

Tax Bulletin

Update publication for our clients

May, 2019



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FOREWORD

The past month was dominated by the Lok Sabha election surge accompanied by major political theatricals with GST playing a vital role in it. While, on the one hand, the Opposition is demonizing the present GST structure with promises of a better *GST 2.0 version*, on the other hand, the Ruling party has managed to gain support from trade and businesses who understand that, with time, GST is settling and that the tax reform was more than a vote bank inducing exercise.

April 2019 also marks the commencement of the Direct Tax changes of increased tax rebates, standard deduction limit, etc. The month also witnessed an indication of increase in GST Litigation with more and more High Court decisions coming to the fore.

Accordingly, we have compiled the **12th Edition of the Tax bulletin** in relation to Direct Tax (i.e. Income Tax) and Indirect Tax (i.e. GST, Customs law and FTP).

Warm Regards,

Team VK&S

CONTENTS – UPDATE ON



- 1 Income Tax
- 2 Goods & Services Tax ['GST']
- 3 Customs
- 4 Foreign Trade Policy ['FTP']



Income Tax updates

- Recent updates at a glance
- Legal Snippets

Recent Updates at a Glance



- ❖ **IT Department and GSTN to enter into MOU for exchange of Data:** With the objective to plug loopholes and nab tax evaders, the IT Department will exchange data with GSTN.
- ❖ **CBDT notifies amendment in Form 16 and Form 24Q:** CBDT notifies amendments in Form 16 [i.e. TDS certificate for salaries] and Form 24Q [i.e. quarterly TDS statement in respect of salaries]; Amended forms seek more details especially about exempt allowances u/s.10; The amendments shall come into force on 12th day of May, 2019. The new format will allow the tax department to view a detailed break up of the income and tax breaks claimed by a salaried person at the first instance itself. Consequently, any discrepancy between the income and deductions shown in Form 16 and the ITR filed by the person can be immediately spotted.



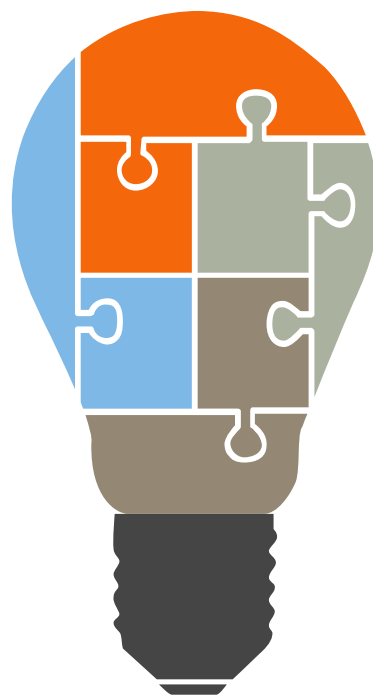
These are small but very useful updates

Legal Snippets



Revenue can not hold genuine refunds of taxpayers in garb of error in their computer system if there is no factual dispute regarding same.

[Vodafone Idea Limited Vs DCIT (TDS) and ORS 2019-TIOL-958-HC-Mum-IT]



Expenses disallowed pertaining to exempt income U/s 14A should not exceed exempt income so earned by taxpayer during the year under consideration.

[Nirved Traders Private Limited Vs DCIT Circle 1(2) Mumbai 2019-TIOL-941-HC-MUM-IT]

