





# Tax Bulletin

Update publication for our clients

## November, 2019

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



**Vijaywargi Khabiya & Saoji**  
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## FOREWORD

**We at VK&S take this opportunity to convey our belated wishes for Diwali and hope that you had a safe and sparkling Diwali!!!**

While amidst festivities businesses were busy finalizing their Income Tax Audit Reports, it is now time to gear up and finalize the GST Audit for the maiden year i.e. FY 2017-2018. We urge everyone to expedite the data collation and have the GST Audit Reports filed in a timely manner by the revised due date viz. November 30, 2019.

The previous month witnessed the State election fervour in Maharashtra and Haryana while the Central Ministry of Finance was grappling with the implementation of the suggestions/ recommendations of the 37<sup>th</sup> GST Council meeting held in September and issued various Notifications/ Clarifications.

The Government was also seen heavily promoting the Sabka Vishwas Legacy Dispute Resolution Scheme with the Indirect Tax jurisdictional officers persuading tax payers to opt for the scheme and conclude pending litigation.

With a snippet of the above the updates and more, we hope that this **18<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**

1

# Income Tax updates

- Recent Updates
- Legal Snippets

# Updates and legal snippets

## Recent Updates

- **CBDT advises taxpayer to exhaust MAT credit before opting for lower tax rate**
  - CBDT vide circular No. 29/2019 dated October 2, 2019 advised tax payers to exhaust unutilised MAT credit before exercising option of lower tax rate U/s 115BAA of lower tax rate of 22%.
- **Launch of Faceless Assessment**
  - CBDT has launched National e-Assessment Centre (NeAC) on 7th October, 2019 at Delhi.
  - There would be state of the art Digital Technology for Risk Management by way of automated examination tool, Artificial Intelligence and Machine Learning, with a view to review the scope of discretion of the officers of Income Tax Department.
  - 8 Regional e-Assessment Centres (ReAC) at Delhi, Mumbai, Chennai, Kolkata Ahmedabad, Pune, Bengaluru and Hyderabad which would comprise Assessment unit, Review unit, Technical unit and Verification units.
  - Cases for the specified work shall be assigned by the NeAC to different units by way of automated allocation systems.
  - In the first phase, the Income Tax Department has selected 58,322 cases for scrutiny under the e-Assessment Scheme 2019 and the e-notices have been served before 30th of September 2019 for the cases of Assessment Year 2018-19.

## Legal Snippets

Interest received on compulsory acquisition of land is in nature of compensation and exempt u/s 10(37) and is not chargeable to tax - YES : ITAT

**[ ITO Ward-1 Panchkula Dhanendar  
Kumar HUF  
2019-TIOL-2189-ITAT-CHD]**



Partial disallowance of rent paid on a building is sustainable on grounds of it not being used for business purpose, notwithstanding that such building hosted other companies which shared the same Chairperson & MD with the assessee-company - YES: HC

**[Commissioner of Income Tax Kochi  
Vs Appolo Tyres Limited  
2019-TIOL-2415-HC-KERLA-IT]**

2

## GST updates

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

# Notifications



## Due Dates

Month	GSTR-1		GSTR-3B
	Turnover < 1.5 Crore	Turnover > 1.5 Crore	
October 2019	Quarterly GSTR-1 to be filed by January 31, 2020	November 11, 2019	November 20, 2019
November 2019		December 11, 2019	December 20, 2019
December 2019		January 11, 2020	January 20, 2020
January 2020	Quarterly GSTR-1 to be filed by April 30, 2020	February 11, 2020	February 20, 2020
February 2020		March 11, 2020	March 20, 2020
March 2020		April 11, 2020	April 20, 2020

## Waivers & Relaxations

**GST Annual Return for F.Y. 2017-18 and 2018-19 made optional for small taxpayers with aggregate turnover < Rs 2 crores** and who have not filed the said return before the due date.

