign companies has remained unchanged. Only domestic companies which have a turnover or gross receipts of 250 crores or less in the previous year FY 2016-17 will pay tax @ 25% instead of 30%. (Previously the limit of 250 crores was only 50 crore). However, the rate at which surcharge is applicable for all persons has remained unchanged.

Rate of Income Tax for Individual & HUF for FY 2018 – 19 (AY 2019 – 20)

Individuals (Below 60 years) and HUF		Resident Senior Citizen* (60 to 80 years)		Resident very Senior Citizen* (Above 80 years)	
Income Slabs	Tax Rate	Income Slabs	Tax Rate	Income Slabs	Tax Rate
₹ 0 – ₹ 2,50,000	NIL	₹ 0 – ₹ 3,00,000	NIL	₹ 0 – ₹ 5,00,000	NIL
₹ 2,50,001 – ₹ 5,00,000	5% of the amount by which the total income exceeds ₹ 2,50,000/-	₹ 3,00,001 – ₹ 5,00,000	5% of the amount by which the total income exceeds ₹ 3,00,000/-		
₹ 5,00,001 – ₹ 10,00,000	₹ 12,500/- + 20 % of the amount by which the total income exceeds ₹ 5,00,000/-	₹ 5,00,001 – ₹ 10,00,000	₹ 10,000/- + 20 % of the amount by which the total income exceeds ₹ 5,00,000/-	₹ 5,00,001 – ₹ 10,00,000	20 % of the amount by which the total income exceeds ₹ 5,00,000/-
Above ₹ 10,00,000	₹ 1,12,500/- + 30 % of the amount by which the total income exceeds ₹ 10,00,000/-	Above ₹ 10,00,000	₹ 1,10,000/- + 30 % of the amount by which the total income exceeds ₹ 10,00,000/-	Above ₹ 10,00,001	₹ 1,00,000/- + 30 % of the amount by which the total income exceeds ₹ 10,00,000/-

Surcharge#:

Total Income	Surcharge Applicable
Below ₹ 50,00,000	NIL
₹ 50,00,000 – ₹ 1,00,00,000	10%
Above ₹ 1,00,00,000	15%

Health & Education Cess @ 4% (Previously was 3%, now Increased) It will be computed on the aggregate of Income-Tax and Surcharge.

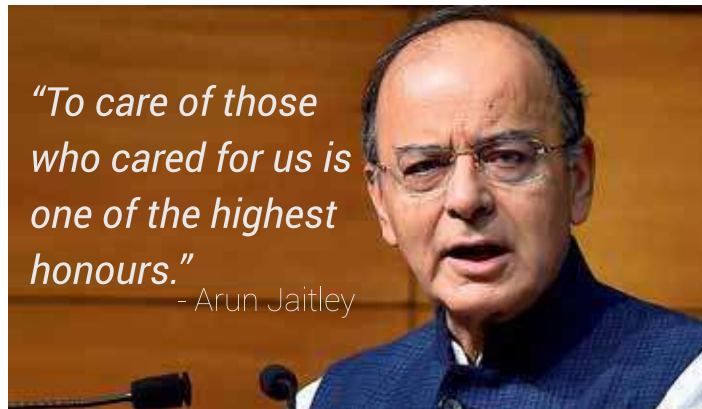
Rebate** of ₹ 2,500/- (Maximum) – If Total Income is up to ₹ 3,50,000/- (Section 87A)

* The benefit of the Senior citizen is applicable only for Resident Individuals as per section 6 of Income Tax Act, 1961. Therefore, the Non-resident senior citizen is not covered and shall be liable to pay tax as per provisions applicable for Individual (Below 60 years) and HUF.

Surcharge will be applicable over and above Normal Slab Rate Taxes (Only if Total Income exceeds the mentioned limits) otherwise, it won't be applicable.

**** Rebate will be applicable only in the cases where the Total income is up to ₹ 3,50,000/-, in such cases there will be a rebate of maximum ₹ 2,500/- allowed or the tax payable, whichever is lower.**

TOTAL INCOME: The sum of all money received, under each head of income, by an individual or organization, which is reduced by the deductions applicable (under Chapter VI-A) is called total income.



Special Benefits for Senior Citizens

1. Under Section 80D - Health Insurance Premium and Medical Treatment, the deduction of ₹ 30,000/- were applicable to the Senior citizen which has been enhanced to ₹ 50,000/- for the AY 2019-20. With the word "Very" being removed from Section 80D, now there is no distinction between Senior Citizen and Very Senior Citizen u/s 80D for the purpose of health insurance premium, preventive health check-ups & medical expenditure collectively. Therefore, now, Senior Citizens and Very Senior Citizens with Insurance policy can claim the deduction up to ₹ 50,000/-, if they pay Insurance Premium and the Individual without the insurance policies can claim deduction up to a maximum of ₹ 50,000/- for expenses relating to Health. (Subject to Production of bills)

2. Under Section 80DDB - With the word "Very" being removed from Section 80DDB, now there is no distinction between Senior Citizen and Very Senior Citizen u/s 80DDB. Enhanced deduc-

tion to senior citizens for medical treatment of specified diseases which was ₹ 60,000/- and ₹ 80,000/- in case of very senior citizen has been uniformly been enhanced to ₹ 1,00,000/-.

3. Under Section 80TTB – Interest Income from Saving Accounts with a bank, a Co-operative bank and post office up to ₹ 10,000/- is deductible from tax u/s 80TTA. But for Senior Citizen a new Section 80TTB has been inserted to provide a deduction up to ₹ 50,000/- in place of ₹ 10,000/- from AY 2019-20.

4. Under Section 194A – TDS from Interest Income has been amended for Senior citizens only. The threshold of ₹ 10,000/- has been increased to ₹ 50,000/-. Therefore, any Interest getting accrued or paid from 1st April 2018, for senior citizen shall not attract TDS up to ₹ 50,000/-.

5. Standard Deduction of ₹ 40,000 shall also be applicable to Senior citizens also in lieu of Transport allowance and Medical reimbursement. However, the transport allowance at enhanced rate shall continue to be available to differently-abled persons. Also, other medical reimbursement benefits in case of hospitalisation etc., for all employees shall continue. It is interesting to note that Pensioners anyways do not get any allowance and reimbursement, therefore for them, this standard deduction has brought completely new benefits.

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etc., for all employees shall continue. It is interesting to note that Pensioners anyways do not get any allowance and reimbursement, therefore for them, this standard deduction has brought completely new benefits.

Corporate Taxes Rates Tax FY 2018 - 19 (AY 2019 - 20)

Turnover	Type of Tax	Nil to 1 crore	1 crore to 10 crores	10 crores to 250 crores	Exceeding 250 crores
Particulars					
Domestic Company	Basic Rate	25%	25%	25%	30%
	Surcharge	0%	7%	12%	12%
	H&E Cess	4%	4%	4%	4%
	Effective Tax	26%	27.82%	29.12%	34.944%
Foreign Company	Basic Rate	40%	40%	40%	40%
	Surcharge	0%	2%	5%	5%
	H&E Cess	4%	4%	4%	4%
	Effective Tax	41.6%	42.432%	43.68%	43.68%
Firm / Local Authority / Cooperative Society	Basic Rate	30%	30%	30%	30%
	Surcharge	0%	12%	12%	12%
	H&E Cess	4%	4%	4%	4%
	Effective Tax	31.2%	34.944%	34.944%	34.944%

FM has reduced the Domestic Companies tax rate to 25% from 30% for the companies which have turnover up to 250 crores. (MSME Tax) This shall include 99% of companies. Only XL companies will have to bear the tax at the old rate. Since there is no change in the surcharge applicable, therefore it remains as per previous finance acts. Instead of 3% cess of EC & HSEC, there will be a single Health and Education Cess of 4% applicable.

NOTE : Provisions like MAT, AMT and Marginal relief are applicable without any change.

Section 112A – Taxation of Long-Term Capital Gains

Currently, long-term capital gains arising from a transfer of listed equity shares or units of equity-oriented fund or units of business trusts, (assets held for a period of more than one year) are

exempt from income-tax under Section 10(38) of the Act. The exemption u/s 10(38) will come to an end from 1st April 2018, therefore any capital gains till 31.03.2018 will continue to remain exempt u/s 10(38). As per newly proposed Section 112A, long-term capital gains arising from a transfer of

proposed Section 112A, long-term capital gains arising from a transfer of an equity share, or a unit of an equity-oriented fund or a unit of a business trust shall be taxed at 10% of such capital gains. Such capital gains tax shall be levied in excess of ₹ 1 lakh. This concessional rate of 10% will be applicable if STT has been paid on both acquisition and transfer of such capital asset, in case of equity shares, and paid at the time of transfer in case of a unit of an equity-oriented fund or a unit of a business trust.

The concept of Grandfathering was introduced while levying the tax on LTCG on above-mentioned shares and securities, which means to

exempt something from the new law or regulation. Therefore, any gains made up to 31st January 2018 would be totally exempt, when the share is sold post 31st March 2018. Therefore, this tax comes into force for all sales happening from 1st April 2018 and the shares and securities being Long-term capital assets.

The long-term capital gains shall be computed without giving effect to the first and second provisos to section 48, i.e. inflation indexation in respect of the cost of acquisitions and improvement if any, and the benefit of computation of capital gains in foreign currency in the case of a non-resident, will not be allowed.

Calculation for LTCG from 01.04.2018

Particulars	₹	₹
Full value of Sale Consideration	XXX	
Less: Transfer Expenses	(XX)	
Net Consideration		XXX
Cost of Acquisition		
a. Actual Cost of Acquisition	XXX	
b. FMV as on 31.01.2018*	XX	
c. Amount of sale consideration	XX	
d. Lower of (b) or (c)	XX	
Cost of Acquisition – Higher of (a) or (d)		(XXX)
Capital gains taxable u/s 112A		XXX

* The Fair Market Value (FMV) of a listed equity share shall mean its highest price quoted on the stock exchange on January 31, 2018. However, if there is no trading in such shares on such exchange on January 31, 2018, the highest price of such asset on such exchange on a date immediately preceding January 31, 2018. While in case of units which are not listed on the recognized stock exchange, the net asset value of such units as on January 31, 2018, shall be deemed to be its FMV.