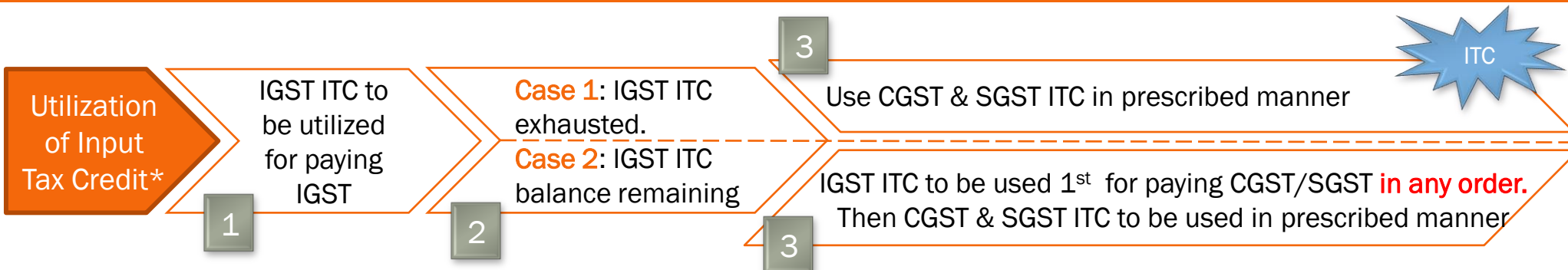


2

GST updates

- Notifications and Circulars
- Legal Snippets
- GST Advance Rulings

ITC utilization, extension of due dates and other changes



*Till new order of utilization is implemented in common portal, taxpayer may to utilize ITC as old provision.



Extension of Due Dates

- **FORM GSTR-1 - March 2019**, time limit extended up to **April 13 2019**. (aggregate turnover > Rs.1.5 Crore)
- **FORM GSTR-7 (TDS deductor)** of March 2019, time limit extended up to **April 12 2019**.
- **FORM GSTR-3B** of March 2019, time limit extended up to **April 23 2019**.



Restriction on E-way Bill generation – Section 135E

With effect from June 21, 2019 persons not filing returns for 2 consecutive tax period will not be able to generate E-way bill

IMP!



Changes for all Composition Dealers

- **Quarterly Statement** - In **FORM GST CMP-08** to be furnished till 18th day of month succeeding such quarter.
- **Annual Return** - In FORM GSTR-04 for every financial year to be furnished on or before 30th April

NEW!

Clarifications

Applying for Revoking cancellation of registration



For applying for revocation -

Clarification issued regarding filing of pending returns in case when cancellation is made effective:

- From date of order and
- With retrospective effect.

Registered persons unable to file revocation against order passed up to March 31, 2019 are allowed to file application for revocation of cancellation of registration till **July 22, 2019**.

**REVOKE
CANCELLATION**

GST on seed certification tags



Charges received for issue of seed certifications/tags by the Government Seed Certification Agencies are in nature of composite supply of seed testing and certification, which is exempt

Supply of seed tags by the vendors (other department/ manufacturers) to the state government/seed certification agency is supply of goods liable to tax.



Long term lease by Government



Upfront amount payable for long term lease (> 30 years) of industrial plots or plots for development of infrastructure for financial business is exempt **irrespective that amount is paid in instalments, provided the amount is determined upfront**

**Clarification on
exemption**

GST & E-way Bill Portal Updates

Strict instructions issued regarding Invoice Series on Portal

- With start of new Financial Year, new invoice series is to be started by GST Taxpayer.
- Tax Invoice/ Bill of supply should have consecutive serial number not exceeding 16 character
- If above provision are not adhered taxpayer may face problem:
 - While generating E-Way Bill;
 - Furnishing Form GSTR-1;
 - Applying for refund.



Enhancement in E-Way Bill Systems

- System is now enabled to auto – calculate route distance for movement of goods, based on Postal PIN of source and destination
- Blocking of generation of multiple E-Way Bills on one Invoice/document.
- Transporter or taxpayer can extend E-way bill validity in case of Consignment in transit.
- User can view the list of E-Way Bill about to expire in next 3 days.



New Functionality on Portal

- Offline Utility of Form GSTR-9A;
- Online filling of Form GSTR-9C and its Offline Utility

GST – Advance Rulings



As per Section 97(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), an applicant desirous of obtaining an advance ruling may make an application to the Authority for Advance Ruling ('AAR')

The broad objective for setting up a mechanism of Advance Ruling is to provide certainty in tax liability in advance, in relation to an activity proposed to be undertaken by the applicant and reduce litigation. Under GST, advance ruling can be obtained for a proposed transaction as well as a transaction already undertaken by the applicant

It may be clarified that an Advance ruling is binding only on the applicant who has sought the advance ruling and on the concerned officer or the jurisdictional officer in respect of the applicant

However, the Rulings help us to ascertain the mind-set and interpretation that may be adopted by the Department. Accordingly, we have discussed a few Advance rulings issued in the past months in the subsequent slides

Taxability of Royalty paid for minerals

1

What is Royalty?

