





# Tax Bulletin

Update publication for our clients

## June, 2019

-  Income Tax
-  Goods & Services Tax ['GST']
-  Customs
-  Foreign Trade Policy ['FTP']



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## FOREWORD

The 13<sup>th</sup> edition of our Tax Bulletin marks the 1<sup>st</sup> Anniversary of our endeavour to develop a routine of periodic updates summarizing the key tax developments. In the past year, through our Bulletin, we attempted to bring all the important tax updates to our clients' knowledge and managed to spread considerable awareness amongst trade and businesses. This year as well, we hope to provide timely updates to our clientele and have accordingly revamped the format for a more summarized reading.

With the Modi 2.0 Government coming into power, Smt. Niramala Sitharaman has been given the baton of the Finance Ministry which has herculean tasks to be accomplished. Smt. Nirmala Sitharaman is only the second female to become a Finance Minister and has stepped in at a time when the GDP is trembling. Nevertheless, with her background as an Economist, efficient changes in the economy forms the key expectation.

Although May 2019 was dominated by the formation of the new Government, June 2019 would require all business to focus their resources on efficient and correct preparation of GST Annual Return and comply with the GST Audit requirement for Financial Year 2017-2018. The due date for the same is June 30, 2019 and it is suggested that Assessees should target timely filing of their returns.

We hope that this **13<sup>th</sup> Edition of the Tax bulletin** in relation to Direct Tax (i.e. Income Tax) and Indirect Tax (i.e. GST, Customs law and FTP) will be of value to all those interested in keeping abreast with tax developments.

Warm Regards,

**Team VK&S**

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# Income Tax updates

- Advance Tax Compliance
- Legal Snippets

# Advance Tax Compliance



The due date for payment of first installment of advance tax is approaching. Please find below quick facts:

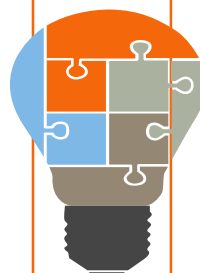
- ❖ Each tax payer (Including NRI) whose liability after reducing TDS is expected to above Rs. 10,000, such category of person needs to pay advance tax.
- ❖ The taxpayers who have opted for presumptive taxation scheme have to pay the whole amount of their advance tax in one instalment on or before 15 March. They also have an option to pay all of their tax dues by 31 March.
- ❖ Resident senior citizens not having income from business or profession are not liable for advance tax.
- ❖ Delay / short payment of advance tax will attract interest U/s 234B & 234C of Income Tax Act.
- ❖ **Due Dates are as follows**

Due Date	Advance Tax Payable
On or before 15th June	15% of advance tax less taxes already paid
On or before 15th September	45% of advance tax less taxes already paid
On or before 15th December	75% of advance tax less taxes already paid
On or before 15th March	100% of advance tax less taxes already paid

## Legal Snippets

When separate books of accounts are produced for both SEZ and manufacturing unit, instead of working out the correct amount of profit related to the exempted unit, AO is wrong in resorting for proportionate disallowance u/s 10AA

**[ ACIT Circle 3(1) Vizag Vs MINIMET REFRACTORY SOLUTIONS PVT LTD 2019-TIOL-1050-ITAT-VIZAG]**



Instead of gross profit, it is a net profit of unaccounted sales found during survey operations which should be taxed

**[Dinanath Ornaments Stores Vs ITO Ward 1 Haldia 2019-TIOL-1046-ITAT-KOL]**

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## GST updates

- Notifications, FAQ and Press Release
- Legal Snippets
- GST Advance Rulings

# Notifications, FAQ and Press Release



## Extension of Due Dates

- Due date extended for **cyclone hit district of Orissa**
  - FORM GSTR – 1 of April 2019 time limit extended up to **June 10,2019;**
  - FORM GSTR – 3B of April 2019 time limit extended up to **June 20,2019;**
- **Last date for exercising the option by promoters** to pay tax at the old rate of 12%/8% with ITC instead of 5%/1% without ITC was extended till **May 20,2019**



## FAQ for Real Estate Sector

Detailed FAQ on Real Estate issued. It provides:

- Clarity on rates
- Scope of on-going project
- Clarity on different types of projects
- Rate on transfer of development rights and FSI
- Specific factual illustrations
- Non-saleable area such as club house shall be taken as commercial or residential apartment as declared to RERA Authority;
- Gross amount shall not include stamp duty payable and maintenance charges;

Annual  
Return

Press Release issued for clarifying certain issues relating to GSTR-9 (Annual Return). Tax payers urged to file timely returns to avoid last minute rush.

# GST – Advance Rulings



*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 recently.*

Input Tax  
Credit

## *Rambagh Palace Hotels Pvt Ltd [Rajasthan AAR]*

**Issue:** Applicant is five star hotel providing short term accommodation service. **Clarity is sought on availability of ITC on building repair work and furniture and fixture repairing work.**

### **Ruling –**

- The ITC of repair of an immovable property is not available to the extent of capitalization as per GST Provision. **Thus ITC will not be available to the extent of capitalization of building material, electrical fitting, sanitary fitting, works contract.**
- The furniture and fixtures are movable in most cases, **thus ITC is available** unless fixed and capitalization.