If the Capital gains taxable u/s 112A is up to ₹ 1,00,000/- then there will be no tax payable. However, if the amount of gain exceeds ₹ 1,00,000/- then the tax will be payable on the gain above ₹ 1,00,000/-.

The deduction under Chapter VIA shall not be allowed for the purpose of payment of capital gains tax u/s 112A. However, the benefit of Rebate u/s 87A shall be allowed before calculating tax u/s 112A.

Very old Shares which were purchased without payment of STT (Purchased when STT was not applicable) in such cases whether the grandfathering clause will be applicable or not is a question which awaits clarity.

NOTE : In case of Capital loss, whether the set

off will be allowed to be carried forward or not is not explained. Going by the principles of Set off provisions, if a gain is taxable then any loss arising out of the same nature of income would be allowed to be set off. But if the gain is tax-free then any loss of such nature cannot be set off. However, this scheme of calculation, where the base of acquisition of the asset is getting shifted, should the loss be allowed or not. This can lead to fresh litigation and therefore to avoid this, the government is expected to clarify its stand soon.

Further, the complication can increase in the case of Bonus issues or rights issues of shares.

Therefore, presently the Capital gains on Long-Term Shares can be summed up as:

Nature of Shares	Rate of Tax (%)	
	Resident Investor	Non-Resident Investor
Unlisted Shares	20%	10%
Listed Shares (Sold off the Market)	10% / 20%**	10%
Listed Shares (STT paid* on Sale and Purchase)	10%	10%

*** Rate of Tax applicable only for gains exceeding ₹ 1,00,000/- and government is to notify acquisitions in respect of which STT shall not apply.**

**** After applying Indexation.**

These amendments will take effect from 1st April 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

Section 115AD – Long-Term Capital Gains in case of Foreign Institutional Investors (FIIs)

Consequent to the proposal of withdrawing the

exemption u/s 10(38) of Long-term capital gains, such Long term Capital gains in excess of ₹ 1,00,000/- shall be taxable in the hands of FIIs at the rate of 10% u/s 115AD.

Section 115R - Dividend distribution tax on dividend payouts to unitholders in an equity-oriented fund

Under existing provision Section 115R - any income distributed to a unitholder of equity-oriented funds is not chargeable to tax. To provide a level playing field between growth-oriented funds and dividend paying funds, it is proposed to amend the said section to provide that where any income is distributed by a Mutual Fund being, an equity-oriented fund, the mutual fund shall be liable to pay additional income tax at the rate of 10% percent on income so distributed.

This amendment will take effect from 1st April 2018.

Rationalization of section 43CA, section 50C and section 56

At present, while taxing income from capital gains (section 50C), business profits (section 43CA) and other sources (section 56) arising out of transactions in immovable property, the sale consideration or stamp duty value, whichever is higher is adopted.

The difference is taxed as income both in the hands of the purchaser and the seller.

It is proposed that No adjustment needs to be made to the full value of consideration in based on stamp duty valuation if the variation is within the range of 5% of sales consideration.

The corresponding amendment in section 43CA, 50C and 56 are made.

These amendments will take effect from 1st April

2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

Rationalisation of provision relating to conversion of stock-in-trade into Capital Asset

Currently, section 45(2) covers conversion of Capital Assets into Stock in Trade. (Post the landmark judgement of “CIT vs. Bai Shirinbai K. Kooka” But surprisingly, the reverse scenario was not covered in the tax net and in this budget it has been proposed to be brought under tax net i.e. conversion of Stock in Trade into Capital Assets.

Section 28 is also amended so as to provide that any profit or gains arising from the conversion of inventory into a capital asset or its treatment as capital asset shall be charged to tax as business income.

The fair market value of the inventory on the date of conversion shall be deemed to be the full value of the consideration received. Consequently, corresponding amendments proposed in Section 2(24), 2(42A) & 49.

Rationalisation of provision of Section 54EC

Section 54EC of the Act provides that capital gain, arising from the transfer of a long-term capital asset, invested in the long-term specified asset at any time within a period of six months after the date of such transfer, shall not be charged to tax subject to certain conditions specified in the said section.

The scope of this section now proposed to restrict only to “long-term specified asset” being land or building or both.

It is also proposed to provide that long-term specified asset, for making any investment under the section on or after the 1st day of April, 2018, shall mean any bond, redeemable after five years (The period of holding (lock-in) enhanced from present level of 3 years to proposed 5 years.) and issued on or after 1st day of April, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government in this behalf.

This amendment will take effect, from 1st April 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

Other Important Direct Tax Proposal in the Union Budget

Deductions in respect of certain incomes not to be allowed unless return is filed by the due date

Existing provisions contained in the section 80AC of the Act provide that no deduction would be admissible under section 80IA, 80IAB, 80IB, 80C, 80ID and 80IE unless the return of income by the assessee is furnished on or before the due date specified under subsection 139(1).

It is proposed to extend the scope of section 80AC to provide that the benefit of deduction under the

entire class of deductions under the heading C – “Deduction in respect of certain incomes” in chapter VIA. Other deductions in Chapter VI-A continue to be allowed.

Farm Produce Companies

Farm Producer Companies (FPC), having a total turnover up to ₹ 100 Crore shall eligible to deductions u/s 80P. The benefit shall be available for a period of five years from the financial year 2018-19.

This amendment will take effect from 1st April 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

Measures for Promoting Start-ups u/s 80-IAC

Section 80-IAC of the Act provides that deduction under this section shall be available to an eligible start-up for 3 consecutive AY out of 7 years at the option of the assessee.

In order to improve the effectiveness of the scheme for promoting start-ups in India, it is proposed to make following changes.

The amendment will take effect, from 1st April 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

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The amendment will take effect, from 1st April 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

Particular	Existing Provision	Proposed Provision
Eligibility w.r.t. incorporation	on or after 01/04/2016 but before 01/04/2019	on or after 01/04/2016 but before 01/04/2021
Turnover Requirement	Does not exceed ₹ 25 Crores in any PY beginning on or after 01/04/2016 and ending on 31/03/2021	Does not exceed ₹ 25 Crores in any seven PYs commencing from the date of incorporation
Eligibility business definition enhanced	Engaged in Innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property	Engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation

Application of Dividend Distribution Tax to Deemed Dividend u/s 2 (22) (e) - Now Taxable to Companies Only

At present dividend distributed by a domestic company is subject to dividend distribution tax payable by such company. However, deemed dividend u/s 2 (22) (e) is taxed in the hands of the recipient at the applicable marginal rate. The taxability of deemed dividend in the hands of the recipient has posed a serious problem of the collection of the tax liability and has also been the subject matter of extensive litigation.

Proposed to delete the Explanation to Chapter XII-D occurring after section 115Q of the Act
Now DDT chargeable u/s 115-O also include dividend u/s 2 (22) (e) in the hands of company @

30% (without gross-up).

Tax neutral transfers

Section 47 provides for certain tax neutral transfers, which includes the transfer of capital assets between the wholly owned subsidiary company and its holding company.

However, no corresponding provision was available in statute book in section 56 under the head “Income from Other Source”.

Accordingly, in order to further facilitate the transaction of money or property between a wholly owned subsidiary company and its holding company, it is proposed to amend the section 56 so as to exclude such transfer from its scope.

This amendment will take effect, from 1st April 2018 and shall accordingly, apply in relation to the transaction made on or after 1st April 2018.

Proposed DDT structure –

Dividend covered u/s 2 (22) (a) to (d)	DDT @ 15% (with grossing up)
Dividend covered u/s 2 (22) (e)	DDT @ 30% (without grossing up)

Quoting of PAN

It is proposed to use a PAN as Unique Entity Number (UEN) for non-individual entities which enter into a financial transaction of an amount aggregating ₹ 2,50,000 Lakh or more in FY.

In order to link the financial transactions with the natural persons, it is also proposed that the managing director, director, partner, trustee, author, founder, Karta, chief executive officer, principal officer or office of such entities shall also apply for PAN u/s 139A.

Penalty for failure to furnish statement of financial transaction or reportable account u/s 285BA

Penalty	Existing Penalty	Proposed Penalty
Failure to furnish statement of financial transaction or reportable account within the prescribed time	□ 100 / day	□ 500 / day
Failure to furnish the statement of financial transaction or reportable account within the period specified in the notice	□ 500 / day	□ 1,000 / day

These amendments will take effect from 1st April 2018.

ICDS

Recent judicial pronouncements had raised doubts about the legitimacy of the notified ICDS.

In order to regularise the compliance with the notified ICDS by a large number taxpayer so as to prevent any further inconvenience to them, this Union Budget has proposed many amendments in the existing law and inserted new sections for smooth compliance with the ICDS.

It is proposed to bring the amendments retrospectively with effect from 1st April 2017 i.e. the date on which the ICDS was made effective and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Major Indirect Taxation aspects of the Finance Bill, 2018

Amendments to the Customs Act, 1962

- Scope of Customs Act amended to include any offence or contravention committed thereunder outside India by any person

- Definition of term “assessment” and “re-assessment” has been expanded significantly to include factors such as classification, valuation, exemption or concession, quantity, weight & measure, origin and any other specific factor which impact the computation of Customs duty.
- The limit of ‘Indian Customs Waters’ into the sea from the existing ‘Contiguous zone of India’ has been extended to the ‘Exclusive Economic Zone (EEZ)’ of India.
- Verification of self-assessed imported goods shall be based on a risk-based selection Criteria.
- Provisional assessment of duty would also cover export consignments.
- Provision to exempt goods imported for repair, further processing of manufacture from payment of Customs Duty introduced, similar provisions inserted for re-import of exported goods as well.
- Pre-notice consultation to be held with assessee in cases not involving collusion, willful mis-statement, suppression before issuing of demand notice.
- Provision for issuance of supplementary show-cause notice introduced subject to specified timelines and circumstances.
- Adjudication of notices to be completed within prescribed timelines
 - o 6 months for notices issued under normal limitation period
 - o 1 year for cases involving collusion, willful mis-statement, suppression. Time limit extendable up to 6 months / 1-year subject to approval from the higher authorities.
- Proceedings of a show-cause notice shall be deemed to be concluded if adjudication not completed within specified prescribed timelines
- Definition of “Advance Ruling” expanded to cover subjects beyond the mere determination of duty.
- Advance Ruling can now be obtained in respect of taxes apart from duties either under Customs Act or any other law for the time being in force.
- Time limit to pronounce Advance Ruling reduced from 6 months to 3 months
- Customs authorities or applicant authorized to file appeal against a ruling passed by the Advance Ruling authorities within 60 days from the date of communication of the ruling - extendible up to 30 days.