Late fee waivers announced in certain cases for taxpayers in **Jammu & Kashmir**

Due date for filing **GST CMP-08 i.e. Return to be filed by Composition Dealers** for the quarter July, 2019 to September, 2019 was extended to October 22, 2019 (earlier dated was October 18, 2019)

## Amendments in CGST Rules

- **ITC eligibility as per GSTR-2A:** Registered person can claim ITC in respect of invoices or debit notes **not reflected** in GSTR-01 by his supplier only to the extent of 20% of his total eligible credit as per details furnished by the supplier in GSTR-01
- Due date of filling TRAN-01 extended till December 31, 2019 for persons who could not submit it timely on account of technical difficulties

**IMP**

## Retrospective

GSTR-3B declared to be a Return under the GST provisions w.e.f. July 1, 2017 i.e. retrospectively. Effectively upper limit to avail ITC for 2017-2018 fixed to be March 31, 2019 as prescribed in circular

# Circulars

## Refund related clarifications

1

A registered person who has filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a given period under a particular category, may again apply for refund for the said period under the same category subject to fulfilment of following conditions:

- Earlier return must be a NIL Return
- Same category refund must not have been filed for subsequent period (Condition only applicable to refund of unutilized ITC)

2

Procedure to claim refund subsequent to favourable order in appeal/ other forum clarified

## Rate related clarifications issued for:

- Leguminous vegetables such as grams when subjected to mild heat
- Almond Milk
- Mechanical Sprayer
- Imported stores by the Indian Navy
- Taxability of goods imported under lease on temporary basis (aircrafts, aircraft engines and other aircraft parts, rigs and ancillary items imported for oil or gas exploration and production)
- GST rate on parts for the manufacture solar water heater and system
- GST on parts and accessories suitable for use solely or principally with a medical device

### Discount

Circular No.105/24/2019-GST dated 28.06.2019 which was issued in respect of post-sales discount has been withdrawn *ab-initio*.

### Mining

Circular issued to clarify scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both

### GST on licence fee

Supply of grant of alcoholic liquor license exempt due to specific provision – GST to apply on grant of other licenses and privileges for a fee

## Effective date of explanation added to Notification

Clarificatory explanations added to Notifications shall have effect as if it had always been the part of the original notification.

*Explanation was inserted in the Service Rate Notification to the effect that for the purpose of the Entry 3(vi), the activities or transactions undertaken by Government and Local Authority are excluded from the term 'business'.*

## Taxability of lending of securities under Securities Lending Scheme, 1997

- Transaction in securities which involves a disposal of securities does not attract GST
- However, lending of securities is not equivalent to disposal of securities as per the Scheme and lending fee will attract GST
- Activities of the intermediaries facilitating lending and borrowing of securities for commission or fee will also be taxable

# GST Circulars

## No GST on the service of display of donor's name in charitable organisation's premises

- It is an act of expressing gratitude towards the donor's act of philanthropy
- Not aimed at giving publicity to the donor and is not for advertising or promotion of his business;
- There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, no GST liability subject to the fulfillment of the following conditions:
  - i. gift or donation is made to a charitable organization
  - ii. payment has the character of gift or donation; and
  - iii. the purpose is philanthropic (i.e. it leads to no commercial gain)

## Maritime courses conducted by Maritime Training Institutes of India- Exempt

- Director General of Shipping, is empowered under Merchant Shipping (Standards of Training, Certification and Watch-Keeping for Seafarers) Rules, 2014 to approve (i) the training course, (ii) training, examination and assessment programme, and (iii) approved training institute etc.
- Accordingly it is clarified that Maritime Institutes are "educational institutions" under GST Law and the courses conducted by them are exempt from levy of GST