## *Senco Gold Ltd [West Bengal AAR]*

**Issue:** Applicant is engaged in manufacturing and retailing of jewellery. Applicant raises tax invoice to the franchisee for services and franchisee raises tax invoice to applicant for supply of old gold. Applicant intend to settle the mutual debt through book adjustment. Clarity is sought on availability of ITC when his purchases are settled through book adjustment.



**Ruling –** The CGST Act and CGST Rules **do not restrict the recipient from claiming ITC when consideration is paid through book adjustment**, as there is not specifically provided that payment should be made by cheque or draft or electronic clearance or cash.

# GST – Advance Rulings

## Ujjwal Pune Ltd [Maharashtra AAR]

### Works Contract

**Issue:** Applicant has applied for tender of Pune Municipal Corporation for installation of Energy Efficient dimmable LED Street light on design, build, finance, operate, maintain and transfer basis. **Clarity is sought regarding applicability of GST Rate.**

**Ruling –** There is supply of goods and services made in conjunction with each other. **Therefore it is a composite supply where the principal supply is of goods and the supply of services is ancillary to supply of goods.** It is not works contract as LED light which are installed at electric pole can be removed without damaging pole. GST Rate applicable is 12% which is tariff rate of Led Light.

## M/s Irene Rubbers [Kerala AAR]

### Job work under GST

**Issue:** Applicant is job worker engaged in production of rubber backed and rubber edged coir mats and polypropylene mats. **Whether the process and treatment carried out on the goods belonging to the principal amounts to job work**

**Ruling –** Manufacturing services on physical inputs owned by the principal is treated as service by way of job work. The job worker can use his own goods for providing the services of job work. Therefore the value of services is based on the service charge paid, not the value of goods manufactured. GST Rate applicable is 5%.



### Healthcare

Diagnostic centers are organized facilities to provide diagnostic procedures and **come under category of Healthcare services and are eligible for exemption (Kerala AAR)**

Supply of medicine, consumable, surgical item, room rent used in the course of providing healthcare services to in-patients are naturally bundled and qualifies as composite supply. **Eligible for exemption. (Kerala AAR)**

### Real Estate

Developer of real estate also provides other services like preferential location service. Supply constitutes composite supply and **benefit of 1/3<sup>rd</sup> abatement applicable on the entire value. (West Bengal AAR)**

Once the project qualifies as Affordable Housing Project, the benefit of concessional tax rate would be available irrespective of it being supplied by the developer or contractor. **Notification entry is qua supply of service (Maharashtra AAR)**



## Legal snippets

### *Atin Krishna Vs UOI [Allahabad High Court]*

Duty Free Shops

**Issue:** Whether Duty Free Shop at International Airport liable to pay GST ?

**Ruling –** DFS is located in the custom area. Since goods have not cross custom frontier and bill of entry is not filed, thus IGST not payable on imports. **No GST will be levied on supply made at arrival or departure terminal** at international airport



### *Safari Retreats Pvt Ltd Vs Chief Commissioner of CGST [Orissa High Court]*

Inputs used in Construction

**Issue:** Whether accumulated ITC of cement, sand, electrical equipment etc used in construction activity can be availed when outward supply from use of the building is taxable?

**Ruling –** The very purpose of GST Act is to prevent multi-taxation. The intention of credit is to give benefit to assessee when the outward supply is taxable. The provision of blocked credit is to be read down and narrow restriction as imposed is not required to be accepted. Thus **ITC of construction activity can be availed and**

The decision is a welcome step to initiate legislative change in Section 17(5)(d) to bring out the intention of law to permit ITC of procurements which are necessary for provision of taxable outward supply. Writ Petition challenging said Section also filed before Delhi HC.

### *Solar Power Developers Association & ORS Vs UOI [Delhi High Court]*

Tax Structure on Renewable Energy Devices

**Issue:** Petitioner wants GST Council to reconsider tax structure viz. presumptive 70:30 Valuation principle on renewable energy devices.

**Ruling –** The Petitioner to be called for consultative meeting with CBIC & Ministry of Renewable Energy . The deliberation of that meeting to be placed before council for its consideration.