- Presentation of Bill of entry/Shipping Bill/Bill of export can also be made through Customs
- Automated System for import and export of goods
- Provision for advance payment of duty under Electronic Cash Ledger introduced
- Audit provisions introduced under the Customs Act
- New Section inserted regarding a reciprocal arrangement for exchange of information between India and any other country in connection with specified Customs matters.
- Social Welfare Surcharge (SWS) introduced, as Customs duty, on all imported goods:
 - o 3% on import of Petrol, HSD, Silver and Gold
 - o 10% of all other imported goods (except goods which were hitherto exempt from EC and SHEC) Ad-valorem rate of SWS will be on the aggregate of Customs Duty (excluding IGST, GST compensation cess, Anti-Dumping Duty, Safeguard Duty, etc.)- essentially on BCD.
- BCD rationalization at 7.5% for various Refractory items.
- Motor Spirit and Petroleum Products
 - o Basic Excise duty on manufacture of Motor Spirit and HSD reduced by Rs. 2/- per litre
 - o Road cess of Rs. 6 per litre on petroleum products abolished
 - o Road and Infrastructure Cess (R & I Cess) on petroleum products of Rs. 8 per litre Introduced.
 - o Additional Duty of Customs levied on import of Motor spirit and HSD abolished.

Major Rate Changes in Customs

Description	Existing BCD Rate	Proposed BCD Rate	Future Price Indicator
Automobiles			
Specified Radial tyres (Bus and Truck)	10%	15%	Costlier
Specified parts of motor vehicles	7.5% - 10%	15%	Costlier
CKD parts of motorized four and two Wheelers	10%	15%	Costlier
CBU Import of Motor vehicle	20%	25%	Costlier
Diamond and Precious Stones			
Specified Diamond	2.5%	5%	Costlier
Coloured gemstones	2.5%	5%	Costlier
Capital Goods and Electronics			
PCBA for chargers of Mobile Phones	Nil	10%	Costlier
Silica (used for Telecom / optical fibre cables)	Nil	5%	Costlier
Specified Parts for Mfg. of Panels of LCD/LED TV	Nil	10%	Costlier
Solar tempered glass for Mfg. of solar cells	5%	Nil	Cheaper
Inputs for manufacture of PCBA or moulded plastics for chargers of Mobile Phones	Applicable Rate	Nil	
Specified Inputs for Manufacture of CNC Machine Tools	7.5%	2.5%	Cheaper
Electronic products			
Cellular mobile phones	15%	20%	Costlier
Specified parts and accessories of cellular mobile phones	7.5% - 10%	15%	Costlier
Smart watches	10%	20%	Costlier
LCD/LED/OLED panels and their parts	7.5% / 10%	15%	Costlier
Video games	10%	20%	Costlier
Watches and Clocks			
Watches and clocks including stopwatches and alarm clocks	10%	20%	Costlier
Footwear			
Specified footwear	10%	20%	Costlier
Specified parts of footwear	10%	15%	Costlier
Miscellaneous Items			
Specified Parts of Furniture	10%	20%	Costlier
Sunglasses	10%	20%	Costlier
Imitation jewellery	15%	20%	Costlier



Budget Musings



G. Natarajan

Having worked in the Central Excise Department for 10 years, the transformation of the Budget from indirect taxes point of view over a period of time brings out nostalgic memories.

In the early 90s, Budget would really be a fiscal festival in the department. All assesses would make a beeline to the Range Office to file their stock declarations. All units would be under physical control and those who wish to clear the goods during Budget can do so only under the physical supervision of Central Excise Officials. Pre budget stock taking would be undertaken for all units. Road patrol would be conducted day and night. All this was necessitated, as the trend was overall hike in excise duties

night. All this was necessitated, as the trend was overall hike in excise duties in every budget for many products, leading to attempts by some unscrupulous assesses to show their post budget clearances as pre budget clearances.

Slowly when the Excise duty rates were rationalised and stabilised the need for the above rigours has died down.

On the day of budget, we used to sit upto late in the night to receive the wireless messages read out from the Collectorate, containing the Budget Highlights. That would be the first source of official communication about budget changes.

The next source is the limited copies of Budget bulletin which would be sent through the customs officers working in Airports, to the nearby International Airport, which would be received either the

next day or second next day. The officer going from the division to collect the same would be the hero of the day. As soon as the Budget bulletin is received, only a selected few would have access to the same. They are those, who are supposed to be knowledgeable, who claim to be knowledgeable and those who are factually knowledgeable and everyone has to wait for their incisive analysis of budget changes.

With the advent of Service Tax in 1994, every year would be marked with introduction of more and more new services in the ambit of the levy, warranting understanding the scope of every service being brought under the levy. Many a times one would come to know that certain services exist in economy only after seeing imposition of levy of service tax on such services.



economy only after seeing imposition of levy of service tax on such services.

The year 2004 was a watershed one where the Cenvat Credit facility was extended across the board, among manufacturers and service providers. 2006 saw levy of service tax on import of service and introduction of Valuation Rules for service tax. 2007 saw the birth of works contract service, which had been a fodder of litigation for the next decade. 2012 was more scintillating, when the negative list based service tax levy, introduction of place of supply of provision of Rules, etc.

With the growth in technology as well as various simplification measures, Budget has slowly become less cumbersome, but as enticing as ever over the years. Though technology has made it possible that within hours of the presentation of Budget, all Budget documents could be accessed over internet, still the human brain needed at least the whole of the day and to briefly understand all provisions contained in the Finance Bill and various notifications and their ramifications.

Having lived with such adventurous moments of Budget for the last 25 years, the Budget of 2018 is a big disappointment from the indirect taxes side (barring Customs). The role of the Parliamentary legislation for GST has now become only ornamental, where the GST Council has become the all powerful body which only has to propose any legislative amendments to the Parliament, there is hardly any amendments on GST in this Budget. It is not known whether the GST council meetings held so far has not felt the need for any legislative amendments in GST law as there has been complete absence of any amendments in GST law in the Budget, sans the name change of CBEC into CBIC.

In the absence of any substantial changes in Excise and Service Tax, which have now become near extinct and extinct respectively, the Budget seems to be an empty container, to any one associated with indirect taxes.

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The Companies (Amendment) Act, 2017: Key Changes

The Companies Act, 2013 introduced significant changes relating to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection and corporate governance. The Companies Act, 2013 was first amended by the Companies (Amendment) Act, 2015 to address the immediate difficulties arising out of initial experience of the working of the Companies Act, 2013 and to facilitate 'ease of doing business'.

However, the amendments by the Companies (Amendment) Act, 2015 were not inadequate. Accordingly, Companies Law Committee was constituted under the chairmanship of Secretary, Ministry of Corporate Affairs, to examine the need for further amendments.

During its public consultation, the Companies Law Committee received over 2,000 suggestions. Based on the recommendations of the Committee, the Companies (Amendment) Bill, 2016 was drafted and introduced in Lok Sabha on March 16, 2016. The Bill was then referred to the Standing Committee on Finance on April 12, 2016. Based on the representations of Chambers of

Commerce and Industry and professional bodies, the Standing Committee on Finance submitted its Report November 30, 2016. The Companies (Amendment) Bill, 2017 was passed by Lok Sabha on July 27, 2017. The Bill received the assent of Rajya Sabha on December 19, 2017. The Bill got assent from the Honorable President of India on January 3, 2018.

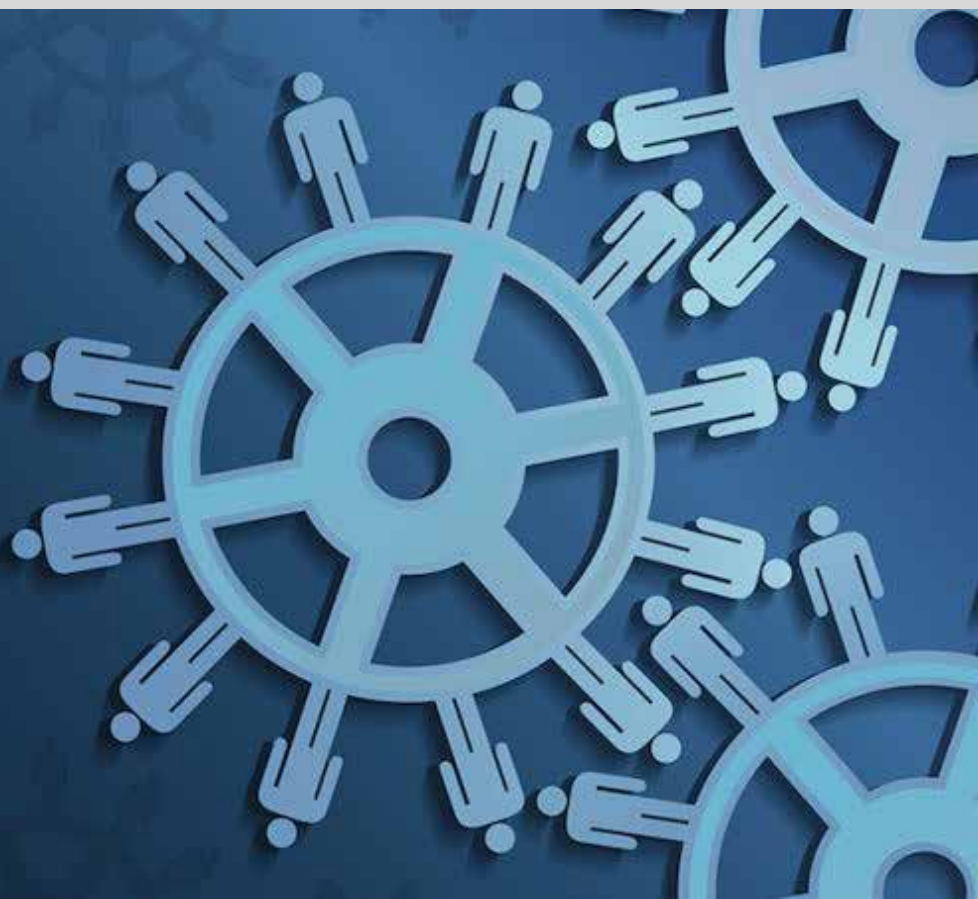
The amendments under the Companies (Amendment) Act, 2017, are broadly aimed at:

- (i) Addressing difficulties in implementation owing to stringent compliance requirements,
- (ii) Facilitating ease of doing business in order to promote growth with employment,
- (iii) Harmonisation with Accounting Standards, SEBI, 1992 and the regulations made there under, and RBI Act, 1934 and the regulations made there under,
- (iv) Rectifying omissions and inconsistencies in the Act,
- (v) Carrying out amendments in provisions relating to qualification and selection of members of NCLT and NCLAT in accordance with Supreme Court directions.