## Place of supply in case of software/design services related to ESDM Industry

- IT Developers in India supply software/design services to service recipients located in non-taxable territory by using the sample hardware kits provided by the service recipient.
- Clarification was sought on whether supply of hardware prototypes/samples by recipient outside India for testing thereon makes the IT services "performance-based services"
- It has been clarified that the entire activity needs to be viewed as one supply and treated accordingly for the purposes of taxation and artificial vivisection of the contract of a composite supply is not provided in law.
- Separate provisions will not apply for determining the place of supply for ancillary supply (such as testing) in such cases

## GST on Airport levies

- **Passenger Service Fee (PSF) and User Development Fee (UDF)** charged by airport operators qualifies consideration for providing the services to passengers, liable to GST
  - Airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines;
  - Airline shall not be liable to pay GST same provided they satisfy the conditions prescribed for a "pure agent" and indicate such fee separately
- **Collection charges paid by airport operator to airlines** are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc.)
  - Airlines shall be liable to pay GST on the same under forward charge while ITC of the same will be available with the airport operator



# 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.*

## *Jotun India Pvt Ltd [Maharashtra AAR]*

Parental Insurance

**Issue:** Applicant introduced an optional parental insurance scheme for employees wherein Applicant was to pay whole premium and recover 50% of the premium from their employees by 1-3 instalments from their salaries. Balance 50% to be borne by the Applicant. **Whether GST payable on the recovered 50% of the insurance premium from the salary of the employees?**

### **Ruling –**

- Activity of providing parental insurance will be considered as Supply u/s 7 of the CGST Act only if it is made in the course of furtherance of business. In the instance case, providing Parental Insurance Scheme is not in the business coverage of the applicant as well as not mandatory under any law.
- Therefore, recovery of 50% of Parental Health Insurance Premium from employees does not amount to "supply of service" under Section 7 of the CGST Act, 2017 and hence not leviable under GST.

## *M/s Aquarelle India Pvt. Ltd [Karnataka AAR]*

Disposal of permanent fixtures on leased premises

**Issues:** Applicant intended to vacate the leased premises along with the fixtures to the building for which no consideration will be charged from lessor. **Whether such disposing off assets will fall under "supply", if yes value on which GST be charged?**

### **Ruling:**

- Writing off of the value of assets is an act related to transfer of property in assets, and this monetary value of that act will form the consideration, hence the said act amounts to supply as per entry 4(a) of Schedule II of the CGST Act
- Value of such supply of goods would be open market value of such supply, value of supply of goods of like kind and quality and 110% of the book value of such goods in books of accounts - If none of these are possible, then the value be determined as per Rule 31

# GST – Advance Rulings

## Rotary Club of Mumbai Western Elite [Maharashtra AAR]

Club Membership

**Issue:** Applicants an association of person ('Club') which undertakes social activities without any profit motive. **Whether Amount collected by Rotary Club from its members constitutes as supply?**

### Ruling –

- Membership fees used to the extent of administrative purposes to be **exempt**
- Amount collected by the Club towards the convenience of the members and paying various expenses leviable to GST

## M/s Infinera India Pvt Ltd [Karnataka AAR]

Intermediary

**Issue:** The applicant is 100% EOU under STPI Scheme and wholly owned subsidiary of Infinera Corporation, USA. Applicant as per the agreement with Infinera USA carries out the work subject to following limitation :

- **pre-sales and marketing services only** under the marketing services agreement
- No activities relating to installation/post-sales support or servicing by the applicant
- Applicant does not enter into negotiation of contractual terms & prices, all decision related to pricing on discretion of Infinera

Applicant is compensated on cost-plus basis, whether or not marketing by applicant leads to sales order. **Whether the applicant is covered under the definition of an intermediaries per section 2(13) of the IGST Act, 2017?**

### Ruling –

- Applicant acts as an interface to the entity located abroad & has a direct contact with the customers located in India forming a triumvirate. The main supply is carried out by Infinera USA. Therefore, applicant comes under the definition of Intermediary and therefore services will be leviable to GST.