Similar petition filed by Indian Wind Turbine Manufacturer Association

## Legal snippets

### *M/s Landmark Lifestyle Vs UOI and ORS [Delhi High Court]*

Interest on gross or net value

**Issue:** Revenue has demanded interest for delay payment of GST on Gross tax liability .

**Ruling –** Interest has been calculated even on the amount constituting the input tax credit which is in fact to be adjusted against tax liability. Thus demand of interest is erroneous. Till next date of hearing, **no coercive action to be taken against petitioner for non payment of interest.** Granted stay from recovery of interest

Earlier the Telangana HC had confirmed interest liability on gross value i.e. without considering ITC available for set-off

### GST – Arresting powers

- The GST litigation scenario has seen an interesting number of cases on arrest, anticipatory bail etc. in the recent past.
- *In the month of May, the Hon'ble Supreme Court while deciding a batch of pleas challenging the provision of arrest under CGST Act, agreed to examine the power of tax authorities to arrest individuals for GST evasion after observing that different HCs had taken different views in granting anticipatory bail to such individuals.*
- The bench has listed a batch of petitions before a 3-judge bench to decide the question of law on the power of arrest.



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# Customs updates

- Notifications
- Circulars
- Legal Snippets

# Customs updates

## Tariff Notifications

15/2019



Implementation of increased customs duty on specified imports originating in USA postponed to 16th June, 2019.

## Anti-dumping Duty ('ADD') Notifications

20/2019

Extends ADD on ductile iron pipes originating in, or exported from China PR till 23rd June, 2019.

21/2019

Imposes ADD on "Saccharin", originating in or exported from Indonesia

### Circular

#### Prosecution in case of smuggling by Foreign Nationals

- Normally prosecution launched after adjudications
- In cases involving offences related to specified items such as gold, foreign currency, fake Indian currency, arms ,etc. prosecution is launched right after issuance of Show Cause Notice ('SCN')
- *In case involving Foreign Nationals, prosecution permitted to be launched even before SCN*



### Legal Snippet

#### Supreme Court on Transaction value



- Expression "reason to believe" would have required proper officer to refer to facts and figures to show existence of positive belief on undervaluation or lower declaration of TV;
- *"Subjecting imports to detailed enquiry on mere suspicion because one is distrustful and unsure without reasonable and certain reasons would be contrary to the scheme and purpose behind the provisions which ensure quick and expeditious clearance of imported goods"*

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# FTP updates

- Public Notices
- Circulars &
- Trade Notices

# Circulars and Notices

Subject	Implications
SEIS benefits under the FTP 2015-20	<p>Claimants taking SEIS benefits for INR payments need to submit documentary evidence in the form of CA / CS/ Cost and Works Accountant Certificate, stating:</p> <ul style="list-style-type: none"> <li>• Services rendered under Appendix 3E have been scrutinized and</li> <li>• Approved as per RBI guidelines</li> </ul> <p>A consolidated statement of invoices and FIRC's/proof of payment can be submitted for following service categories</p> <ol style="list-style-type: none"> <li>1. Medical and Dental Services;</li> <li>2. Hospital Services and</li> <li>3. Hotel and Restaurants (including catering)</li> </ol>
MEIS – shipping bills	The number of shipping bills which can be filled in a single online application for MEIS claim has been increased from 50 to 250.
Amendment in Para 3.01 (b) of the Handbook of Procedures	<p>If e-BRC has been generated in INR and the payment is under Para 2.52 (b) of the FTP, then a letter from the concerned bank is required to be submitted to the concerned Regional Authority ('RA') that the payment has been received through Vostro Mechanism.</p> <p>Where, the shipments have been made to countries which are in Office of Foreign Assets Control ('OFAC') list and e-BRC could not be generated by the concerned bank, then a declaration to that effect by the exporter along with the self-attested copy of proof of payment is required to be submitted to the RA .</p>
Discontinuance of submission of Hard copy of application at RAs for Advance Authorisation (AA) & EPCG	<p>While filing AA / EPCG Authorization the applicants have to upload all the supporting documents online with effect from 20.05.2019.</p> <p>Registered – cum – Membership Certificate ('RCMC') not be submitted in physical format w.e.f. 1-07-2019</p>
3 months time window for applying for MEIS for shipping bills with HS Codes which were harmonized after a delay	<p>Customs server has now transmitted such shipping bills to the DGFT server and the necessary changes have been made thereby making these shipping bills available for application.</p> <p>For these shipping bills, the applicant can take the benefit of the Para 3.15 (a) (ii) of the HBP 2015-20, which allows three months time for filling claims under MEIS from the date of shipping bill data transmission from Customs to DGFT department, before the late cut provision are applicable.</p>

Trade Notice issued to encourage Advance Economic Operator ('AEO') to use self-ratification scheme and reduce approach to Norms Committee for ratification

## About VK&S



**Vijaywargi Khabiya and Saoji**, Chartered Accountants, is a single window professional services firm focusing on high quality services one needs from a business advisory organization. The firm is managed by dynamic & pulsating partners with decade long professional experience. The firm provides services and consultancy related to accounting & implementation thereof, auditing including internal, statutory, tax, concurrent and management audit, matters related to direct & indirect tax including advisory, litigation, due diligence review, tax optimization and compliance services, outsourcing of accounts, payrolls, FEMA, Company Laws matters, Project Financing, Subsidies, and the like



### ANY QUESTIONS?

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