The Key Highlights of the Companies (Amendment) Act, 2017 are as follows:

- (i) The Companies (Amendment) Act, 2017 will have an impact on the group company structure and compliance procedures, as the definitions relating to ‘holding company’, ‘subsidiary company’, ‘associate company’ are amended. Holding company now includes ‘body corporate’ i.e. a company incorporated outside India. One of condition for determining a relationship with company as subsidiary company or associate company has been amended. The said definitions will have an impact on the compliance procedures and approval mechanism of Related Party Transactions, as the scope of related parties has been enhanced.
- (ii) The Companies (Amendment) Act, 2017, in total, amends 14 definitions in the Companies Act, 2013. In addition to the above-mentioned definition (i.e. Holding Company, Subsidiary Company, Associate Company), the Companies (Amendment) Act, 2017 amends definition relating to Cost Accountant, Debentures, Financial Year, Interested Director (definition is deleted), Key Managerial Personnel, Free Reserves, Public Company, Public Financial Institutions, Related Party, Small Company, Turnover;

- (iii) The disclosures in Prospectus under the Companies Act, 2013 have been linked to the disclosures in Prospectus under the SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009. The repetitive disclosures are eliminated by the Companies (Amendment) Act, 2017;
- (iv) The procedure for incorporation of companies has been smoothened w.r.t. the name approval and documentation for company incorporation under the Companies (Amendment) Act, 2017;
- (v) Section 42 of the Companies Act, 2013 (relating to ‘Issue of shares on private placement basis’) has been entirely substituted under the Companies (Amendment) Act, 2017. The amendment will have an impact on both – private companies and public companies;
- (vi) Section 53 of the Companies Act, 2013 prohibited issuance of shares at a discount. The Companies (Amendment) Act, 2017 now allows companies to issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan such as resolution plan under the Code or debt restructuring scheme.
- (vii) The Companies (Amendment) Act, 2017 introduces a completely new provision w.r.t. the maintenance of the “Register of significant beneficial owners in a company”. Pursuant to the said provisions, every individual (whether acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India) holding beneficial interests, of not less than 25% in shares of a company or the right to exercise, or the actual exercising of significant influence or control over the compa-





ny shall make a declaration to the company. The declaration shall specify the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed;

(viii) Based on the operational and compliance issues faced by the corporates, the Companies (Amendment) Act, 2017 has amended the provisions relating to board meetings and shareholders' meetings;

(ix) The Companies (Amendment) Act, 2017 has amended provisions relating to Corporate Social Responsibility. The amendment particularly relates to its applicability and constitution of Corporate Social Responsibility;

(x) The Companies (Amendment) Act, 2017 has amended the definition of 'resident director'. It provides for clarity in applicability and role of Resident Director and Independent Director. 'Pecuniary relationship' in relation to the independent directors has been further elaborated in the Amendment Act;

(xi) The entire section relating to 'Loans to Directors' (Section 185) under the Companies Act, 2013 is being substituted by way of the Amendment Bill. The Government has introduced adequate checks and balances by way of approval process and for enabling 'loans to directors', in certain cases;

(xii) Section 197 of the Companies Act, 2013 required approval of the company in a general meeting for payment of managerial remuneration in excess of 11% of the net profits. The Companies (Amendment)

Act, 2017 now requires that where a company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, for such payment of managerial remuneration shall be obtained by the company before obtaining the approval in the general meeting. The requirement of Central Government approval is being replaced by such requirement of the approval of the shareholders, secured creditors and non-convertible debenture holders, as the case maybe. The Companies (Amendment) Act, 2017 also mandates the requirement that the Statutory Auditor of the company to report in its Auditors Report on: (i) Compliance of the provisions of managerial remuneration and (ii) Whether remuneration paid to any director is in excess of the prescribed limits;

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(xiii) Section 247 of the Companies Act, 2013 prohibited a registered valuer from undertaking valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets. The Companies (Amendment) Act, 2017 now prohibits a registered valuer from undertaking valuation of any asset in which he has direct or indirect interest or becomes so interested at any time during three years prior to his appointment as valuer or three years after valuation of assets was conducted by him.

(xiv) Section 403 of the Companies Act, 2013 (relating to 'fee for filing') has also been amended by the Companies (Amendment) Act, 2017. Pursuant to the amendment, where any Annual Return and Financial Statements is not submitted or filed within the prescribed period, then the same can be submitted or filed after the expiry of the period, on payment of prescribed additional fee, which shall not be less than Rs. 100/- per day and different amounts may be prescribed for different classes of companies. In due course, the Government may prescribe different fees for One Person Company, Small Companies, Private Companies – which are not small companies, public companies, etc. The Companies (Amendment) Act, 2017 further provides where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under the Companies Act, be submitted, filed, registered or recorded, as the case may be, on payment of a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee as applicable;

(xv) Fraud: The Companies (Amendment) Act, 2017 amends penal provisions relating to fraud. Pursuant to Amendment Act, any person who is found to be guilty of fraud involving an amount of at least Rs. 10 lacs or 1% of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. Pursuant to the Companies (Amendment) Act, 2017 where the fraud involves an amount less than Rs. 10 lakh rupees or 1% of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to Rs. 20 lakh or with both. The Companies (Amendment) Act, 2017 has amended the penal provisions relating to fraud and has linked the same with the quantum of fraud or public interest involved. Such provisions were not there in the extant provisions of Companies Act, 2013.

Conclusion:

The Central Government has invested considerable efforts and time and ensured pro-active approach in introducing and passing of the Companies Amendment Bill, 2017 in both Houses of the Parliament. The suggested amendments aims at strengthening the Corporate Governance standards in India, initiate strict action against defaulting companies and at the same time improve ease of doing business in India. Taking into account the efforts of the Government w.r.t. Companies (Amendment) Act, 2017, in my view,

these would be the last tranche of significant amendment to the Companies Act, 2013. Based on the provisions of the Companies (Amendment) Act, 2017, the Ministry of Corporate Affairs will amend the corresponding Rules framed under the Companies Act, 2013.



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Tax Treatment of Leave Encashment: Special Reference to Public Sector Employees

The regular income of the employee comes down as and when he /she retire from service. The same is applicable to everyone irrespective of service he rendered for the nation whether in Government, public sector enterprises, autonomous bodies and other private sectors. The sources of income after retirement are Pension and the returns earned

from the amount he receives as retirement benefit. Taking the fact into consideration tax benefit is granted to retirement benefits to the employees of all sectors .Some of the important retirement benefits and tax reliefs provided thereon are categorized as hereunder;



T.G HARIDAS

[The author is retired as Manager from Canara Bank in 2016 and has approached the Hon'ble High Court of Kerala against the anomalies briefly discussed in this article]

SI No	Category	Amount of exemption	Relevant Provisions under Income Tax Act	Remarks
1	Provident fund with interest	Complete Exemption	IT ACT 1961	SPF/PPF/ with some service condition
2	Gratuity	Rs. 10,00,000/=	Sec. 10(10)(I), (ii),(iii)	Under revision
3	Commutation of pension	Complete Exemption	Sec 10 (10A)	Subject to certain percentage and mortality chart
4	Voluntary retirement compensation	Rs. 5,00,000/=	Sec 10(10C)	Subject to approval Of scheme
5	Leave encashment	i. Without any limit for Government servants (Central & state Government) ii. Rs3000000/= for other employees	Sec. 10(10AA) (i) & (ii)	





In this article, the author's humble attempt is to analyze the constitutional conformity, legal sustainability and propriety of the exemption provided on leave encashment the Public Sector Employees receive at the instance of his/her retirement.

Brief history of exemption on Leave Encashment on retirement:

The tax exemption for leave encashment traces root in Finance Bill, 1982. The exemption was introduced in utmost conception of its social necessity and the then Finance Minister, Sri. Pranab Mukharjee in his budget speech had introduced the provision as “a measure of relief deserved for those at the end of their working lives”.