## JSW Steel Ltd [Karnataka AAR]

Royalty- DMF & NMET

**Issues:** Applicant manufactures Iron & Steel products and pays Royalty to Government as well as NMET & DMF. **Whether applicant to pay GST under RCM for contributions made towards NMET & DMF?**

**Ruling:** Applicant is liable to pay GST under reverse charge for the payment made towards NMET and DMF

Ocean Freight

### **Whether IGST to be paid by the importer on Ocean Freight in case of CIF basis Contract?**

- Subject to the final decision of the Gujrat HC , IGST to be paid by the importer on CIF contract under RCM

# GST – Advance Rulings

## *M/s Surfa Coats (India) Pvt. Ltd. [Karnataka AAR]*

ITC on goods purchased for promoting business

**Issues:** To promote business, applicant frames incentive schemes (like distribution of washing machine, refrigerator, gold coins, rain coats) depending on the market conditions **Whether ITC can be availed on items purchased for furtherance of business ?**

**Ruling:** Section 17(5)(h) specially denies ITC on goods disposed off by way of free samples or gift. Therefore ITC cannot be availed on such goods.

## *M/S Tarun Realtors Pvt Ltd [Karnataka AAR]*

Blocked credit

**Issues:** Applicant is developing a Shopping Mall which will include multiplex, hypermarket, departmental stores, retail shops, & food courts. **Whether applicant eligible for credit for installation of Chillers, Air Handling Units, Escalators, Lifts, Water Pumping pumps, fire-fighting pumps, mechanical car park, etc?**

**Ruling:** Installation of P&M is essential for a commercial mall, and cannot be considered separate from the civil structure. Therefore, ITC on goods or service involved in a construction of immovable property which is a civil structure or building is blocked under 17(5) of the CGST Act, 2017

## *M/S Wework India Management Pvt Ltd [Karnataka AAR]*

ITC on capitalized assets

**Issues:** Applicant procures goods & services from contractors for fitting out the work spaces and provides the said work spaces on rent as shared workspaces . **Clarity was sought on availability of ITC of specific products**

### **Ruling:**

- Detachable wooden flooring and sliding and stacking of glass partitions are fixed to the buildings to create the office spaces and hence is a *sine qua non* for letting out of the office spaces
- There cannot be office space unless these are fixed and hence it can be said to be permanently fastened to the building
- Since this activity amounts to addition or alteration to an immovable property, ITC is not available
- Insofar as fixing of Engineering wood with Oak top wooden flooring is concerned, the same can be easily detached and reused. It only adds to the value to the building and is not essential for the office space unlike the partitions and it is not covered under construction of immovable property' , therefore, ITC will be available.

# GST – Advance Rulings

## *Santosh Distributors [Kerala AAR]*

Discount reimbursement to be treated as 'consideration'

**Issues:** Applicant is an authorized distributor of M/s Castrol India Ltd, Mumbai(Principal Co.) for supply of Castrol brand industrial lubricants. The Principal Co. facilitates discounts by way of issuing commercial credit notes on products through its distributors to attract particular category of customers. The amount of discount is reimbursed to the applicant.

### **Ruling:**

- Additional discount given by the supplier through the applicant which is reimbursed to the applicant is a special reduced price
- Such additional discount is liable to be added to the consideration payable by the customer to the distributor/applicant to arrive at the value of supply in terms of s.15 of the Act
- Applicant is liable to pay GST at the applicable rate on the amount received as reimbursement of discount/rebate from the principal company

## *Cadmaxx Solutions Education Trust*

Activities by Trusts registered under 12AA

- Reimbursement of Stipend to Trainees : Not taxable
- Consideration charged for providing additional training: Taxable @ 18%
- Insurance premium amount reimbursed by the trainer company: Not taxable
- Sourcing fees collected by the Trust from trainer companies : Taxable @18%
- On roll conversion charges collected by the Trust from the trainer company : Taxable @18%