Lease holders of mines are required to pay Royalty to the Government on extraction of minerals

2

Is GST payable on Royalty?

Yes. GST payable RCM. ITC is available. **997337** - Licensing services for the right to use minerals including its exploration and evaluation

3

Applicable GST Rate

There has been a difference in opinion about applicable GST rate in Advance Rulings

The rate Notification was amended w.e.f. January 1, 2019. whereby rate for residuary entry for SAC 9973 was changed to 18% and a new entry i.e. Leasing or renting of goods attracting same rate as supply of goods was added.

Advance Ruling	Order date	Entry in Rate Notification	GST Rate	Remarks
Pioneer Partner – Haryana Advance Ruling	29.06.2018	Residuary entry for 9973 - Leasing or rental services, with or without operator, other than above	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	At the relevant time, the entries for SAC 9973 in rate Notification did not contain any other relevant clause, hence rate applicable to residuary entry was adopted.
NMDC Ltd – Chhattisgarh Advance Ruling	27.03.2019			
Wolkem Industries Ltd – Rajasthan Advance Ruling (25.03.2019)	25.03.2019	Residuary entry for 9973 - Leasing or rental services, with or without operator, other than above	18%	The Authority relied on the amended Notification prescribing 18% rate for the residuary entry or SAC 9973. New entry introduced by way of amendment i.e. leasing or renting of goods was not considered.

The matter relating to Service Tax on Royalty payment for the previous regime is pending before the Hon'ble Supreme Court in case of *Udaipur Chambers of Commerce and Industry v. Union of India - 2018 (10) G.S.T.L. J167 (S.C.)*.

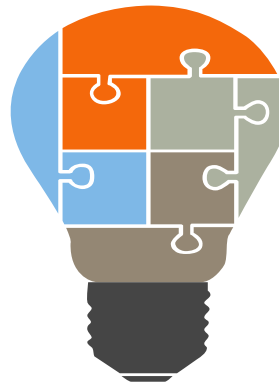
Advance Ruling – Reimbursement and power of AAR

E-Square Leisure Pvt Ltd [Maharashtra AAR]

Issue: Applicant provides service of renting of immovable property. In addition to rent, applicant collect expenses such as electricity, water charges, property tax. **Clarity is sought on tax liability on reimbursement of expense.**

Ruling –

- The terms of agreement and the transaction indicates that, no authorization is been obtained by applicant from the recipient to act as his pure agent and make payment to third parties.
- **Thus, GST is leviable on the reimbursement of expenses.** Moreover, the reimbursement of expenses constitute as composite supply. GST is payable at rate applicable to principal supply.



National Dairy Development Board [Gujarat AAR]

While the main point of contention was whether NDDDB qualifies as a 'Governmental Authority or not, while concluding, the AAR Held that decision of Patna High Court only had persuasive value since the AAR was in Gujarat.

Cause of concern!!

It may be highlighted that it is a settled position in law that until a contrary decision is given by any other competent High Court, which is binding on a Tribunal, it has to proceed on the footing that the law declared by the High Court, though of another State.

Advance Ruling Authorities not following decisions of High Courts may be a big cause of concern.

Advance Ruling – Transportation related

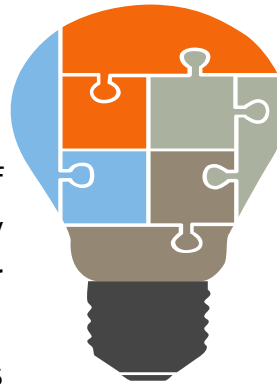
M/s Narsingh Transport [Madhya Pradesh AAR]

Scope of 'further supply' of motor vehicle discussed

Issue: Whether the GST paid on cars provided to different customer on lease rent will be available as ITC u/s 17(5) of CGST Act?

Ruling –

- As per Section 17(5), ITC is not available of GST paid on motor vehicles except when they are used for further supply of such motor vehicle.
- Supply includes all forms of supply of goods or services or both such as sale, lease to be made for consideration in course of furtherance of business.
- **Applicant is eligible to claim ITC.**
- After termination of lease agreement, if the vehicle is not leased to other customer, then applicant is liable to reverse ITC.