The Section 10(10AA) originally inserted as per Finance Act, 1982 read as follows;

(10AA) (i) any payment received by an employee of the Central Government or a State Government as the cash equivalent of the leave salary in

respect of the period of earned leave at his credit at the time of his retirement on superannuation or otherwise;

(ii) any payment of the nature referred to in sub-clause (i) received by an employee, other than an employee of the Central Government or a State Government, in respect of so much of the period of earned leave at his credit at the time of his retirement on superannuation or otherwise as does not exceed six months, calculated on the basis of the average salary drawn by the employee during the period of ten months immediately preceding his retirement on superannuation or otherwise, or thirty thousand rupees, whichever is less:



Provided that where any such payments are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from income-tax under this

sub-clause shall not exceed thirty thousand rupees:

Provided further that

“ Provided also that the Central Government may, having regard to the maximum amount which may for the time being be exempt under sub-clause (i), increase, by notification in the Official Gazette, the limit of thirty thousand rupees, for all the three purposes for which it has been mentioned in the foregoing provisions of this sub-clause, up to such maximum amount:

Provided also that
Thus though no exemption is granted for government employees and other employees for leave encashment during the period in service, Section 10(10AA) provides for exempting the cash equivalent of the leave salary at the time of the retirement on superannuation or otherwise in respect of the employees of the central government and state government completely and for other employees, subject to the restrictions therein. The central government had duly been raising the upper limit for exemption in respect of the other employees till 2002 in consonance with the

stipulations of proviso to Section 10(10AA). For easy analysis, the summary of comparison of leave encashment bestowed with other employees [under sub clause (ii)] by virtue of periodical notifications and the salary of the central government employees [highest salary of the central government employee at the time of notification is adopted for reference] is tabulated hereunder.



List of notifications increasing the upper limit under sub-clause (ii); reference to the salary of govt servants

DATE	CPC & PAY BAND	BASIC	DA + SALARY FOR 8 MONTHS (X8)	Tax exemp- tion [Limit of encashment]	Ref no	DATE
1.04.82	3d	800 – 1200		25500	BUDGET	1/04/82
1.07.86	4th/ S34	9000	2% 9180 73440	73400	SO 553 E	08/06/88
1.01.87	3d	9000	5% 9450 75600	75600	SO 553 E	08/06/88
1.07.87	4th/ S34	9000	8% 9720 77760	77600	SO 553 E	08/06/88
1.01.88	4th/ S34	9000	11% 9990 79920	79920	SO 553 E	08/06/88
1.04.95	4th/ S34	9000	81% 16290 130320	130320	S.O.249(E)	26/3/1996
1.04.95	4th/ S34	9000	88% 16920 135320	135360	S.O.249(E)	26/3/1996
1.07.97	S-34	30000	30000 X 8 240000	2,40,000	SO. 1015(E)	27/11/1998
1.04.98	5th S-34	-d0-	30000 x 10 @ 300000	3,00,000	123	31/5/2002

• (Chart is without HRA and any other grade pay) @ 10 months' salary as per 5th pay commission)

The powers conferred to the Central Government for increasing the upper limit of leave encashment at the time of retirement/superannuation in respect of the other employees by sub-clause (ii) of clause (10AA) of section 10 of the Income-tax Act, 1961 (43 of 1961) was not exercised after the year 2002, even though the salary invariably in all sectors including the government sector has been mounting up considerably, upper limit of exemption for the leave encashment at retirement/superannuation in respect of the other employees has been kept frozen unreasonably and unjustifiably against the proviso to Section 10(10AA) empowering the central government to issue notifications increasing the upper limit “having regard to the maximum amount which may for the time being be exempt under sub-clause (i)”.

Presently, the maximum eligible tax benefit for Government employee is approximately Rs. 26,25,000/= whereas, the other employees are confined in an upper limit of Rs. 3,00,000/=.

Hike in exemption; Leave Encashment vs. Gratuity

Section 10(10) of the Income Tax Act, 1961 speaks about the exemption of gratuity on death/retirement of employees. For reference, Section 10(10) of the Income Tax Act, 1961 is extracted as hereunder;

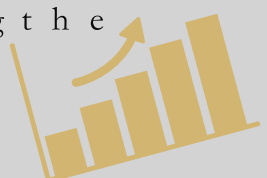


Section 10 (10) (i) any death-cum-retirement gratuity received under the revised Pension Rules of the Central

Government or, as the case may be, the Central Civil Services (Pension) Rules, 1972, or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority or any payment of retiring gratuity received under the Pension Code or Regulations applicable to the members of the defence services ;

(ii) any gratuity received under the Payment of Gratuity Act, 1972 (39 of 1972), to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act ;

(iii) any other gratuity received by an employee on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependants on his death, to the extent it does not, in either case, exceed one-half month's salary for each year of completed service, calculated on the basis of the average salary for the ten months immediately preceding the month in which any such event occurs,



“subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government :

Provided that where any gratuities referred to in this clause are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from income-tax under this clause shall not exceed the limit so specified :

Provided further

The provision is referred to herein for its resemblance with Section 10(10AA) in wordings and allocation. As in the case of Section 10(10AA), Section 10(10) also empowers the enhancement of upper limit by Central Government

“having regard to the limit applicable in the relevant behalf to the employees of that Government.

Pertinently, the central government has fixed the upper limit under Section 10(10) is fixed at Rs. 10,00,000/= after the increase as per Notification No. 43/2010 dated. 11-06-2010.

The above would show the failure of the Central Government in exercising the powers vested with it as per proviso to Section 10(10AA) and discrimination in giving separate treatment to various provisions providing for fixation of upper limits under the same criteria.

Classification of employees under Section 10(10AA); A Constitutional Analysis:

Under Section 10(10AA), the employees are classified into two; Government employees –for whom the leave encashment is completely exempt- and other employees –for whom exemption is subject to the limits enshrined under the provision and further subject to the upper limit of Rs. 3,00,000/=.

A bare perusal of the provision would show that the classification of central and state government employees on one hand and other employees including the private sector employees in respect of whom the government has hardly any regulatory authority and the public sector employees who are duly governed by the mandates and stipulations of various governing authorities directly or otherwise constituted and functioning under the government directives.

The classification whereby the public sector employees who, by virtue of its duly regulated working conditions are to be treated at par with the government employees, are placed along with the private sector employees is ultravires and unconstitutional.

The above position was upheld by the Apex Court in a catena of rulings, including the lex classicus Indira Sawhney vs. Union of India [AIR 1993 SC 477] and observing thus;

“there is equality only among equals and to equate unequals is to perpetuate inequality”



Litigation

Perusal of this author has revealed only a limited numbers of litigations against this anomaly, most of which apparently failed to touch the core issue in depth. DOT employees who opted for BSNL has taken this matter at the time of their retirement, The Authorities apparently resolved the issue vide 1001/04 2011-12/taxation/BSNL/LE/196 DT04.05.2012 without referring to the IT department for guidance and thereby burying the grave anomaly from the notice of competent authorities. The subject matter was brought before various Appellate Tribunals and notably, the Income Tax Appellate Tribunal, Delhi Bench, Delhi has in a catena of decisions, including, in *Ram Kanwar Rana vs. ITO Ward 3, Hisar* [ITA No. 1307/Del/2016 Order dated 16.06.2016] observed thus;

"10. I have heard the rival submissions and perused the relevant material on record. The ld. AR submitted that there is not much difference in the language of section 10(10)(i) and 10(10AA)(i) and the view taken in respect of arrears of gratuity u/s 10(10) should be followed for arrears of leave SB Kalidhar encashment u/s 10(10AA). The ld. DR supported this proposition. As both the sides are consensus ad idem on the position that the view taken in the context of section 10(10) as applicable to leave gratuity be followed here in the context of section 10(10AA) in the context of leave encashment, I am desisting from independently examining the later provision. In view of the fact that I

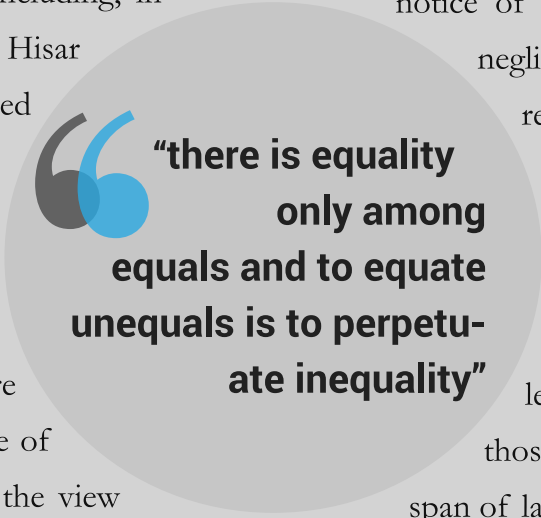
have held the assessee to be entitled to exemption u/s 10(10)(i) in respect of arrears of gratuity, following the same, I extend the benefit of exemption u/s 10(10AA)(i) in respect of arrears of leave encashment. This ground is allowed."

Conclusion

All major trade unions are having its units in Government organizations, public sector undertakings, and private sectors. No effective efforts were taken by them for highlighting this factor and rectifying the disparity for last 15 years.

The intention of this article is to bring to the notice of all concerned that how a negligent action which is not reviewed timely seize the legislative intention and the prevailing public interest. Further action in this matter may lead to a solution except those who had retired for a span of last fifteen years.

"The blunders of yesterday will reform as custom of today and as a Prasthanatray of tomorrow" would



"there is equality only among equals and to equate unequals is to perpetuate inequality"



How GST Impacts Transactions between Employer & Employee?



Yatin Goyal

GST is applicable on ‘Supplies’ of Goods and Services. The term ‘supplies’ has been defined at Section 7 of the Central Goods and Services Tax Act, 2017 (“CGST Act”) which includes transactions made for a consideration.

However, in cases referred at Schedule I to the CGST Act, transactions are treated as supplies even if the consideration is absent which includes supplies between related persons when such supplies are made in the course or furtherance of business.

In this context, it would be read with the explanation to Section 15 of the CGST Act which provides that employer and employee will be deemed to be ‘related persons’.

Accordingly, supplies by employer to employees would be liable to GST even though these supplies are made without consideration since they are considered as related persons (except gifts up to Rs 50,000 which has been explained at the end of this Article).

However, Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.



SUPPLIES BY EMPLOYER TO EMPLOYEES WOULD BE LIABLE TO GST EVEN THOUGH THESE SUPPLIES ARE MADE WITHOUT CON- SIDERATION SINCE THEY ARE CONSIDERED AS RELATED PERSONS

Hence, transactions which are excluded from the levy of tax for transactions between employee and employer are:-

- 1. Supply of services by employee to employer in the course of employment.**
- 2. Gifts by Employer to employee not exceeding Rs 50,000 in a Financial Year.**



Based on the provisions, we will now discuss some Employee-Employer Transactions in brief:-

A. Allowances v Reimbursements on Actual – Allowances like Transport Allowance, Uniform Allowance etc. are part of the employment contract. These are in lieu to the services provided by the Employee to his employer & hence the same will not be liable to GST.

With respect to reimbursements, employee has incurred costs which are expected to be reimbursed by the employer since the costs have been incurred on the behalf of the Employer. Now, the employee will claim expenses from the employer & the question here arises that, whether the employer is able to take ITC on that Bills or not.

Different cases are possible now:-

- Reimbursement of expenses relating to goods / services taken from registered supplier and the GST Number of the employer is quoted on the invoice – Vendor to charge tax (if taxable supplies) and employer entitled to claim credit subject to input tax credit restrictions referred to in Sec. 17(5).
- Reimbursement of expenses relating to goods / services procured from registered supplier and the GST Number of the employer is not quoted on the invoice – Vendor to charge tax (if taxable supplies). And the employer is not entitled to take ITC of that Invoices.
- Reimbursement of expenses relating to goods / services procured from unregistered supplier – Employer is required to pay tax under reverse Charge & the employer is entitled to take credit subject to input tax credit restrictions referred to in Sec. 17(5).

B. Gifts – Companies have a policy of giving gifts to employees. These could be Gifts on Birthday, Incentives, Completion of specified period of service, Festivals etc. If these gifts are provided in cash – No tax, since payment in cash is not a supply and hence not liable to GST.

Non Cash gifts have been as below:-

- Gifts forming part of the Employment Contract – If the company is under an obligation to provide gifts based on the terms mentioned in the employment contract say Rs 5,000 worth gift will be given on annually. The gift is consideration for the services rendered by employee and hence not liable to GST based on Schedule III (treated as a part of CTC).
- Gifts not forming part of the Employment Contract – If the company has a policy of providing gifts to employees like sales incentive, etc. as a Gratuitous Activity (i.e. not a part of CTC), these will be treated as supplies to employees without consideration and attract GST.
- Please note that Gifts will be liable to GST only if the value of such taxable gifts exceed Rs 50,000 in a

year.

Now, our next question arises, whether the employer is entitled to take credit of such gift whose value is more than Rs.50,000/- ?

- The answer is a Big No. As it is specifically mentioned in section 17(5), that the credit is blocked for Gifts, irrespective of its value.

The actual wordings are- “goods lost, stolen, destroyed, written off or disposed of by way of gift or free Samples”

C. Notice Pay Recovery – Employees who resign from their job are obliged to serve notice period as mentioned in the employment contract. If the employee does not serve such notice period, the salary of the unserved portion of notice period is recovered by the employer.

Eg. If the employer has to pay a salary of Rs 50,000 for a month and the unserved notice period is 15 days then the employer will recover Rs 25,000 from the employee as Notice pay Recovery.



Now, this notice pay recovery of Rs.25,000/- is saving in expenses by the employer (income to the employer) i.e. consideration to the employer for “not serving the notice period”, which was employees’ contractual obligation & hence, the transaction is liable to GST.

D. Certain Benefits & Deduction at concessional rate from salary towards benefits provided. Benefits given by employer to employee are a consideration for services offered by the employee to the employer.

Eg. Food provided by the employer to all the employees is exempt from GST.

But if the supply is at the discounted or concessional rate to employees like Food provided to employees at concessional rate and the amount is



recovered from their salary is taxable under GST & its valuation is to be done at “Open market Value” to discharge the tax.

Based on the above, we can observe that w.r.t. employer employee transactions, there are so many type of cases but not a single answer in “Yes” or “No”. All transactions need to be examined individually to understand that the tax impact as well the credit eligibility.

"Yatin Goyal is currently pursuing The Chartered Accountancy course & along with that, he is undergoing Articleship in J.C. Bhalla & Co."

“IF THE SUPPLY IS AT THE DISCOUNTED OR CONCESSIONAL RATE TO EMPLOYEES LIKE FOOD PROVIDED TO EMPLOYEES AT CONCESSIONAL RATE AND THE AMOUNT IS RECOVERED FROM THEIR SALARY IS TAXABLE UNDER GST & ITS VALUATION IS TO BE DONE AT “OPEN MARKET VALUE” TO DISCHARGE THE TAX



CASE BRIEFS

Cenvat Credit on GTA service availed for transport of goods from place of removal to buyer's premises is not admissible w.e.f 01.04.2008

Supreme Court held that cenvat credit on Goods Transport Agency- GTA service, availed for transport of goods from the place of removal to buyer's premises is not admissible from 01.04.2008.

Supreme Court- COMMISSIONER OF CENTRAL EXCISE SERVICE TAX v. M/s Ultra Tech Cement Ltd- CIVIL APPEAL NO. 11261 OF 2016- dt. 01.02.2018

Read More

Comments : This Judgment will have a great impact on pending cases on GTA. So far, the assessee were relying on Circular 96/7/2007 dated August 23, 2007, for availing credit from place of removal to customer's place. The relevance of circular has been reduced till period of amendment to 'input service', ie, 01.04.2008. In case of door delivery, the 'place of removal' would be the customer's premise has not been addressed by the Judgment.

Only Registered Promoter is Liable to Pay Tax under Kerala Lotteries Act: SC

The Supreme Court of India has held that only Registered Promoter is Liable to Pay Tax under the Kerala Tax on Paper Lotteries Act, 2005.

Division bench held that if under Section 6 of the Act the assessee, not being a promoter, is not liable to pay tax, and they do not see how the definition of 'promoter', who alone is taxable under the Act, can be expanded

by use of the expression 'any other person' appearing in other provisions of the Act.

Supreme Court of India - CIVIL APPEAL No(s). 137 OF 2009 – dated 06.12.2017

Read More

Comments : A perusal of judgment shows, the judges have gone by the literal coverage of persons under definition of 'Promoter' and has followed the principles of literal interpretation as settled by Judgments as CIT Vs Ellis C Reid, Partington Vsl AG 1869, LR 4 HC 100, Cape Brandy Syndicate Vs. IRC 1921 1 KB 64 etc

HC Stays Service Tax Demand made Post-GST Rollout

High Court stayed a show cause notice issued by the department demanding service tax from the petitioner M/s Mascot Entrade Pvt Ltd for want of jurisdiction after the implementation of the new Goods and Services Tax (GST) and omission of Entry 92C from List 1/VIIth Schedule to Constitution of India

Gauhati High Court - WP (C) 7729 / 2017 – dated 13-12-2017

Read More

Comments: Any new tax legislation would protect the interest of revenue to collect the duty, tax, interest, penalty etc accrued under the repealed laws through a saving clause. Section 174 of CGST Act, 2017, dealing with Repeal and Saving, will have a major role in future litigations regarding past liabilities under Excise, VAT and Service tax laws.

A Service not being delivered or used outside India but provided for the Benefit of Foreign Entity, can be termed as Export of Service: Rajasthan HC

High Court held that a service not being delivered outside India and not used outside India but provided for the benefit of foreign entity, can be termed as export of service and therefore, the service provider is not liable to pay Service Tax on the same.

Rajasthan High Court - D.B. Central/Excise Appeal No. 22 / 2016 - Commissioner Central Excise Commissionerate, Jaipur, vs National Engineering Industries Ltd, - dated 07/12/2017

Read More

Comment : The export benefit is given to the appellant after examining the issue whether presence of branch of a subsidiary of service recipient in India would take away export benefit when the actual contract for provision of service is between the service provider abroad and recipient in India.

Delhi High Court - FASHION DESIGN COUNCIL OF INDIA vs GOVT. OF NCT OF DELHI AND ANR. - W.P.(C) 2563/2013 - dated 22.12.2017

Read More

Comments : The challenge in the writ was to amendment to Explanation 2 to Section 2 (m) of Delhi Entertainment and Betting Tax Act whereby sponsorship amounts received for conducting fashion show events were made liable for levy of Entertainment tax. The views of Hon. Ravindra Bhat. J is to the effect that the Explanation is not ultravires since the amendment for taxing the sponsorship amounts has been made only to definition and not to the charging section. On the

contrary Hon. Deepa Sharma J. holds that the purposive interpretation would prevail and hence tax is liable on sponsorship amounts received for conducting the fashion event.

Inability to pay Pre-Deposit can't be ground for Invoking Writ Jurisdiction: Madras HC

High Court held that the inability to pay pre-deposit of 7.5 percent before the Commissioner (Appeals) cannot be a fit ground for invoking writ jurisdiction under Article 226 of the Constitution of India.

Madras HC- Sunmac Enterprises vs. The Commissioner of Central Excise- WP No.285 of 2018 & WMP.No.340 of 2018

Read More

Comments : Writ petition was dismissed as not maintainable on grounds as precedent not considered by adjudicating authority, in case of assessee for prior period tribunal has given partial relief and inability to make predeposit.

Excise Dept. cannot confiscate a Vehicle merely for the reason that it was used to Transport Liquor: Delhi HC

Quashing the orders of the Financial Commissioner and the Excise Commissioner, High Court held that the mere fact that the vehicle was used to transport liquor would not be sufficient for confiscating the same if the owner of the vehicle is able to establish that he/she was not involved in the offence.

Delhi High Court - DR. VARUNVEER vs FINANCIAL COMMISSIONER, DELHI AND ORS - W.P.(C) 574/2017 - dated 13.12.2017

Read More

Letter allowing Provisional release u/s 110A of the Customs Act, 1962 is Appealable: Bombay HC

High Court held that the Customs, Excise & Service Tax Appellate Tribunal has the jurisdiction to entertain an appeal against a letter allowing provincial release under Section 110A of the Customs Act, 1962.

Bombay High Court - The Commissioner of Customs vs S.S. Offshore Pvt. Ltd. - CUSTOMS APPEAL (L) NO. 51 OF 2017 - dated 21.12.2017

Read More

Comments : The Judgment distinguishes between a final order and an interim order which decides competing interest. The distinction between administrative order and quasi judicial order as culled out in Ak Kraipak Vs . Union of India has been relied on to hold that a letter under Section 110A is an appealable order.