Shri Navodit Agarwal [Chhattisgarh AAR]

GST on diesel cost!!

Issue: Applicant is a transporter in few cement companies. Some of customer moved a proposal they will provide required diesel for transport and applicant need to charge them freight excluding diesel cost. **Whether such supply of diesel is to be added to the freight amount for calculation of GST.**

Ruling – Diesel provided by service recipient forms important and integral component of business. Any amount that the supplier is liable to pay in relation to supply but which has been incurred by recipient and not included in the price actually paid or payable **is includible in value.** The applicant is required to charge GST on total amount including cost of diesel.

Legal Snippets – From the High Courts / Supreme Court

Interest payable on gross tax liability

Megha Engineering and Infrastructures Ltd Vs CCT [Telangana High Court]

Facts: Petitioners has not filed GSTR-3B as ITC was not available to offset entire tax liability. Due to some restraint they could not make payment and file return within due date .

Issue: Whether department demand of **interest @ 18% on gross amount** is correct?

Ruling – The liability to pay interest arises, when a person fails to pay tax to the government within prescribed period. ITC gets credited in electronic credit ledger only after claim is made in the return. **If no payment is made out of electronic credit ledger, then mere availability of the same will not tantamount to actual payment.** The liability to pay interest arises automatically and petitioner cannot escape from the liability.

Differences of opinion between High Court

Filco Trade Centre Pvt Ltd & ANR ETC Vs Union of India & ANR [Supreme Court]

Fact: Petition was filed challenging the constitutional vires of section 140(3)(iv) of CGST Act. As per Section 140(3), registered person who was not liable to get registered under the existing law can claim credit of inputs or goods used for making taxable supply under GST Act. One of the condition is that invoice and other documents of inputs are not issued earlier than July 1, 2016. Gujrat High court held the condition as unconstitutional and Bombay High court has given decision in favour of revenue

Issue : Revenue council highlights a difference of opinion.

Ruling – Notices to be issued within six months. Meanwhile operation of Gujrat High court decision is stayed.

3

Customs updates

- Notifications and Circulars

Customs Notifications – Tariff and ADD

Tariff Notifications

12/2019	Extends the exemption provided to machinery, equipment, computer software, raw materials, etc. required for the Light Combat Aircraft Programme of the Ministry of Defence till 31.06.2019.
13/2019	Basic customs duty on wheat increased from present 30% to 40%

Anti-dumping Duty ('ADD') Notifications

17/2019	Seeks to impose definitive ADD on Cast Aluminium Alloy Wheels or Alloy Road Wheels used in Motor Vehicles originating in or exported from China PR, Korea RP and Thailand. <i>(Previous Notification imposing ADD rescinded vide Notification 16/2019)</i>
18/2019	Extends the ADD on ductile iron pipes originating in, or exported from China PR till 9th May, 2019.
19/2019	ADD on 'Paracetamol', originating in, or exported from, China PR rescinded

Customs – Non-tariff Notifications

Amendment to Handling of Cargo in Customs Areas Regulations, 2009

- The Regulations mainly deal with **Customs Cargo Service providers**.
- By way of Notification, Conditions to be fulfilled by Customs Cargo Service provider have been amended whereby *Commissioner may prescribe equipment or facility required for screening and examination norms*



Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulations, 2019

- New regulations to **apply to export of goods from all customs stations where the Indian Customs Electronic Data Interchange ('EDI') System is in operation** viz. 134 major customs locations
- **Major changes from 2011 Regulations:**
 - Scope of 'authorised person' increased to include employee (with photo ID) of registered Customs broker
 - Order permitting clearance to be issued online
 - No physical copies of Shipping Bill to be prepared unless requested by exporter
 - Records to be retained for 5 years

ICD



'ICD Kheda, denotified as Inland Container Depot for loading and unloading of goods .


NEW!

4

FTP updates

- Notifications, Public Notices,
- Circulars & Trade Notices.