‘Radio Taxi’ Operators Not Liable to pay Service Tax on services rendered to Corporate Clients: CESTAT

Following precedents, CESTAT held that providing radio taxis to corporates on rental basis will not fall under ‘Rent a Cab service’

CESTAT Delhi - Appeal No.ST/52012/2014 - M/s CST Delhi vs M/s Chanson Car At Call Pvt Ltd – dated 03.01.2018

Read More

Comments : The appeal pertains to period prior to 01.07.2012, when the relevant criteria for taxability was the scope and meaning of ‘Rent a Cab’.

Police Dept Not Liable to pay Service Tax under the head ‘Security Agency Services’: CESTAT

CESTAT held that service tax cannot be imposed on the State Police department since it cannot be considered to be a “person” engaged in the business of running security services for the purpose of the Finance Act, 1994.

CESTAT Delhi - Supdt. of Police vs CCE&ST, Jaipur-I -S. T. CoD Nos. 50987 & 50997 of 2017 – dated 02.01.2018

Read More

Comments : The case has been decided on basis of precedent in case of same assessee that supply of police for security is part of sovereign function and police force is an agency of government and hence not falling under the scope of ‘person’

Service Tax cannot be levied on Brand Promotion Fee till 2010: CESTAT grants Relief to Rajasthan Royals Player

While allowing relief to former Rajasthan Royal’s player, Swapnil Asnodkar, CESTAT held that no service tax is leviable on Brand Promotion Fee.

CESTAT Mumbai - APPEAL NO. ST/88043/13, ST/CO/91173/13 – Commissioner of Customs & Central Excise, Goa vs Shri. Swapnil Asnodkar -dated 10/11/2017

Read More

Allahabad High Court - WRIT TAX No. - 779 of 2017 - M/S Ramdev Trading Company And Anr vs State Of U.P.

No Service Tax on Documentation Services provided by Automobile Dealers: CESTAT

CESTAT held that the documentation services provided by automobile dealers would not attract service tax as the same was not providing on behalf of the financial institutions or banks.

Delhi CESTAT- M/s Marudhara Motors v. CCE- Appeal No. ST/58662/2013- [DB]- dated 01.12.2017

Read More

Screening of Films in Multiplex on Revenue Sharing basis would not attract Service Tax: CESTAT

CESTAT held that Service Tax is not payable for screening of films in multiplex on a revenue sharing basis.

The bench noticed that the appellant have disclosed the gross amount received from sale of tickets or exhibition of films in their profit and loss account on the credit side and have shown the amounts paid to the distributors on the debit side under the head film software expenses.

CESTAT Allahabad - APPEAL No.

ST/70563/2016-CU[DB] - M/s PVS Multiplex India Pvt. Ltd vs Commissioner of Central Excise, Meerut-I – dated 29/08/2017

Read More

Comments : The order would show that the entire receipts from screening has been treated as exempted from service tax . The circular dated 13.12.2011 deals with aspect that all revenue sharing arrangements are not exempted from service tax . The taxability depends on the nature of transaction and that each case may be

looked into on its merits and decision be taken on case to case basis. The order classifies the activity as screening of movies, which is exempt. However, the aspect of transfer of copyright involved and whether consideration received by the distributor is towards transfer of such copyright is not dealt in the order.

Municipal Co. is Liable to pay Service Tax on Renting of Immovable Property even If Shops were Rented out as per a Govt Scheme: CESTAT

CESTAT held that the Municipal Corporation is liable to pay service tax while renting out an immovable property according to a scheme introduced by the Government.

CESTAT Delhi - M/s.Municipal Corporation vs CCE, Raipur - Service Tax Appeal No.59970/2013 (DB) – dated 27.12.2017

Read More

Comments : The order is on premise that , although the appellant is constituted under an Act and would qualify as local authority, in absence of any specific exemption, they are liable to pay service tax. The order would apply to services provided by similar such bodies to various persons.

No Service Tax on Retention Fee charged by Hospitals: CESTAT

CESTAT held that service tax cannot be levied on retention fee of hospitals under 'Business Support Service'.

The Tribunal rejected the contention of the depart-

The Tribunal rejected the contention of the department that the doctors are in business or commerce and are provided with infrastructural support.

CESTAT Delhi - M/s Sir Ganga Ram Hospital vs CCE Delhi-I - Appeal No. ST/1844/2010 – dated 06.12.2017

Read More

Comments : There are several potential issues in case of arrangements between hospitals and various service providers. This particular order is clear on aspect that the charges retained by hospital for providing support services to consultant doctors is not taxable under 'BUSINESS SUPPORT SERVICE' as doctor is not in to any 'business'. (Unquote : Although the public cry that medical profession has become a 'business' our courts apparently is not believing so...)

Vodafone need not reverse Cenvat Credit on transfer of Capital Goods to Its Sister Concern: CESTAT

In an assessee-favouring ruling, CESTAT held that telecom giant, Vodafone need not reverse the Cenvat Credit availed by them while transferring capital goods to their sister concern.

CESTAT Ahmedabad - M/s. Vodafone Mobile Services Limited vs Commissioner of Central Excise & ST, Ahmedabad - Appeal No. ST/11492/2017-SM - dated 22.11.2017

Read More

Comments : The capital goods were not physically removed to sister concern and hence it was held that

Rule 3 (5) of credit rules, regarding reversal of credit is not applicable.

Marketing Support Services provided by Microsoft India to Its Overseas Group not subject to Service Tax: CESTAT

CESTAT ruled that the marketing support services provided by Microsoft India to M/s Microsoft Operations P. Ltd. Singapore, amount to export of services and hence are not liable to service tax. The bench clarified that the services being provided by appellants satisfy the conditions of Export of Service Rules, 2005, hence no service tax is leviable.

CESTAT Chandigarh - Microsoft Corporation (India) Private Limited. vs CCE, Delhi-III - APPEAL Nos. ST/57239-57240/2013 - dated 14.12.2017

Court has followed precedents as Paul Merchant case and L & T Case to follow the principle that benefit of marketing service has accrued outside India and hence services are eligible for export benefit.

Read More

Use of Family Name would not Amount to the Use of Brand Name of Third Parties: CESTAT Allows SSI Exemption

Appellate Tribunal held that the use of family name would not amount to the use of brand name of third party for disallowing SSI exemption to the assessee.

Delhi CESTAT- M/s Rastogi Furnishers & Decorators P. Ltd vs Commissioner of Central Excise (CCE), Customs, Excise & Service

Read More

Royalty, License Fee or any other Payment for a Process must be included in the Assessable Value of Imported Goods: CESTAT

CESTAT held that royalty, license Fee or any other Payment for a Process etc, are includable while determine the assessable value of imported goods in terms of Rule 10 of Customs Valuation Rules, 2007.

CESTAT Delhi - Appeal No. C/50558/2017-DB - M/s Fujitsu Ten India Pvt. Ltd. vs Commissioner of Customs, New Delhi – dated 26.12.2017

Read More

If SCN against main Noticee is Set Aside, It would Automatically Invalidate the Proposals against Co-Noticees: CESTAT

The CESTAT held that if a Show Cause Notice against main Noticee is set aside, it would result in deleting the proposals against the co-noticees also.

CESTAT Chennai - Manasa Impex Services vs CC & CCE Coimbatore - C/289/2009 - dated 09.01.2018

Read More

Promotional Expenses incurred by Reebok India are includable in the Assessable Value while Importing Goods from its Parent Company: CESTAT

CESTAT held that the Reebok India should include advertising and promotion expenses in the assessable value while importing goods from its parent Company, Reebok International Ltd.

CESTAT Delhi - M/s Reebok India Company vs CC, Patparganj - Appeal No. C/51559/2017- [DB] - dated 12.01.2018

Read More

Comments : The expenses have been held to be incurred on behalf of seller and is a condition for sale , therefore same shall be part of assessable value. Order of Tribunal in case of Samsonite 2015 327 ELT 528 has been distinguished.

Delhi HC delivers Split Verdict on Levy of Entertainment Tax on Sponsorship for Fashion Events

Division bench of the High Court delivered a split verdict on the levy of entertainment tax on the sponsorship given to fashion events under the Delhi Entertainment and Betting Tax Ac in a petition where the petitioners sought for refund of entertainment taxes paid by them under protest.



Notifications & Circulars

Central Notifications

Composition Scheme: 1% GST applicable to Manufacturers

Govt notified effective rate of tax under composition scheme for manufacturers and other suppliers. As per the Notification, manufacturers and other suppliers are required to pay one percent of the turnover in State.

CBEC- Notification No. 1/2018- Central Tax dt. 1st January 2018

Read more

E-Way Bill Rules Applicable from 1st February

The Central Government notified 1st February 2018 as due date for implementing E-Way Bill Rules under the Goods and Services Tax (GST) regime.

Under the E-way Bill provisions, both the inter-State and intra-State movement of goods above Rs 50,000 is required to be pre-registered online.

CBEC- Notification No. 74/2017- Central Tax dt. 29th December 2017

Read more

Due Dates for Filing GST Returns Notified

Registered persons with aggregate turnover of more than Rs. 1.50 crores shall file monthly return in form GSTR-1 for the period July to October on or before 31st December 2017. Such person shall file their November Return within 10th January.

Quarterly return for registered persons with aggregate turnover up to Rs. 1.50 crores shall file

GSTR1 for July to September on or before 31st December 2017. Further, GSTR1 for October to December can be filed till February 15th and January to March 2018 can be filed till 30th April, 2018.

CBEC-Notification No. 71/2017 – Central Tax dt. 29th December 2017

Read more

CGST (Fourteenth Amendment) Rules, 2017 Notified

FORM GST REG-14 on the common portal cannot be amended without the written order of the Commissioner before the date of submission. Rules relating to application for refund of tax, interest, penalty, fees or any other amount amended.

Amended Forms GST REG-10, FORM GST REG-13, FORM GSTR-11, FORM GST DRC-07.

CBEC- Notification No. 75/2017 – Central Tax dt. 29th December, 2017

Read more

Late Fee for Delay in furnishing GSTR-4 Waived

Govt waived the late fee payable under section 47 of the said Act, by any registered person for failure to furnish the return in FORM GSTR-4 by the due date, which is in excess of an amount of twenty five rupees for every day during which such failure continues.

CBEC- Notification No. 73/2017 – Central Tax dt. 29th December, 2017

Read more

Due date for filing GST ITC-01Extended

Time limit for making declaration in Form GST ITC-01 to avail Input Tax Credit till the 31st day of January 2018 extended.

CBEC- Notification No. 67/2017-Central Tax dt. 21st December 2017

Read more

Extension for filing FORM GSTR-5

Time limit for furnishing the return by a non-resident taxable person in FORM GSTR-5 under the Central Goods and Services Tax Act extended till 31st January

CBEC Notification No. 68/2017-Central Tax dt. 21st December 2017

Read more

Due Date for filing GSTR-5A for July to December Extended

Due date of filing return by persons providing Online Information and Database Access or Retrieval Services can file their returns (Form GSTR – 5A) for the month of July to December 2017 till January 31st.

CBEC Notification No. 69/2017-Central Tax dt. 21st December 2017

Read more

GST Exemption on Disbursement of VGF

The Ministry of Civil Aviation has notified the date of commencement of operations at various RCS Airports till 31.10.2017 in connection with the Service tax/ Goods and Services Tax exemption GST on disbursement of Viability Gap Funding (VGF).

The Ministry of Civil Aviation- Notification dated 30th November, 2017

Principal Commissioner is the Competent Authority to receive Revision Application

Central Excise (Appeals) Amendment Rules, amended- Notification prescribed that revision application

in form E.A.-8 can be submitted before the jurisdictional Principal Commissioner (Revisionary Authority).

CBEC- Notification No. 27/2017-Central Excise (N.T.) dt. 23rd November, 2017

Read more

GST Rate applicable to Food or Drink supplied in College Canteen/ Mess

Supply of food or drink provided by a mess or canteen is taxable at 5% without Input Tax Credit under the current Goods and Services Tax (GST) regime.

CBEC Circular No. Circular No. 28/02/2018-GST dt. 8th January 2018

Read more

Clarification of GST Rates on Various Services

Clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, homestays, printing, legal services etc.

CBEC- Circular No. 27/2017 dated 4th January 2017

Read more

Issues on Manual filing of Refund of Deemed Exports & Excess balance in E-Ledger Clarified

CBEC released clarification regarding issues on manual filing of refund of deemed exports & excess balance in e-ledger under the new Goods and Services Tax (GST) regime.

CBEC- Circular No.24/24/2017-GST dt 21st December, 2017

Read more

Manual filing of AAR Applications and Appeals

CBEC laid down conditions and procedure to be followed by the tax payer while filing applications for advance ruling and appeals manually.

CBEC- Circular No. 25/25/2017-GST dt. 21st December 2017

Read more

IGST is Leviable when Art Works sent to the Gallery is Purchased by Buyer

Issues regarding the treatment of supply by an artist in various States and supply of goods by artists from galleries clarified

CBEC said that when an art work sent to the gallery is purchased by a person, Integrated Goods and Services Tax (IGST) would be applicable.

CBEC-Circular No. 22/22/2017-GST dt 21st December, 2017

Read more

Maintenance of BoA relating to Additional Place of Business for the purpose of Auction of Tea, Coffee, Rubber etc

Clarification in respect of maintenance of books of accounts relating to additional place of business by a principal or an auctioneer for the purpose of auction of tea, coffee, rubber etc.

CBEC Circular No.23/23/2017-GST dt. 21st December, 2017

Read more

Issues on Filing GST Returns

Circular addressing various issues on filing of returns under the current Goods and Services Tax (GST) regime.

Tax payers concerns over return filing dates, applicability and quantum of late fee, amendment of errors

in submitting / filing of FORM GSTR-3B and other related queries.

CBEC- Circular No. 26/26/2017-GST dt. 29th December 2017

Read more

Purchase of goods from Duty Free Shops: Limit of 25K applicable to Card Payments

CBEC clarified that the exemption limit of Rs. 25,000 for sale of goods at duty free shops in Indian currency shall also be applicable to payments through an INR credit card / debit card.

CBEC- Circular No. 50/2017-Customs dt 18th December 2017

Read more

Norms for taking Security/Surety along with the Bond for Import of Goods on Concessional Rate Eased

With a view to simplify the business procedure and to reduce the burden of compliance cost, the CBEC eased the norms for taking security/ surety along with the Bond.

CBEC- Circular No. 48/2017-Customs dt 8th December 2017

Read more

Issues on Refund of Countervailing Duty as Duty Drawback

The Countervailing Duties leviable under section 9 of the Customs Tariff Act are rebatable as Drawback in terms of Section 75 of the Customs Act.

CBEC- Circular No. 49/2017-Cus dt. 12th December, 2017

Read more

State Notifications

Goa notifies constitution of Advance Ruling Authority

State notified the establishment of Advance Ruling Authority under the Goa Goods and Services Tax Act.

Department of Finance- Notification No. 38/1/2017-Fin(R&C)(35)

[Read more](#)

UP implements E-Way Bill from December 16

The notification said that Form E-way bill-02 is mandatory from 16th December 2017 for transportation or transit storage of specified goods when the value of such goods exceed rupees

Fifty thousand under the Uttar Pradesh Goods and Services Tax Act.

Notification No. 25/2017-18 dt. 7th December 2017

[Read more](#)

West Bengal Notifies Authority for Advance Ruling Regulations, 2018

West Bengal Authority for Advance Ruling Regulations, 2018 prescribing norms for filing and disposal of applications notified.

Notification No. WB/SC- 247 dated 10th January 2018

[Read more](#)

Rajasthan Notifies E-Way Bill

E-Way Bill provisions for the purpose of Rajasthan Goods and Services Tax Act notified.

Notification dt 18th December 2017

[Read more](#)

Kerala Govt's Instructions on Disbursal of SGST Components of Refund Claim

Tax payers are permitted to file the refund applications manually in FORM GST RFD-01A for a tax period on

monthly basis for the categories such as Zero-rated supplies, On account of inverted duty

structure (higher tax rate on input & lower tax rate on finished products), deemed exports and Excess balance in electronic cash ledger.

KGST Department- Circular No. 2/2018 dt. 10th January 2018

[Read more](#)

Kerala GST: Norms for Manual Filing and Processing of Refund Claims in respect of Zero-Rated Supplies

Circular prescribing the procedure for Manual filing and processing of refund claims in respect of Zero-rated supplies under the Kerala GST Act.

KGST Department- Circular No. 1/2018 dt. 10th January 2018

[Read more](#)

Rate of Tax applicable to Nonwoven Bags & Cotton Bags clarified

Joint Commissioner, Central Goods and Services Tax Department, Madurai, clarified that the rate of tax applicable to nonwoven bags & cotton bags under the current GST regime.

Circular No. IV/16/84/2017- Tech (GST) Vol I dt. 01.01.2018

[Read more](#)

UP VAT: Closed Firms with Lower Turnover allowed to use Manual C Forms

UP VAT Dept Allows Issuance of C-Form manually for Closed Firms whose turnover is more than Rs 25 lakhs.

Circular dt. 1st January 2018

[Read more](#)



CAR(E) FREE

After a long and a happy marriage of over 5 years, when I was about to sell my Volvo, GST came. Like many, I never imagined that GST would be imposed on the sale of second-hand vehicles, on which no CENVAT credit was neither allowed nor availed. Further, the imposition of 28% plus 15% (Compensation CESS) on such used SUV literally drove all the prospective grooms (victims), leaving me really scared as to whether the manufacturer had really meant their tagline - “Volvo for life”

Though there was a whatsapp clip quoting the Revenue Secretary to have stated that there would be no GST levy if an individual would sell his used car, it remained unauthenticated. After nearly three months of imbroglio, Notification 37/2017 – CT (R) dated 13.10.2017, brought some solace, whereby, the GST was levied @ 65% of the applicable tax rate, on sale of such used vehicles.

S. Jaikumar

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To avail this Notification, the vehicles should have been purchased on or before 1.7.2017 and no form of input tax credit should have been availed. This Notification also had a sunset date of 1.7.2020. There was also a corresponding Comp. CESS Notification 7/2017 – CC (R) dated 13.10.2017.

Now, in one of the most sensible as well as popular measures under this GST regime, the Government has recently issued Notification 8/2018- CT (R) dated 25.1.2018, without any publicity or a press release. If the Notification allowing 65% is to be considered as a relief, the present one should be rated as a gift.

By this new year-gift, the GST on used motor vehicles, on which no input tax credit has been taken either under the pre -GST laws or under GST, would be payable only on the “Margin” and not on the Sale Value, which is currently available to the second-hand goods dealer (including used car dealers) under Rule 32(5) of the CGSTY Rues, 2017.

To amplify, whenever an old and used vehicle is sold, as per the present notification, GST has to be paid on the difference between the actual sale value and the depreciated book value (WDV) and where such vehicle is not claimed with any depreciation, GST is payable on the difference between the sale value and the actual purchase value. Further, if the “margin” is negative, there is no need to pay any GST.

To illustrate, if a vehicle is purchased for INR 10 lakhs and if such vehicle is presently sold for INR 5 lakhs, , then the “margin” as per the said Notification would be negative, being the difference between the sale value (5 lakhs) and the purchase value (10 lakhs). Similarly, in a case where such vehicle is depreciated in the books and WDV of such vehicle is, say, INR 6 lakhs, even then the “margin” would be negative, being the sale value (5 lakhs) minus the WDV (6 lakhs). In both the above cases, there would no GST liability as the “margin” being negative.

This Notification also prescribes two different tax rates, namely 18% for large / premium vehicles and 12% for other motor vehicles including three / two wheelers. More importantly, the Comp. CESS on such old / used vehicles is also completely exempted vide Notification 7/2018 – CC (R) dated 25.1.2018.

Now some moot questions:

1. Can there be any situation, whereby, the sale value is more than the purchase value of a old/used motor vehicle (excluding WDV vehicles)?
2. Would there be any relevance for the earlier Notification allowing 65%?

Any takers for my Volvo ???

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