FTP Public and Trade Notices

Subject	Implications
Amendments in Para 2.16 of Hand Book of Procedures of FTP 2015-20 dealing with validity period of authorization	The validity period of export authorisation for restricted goods (i.e. Non-SCOMET) is increased from 12 months to 24 months.
Discontinuation of issue of physical copy of MEIS/SEIS scrips for EDI ports w.e.f. 10.04.2019 	<ul style="list-style-type: none"> • Issuance of physical copy of MEIS and SEIS Scrips for EDI ports discontinued w.e.f. 10.04.2019. • Procedure for obtaining MEIS and SEIS is same as earlier. • After approval, the applicant will get e-mail and message from the department confirming that the scrip has been issued. • Applicant can view and take a print of the scrip. • The current scrip owner (transferor) can transfer the scrip to another IEC holder (transferee, new owner). However, the information about the new owner has to be recorded on the DGFT website by the transferor so that transferee can utilize it. No simultaneous transfer of scrip to more than one firm is allowed. • Procedure prescribed for debiting e-scrip • Old procedure to continue for non-EDI ports
Verification of online IEC application	<ul style="list-style-type: none"> • In December, the Department laid down a mechanism for verification of documents for online IEC application . As per the Trade Notice only two documents are required for IEC Certificate i.e. (1) Address Proof and (2) Cancelled Cheque or Bank Certificate. • Regional Authority (RA) to randomly pick up any IEC for verification and if RA identifies any variance in the records, RA will provide 15 days for rectification • In case IEC holder fails rectify in due time then RA will suspend the IEC Certificate.



No physical
MEIS / SEIS

FTP Notification and Public Notices

Subject	Implications															
<p>Laying down of modalities for import of Peas (including Yellow peas, Green peas, Dun peas and Kaspera peas), Pigeon Peas (Cajanus cajan)/Toor Dal, Moong dal and Urad dal for the fiscal year 2019-2020.</p>	<p>Import Policy/Policy condition for import of Peas for the fiscal year 2019-20 has been laid down. As per the policy conditions, the quantity to be allowed for import of the products has been given as under:</p> <table border="1" data-bbox="648 551 1968 1033"> <thead> <tr> <th data-bbox="648 551 835 611">Sr. No.</th> <th data-bbox="835 551 1667 611">Item Description / HS code</th> <th data-bbox="1667 551 1968 611">Quantity allowed</th> </tr> </thead> <tbody> <tr> <td data-bbox="648 611 835 748">1</td> <td data-bbox="835 611 1667 748">Peas (including Yellow peas, Green peas, Dun Peas and Kaspera Peas) under HSN Code 07131000, 07139010 & 07139090.</td> <td data-bbox="1667 611 1968 748">1.5 Lakh MT</td> </tr> <tr> <td data-bbox="648 748 835 846">2</td> <td data-bbox="835 748 1667 846">Urad Dal under HSN code 07133190, 07139010 & 07139090</td> <td data-bbox="1667 748 1968 846">1.5 Lakh MT</td> </tr> <tr> <td data-bbox="648 846 835 938">3</td> <td data-bbox="835 846 1667 938">Moong Dal under HSN code 07133110, 07139010 & 07139090</td> <td data-bbox="1667 846 1968 938">1.5 Lakh MT</td> </tr> <tr> <td data-bbox="648 938 835 1033">4</td> <td data-bbox="835 938 1667 1033">Pigeon Peas (Cajanus cajan) / Toor Dal under HSN Codes 07136000, 07139010 & 07139090</td> <td data-bbox="1667 938 1968 1033">2 Lakh MT</td> </tr> </tbody> </table>	Sr. No.	Item Description / HS code	Quantity allowed	1	Peas (including Yellow peas, Green peas, Dun Peas and Kaspera Peas) under HSN Code 07131000, 07139010 & 07139090.	1.5 Lakh MT	2	Urad Dal under HSN code 07133190, 07139010 & 07139090	1.5 Lakh MT	3	Moong Dal under HSN code 07133110, 07139010 & 07139090	1.5 Lakh MT	4	Pigeon Peas (Cajanus cajan) / Toor Dal under HSN Codes 07136000, 07139010 & 07139090	2 Lakh MT
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Contact us



ANY QUESTIONS?

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