## *Vaishnavi Splendour Home Owners Welfare Association*

Contributions collected by Association of Persons

- Applicant maintains the common areas for its members and collects maintenance charges from them. Applicability of GST sought.
- Activity covered under Heading 9995, therefore applicant is clearly providing a service to its members. Amount collected upto Rs. 7,500/- exempt.
- Where the collection exceeds Rs. 7,500/-, entire amount to be taxable in terms of clarification in Circular No. 109/28/2019-GST dated 22.07.2019 – ITC to be restricted to the amount to the extent of exempt turnover
- Applicant not liable to pay CGST/SGST at the time of collecting charges for corpus fund as they are deposits in respect of a future supply.

## *Toolcomp Systems Pvt Ltd*

Tool amortization cost – GST

- Applicant sought advance ruling on the applicability of tool amortisation cost on capital goods (moulds) received freely on returnable basis in GST regime.
- Cost of tools supplied by OEM on FOC basis is not required to be added to the value of parts supplied by applicant - said value is not liable for GST

## Legal snippets

### Filing of TRAN-1 up to 30-11-19

- Punjab and Haryana HC allowed a batch of 102 writ petitions, directs Revenue to permit Petitioners to **file or revise** Form TRAN-01, either electronically or manually, on or before November 30, 2019
- Holds that unutilized credit arising on account of duty/tax paid under erstwhile regime cannot be taken away on procedural or technical grounds

### Violation of Natural Justice by NAA

Bombay HC sets aside order of NAA in case of Hardcastle Restaurant (Petitioner operating restaurants under McDonald's brand name) and remanded matter back to NAA while concluding that "when the three members of the Authority had heard the Petitioner and participated in the entire hearing, the collectively signed decision, when the fourth member joined only for signing the order has resulted in violation of the principles of natural justice and fairness.

### Supply by Duty Free Shops

Bombay HC holds that supply by Duty Free Shops (DFSs) to the outbound passenger constitutes "exports", consequently, becomes a "zero-rated supply" in terms of section 16(1) of IGST Act, eligible for 100% ITC'

### Grant of Bail

- Rajasthan HC denies bail in case alleging fraudulent issuance of invoice involving tax amount of more than Rs. 66.81 crores and creation of 35 fake firms for evading taxes; Petitioner sought regular bail u/s 439 of CrPc, 1973 for offences u/s 132 (1) (b), (c), (d), (f), (i) and (1) of the CGST Act punishable u/s 132 (1) (i) and (v) r/w Section 132 (5) of CGST Act
- It was observed that, "Keeping in view the seriousness of allegations levelled against the petitioner, no ground for grant of bail to her is made out"

### Attachment of bank Accounts

- Issuance of SCN is a sine-qua non to proceed with recovery of interest payable thereon u/s 50 of the Act and the penalty leviable under the Rules.
- Revenue's action of effecting recovery towards interest by attaching bank accounts of the assessee without issuance of Show Cause Notice (SCN) held to be "perverse and illegal" by Karnataka High Court

3

# Customs updates

- Notifications
- Circulars

# Notifications & Circulars

## Non-Tariff Notifications

Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019. notified with effect from October 1, 2019

Warehouse (Custody and Handling of Goods) Regulations and Warehoused Goods (Removal) Regulations amended to provide for non-applicability of said Regulations to a warehouse operating under Section 65

Amendments notified for Courier Regulations 2010 and Courier Regulations 1998

Road from Nongjri (Barapunji), East Khasi Hills District, Meghalaya, to Kalairag (Bangladesh) between BP No. 1251/11-S12-S added to list of notified route relating to land frontier of Bangladesh

Date of implementation of Sea Cargo Manifest and Transshipment Regulations, 2018 extended till February 16, 2020

Special Notified Zone declared in Gujarat for Import, trading & re-export of rough diamonds by notified entities in Gujarat Hira Bourse, Ichhapore Surat

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

40/ 2019	Imposes ADD on imports of Flat rolled product of steel, plated or coated with alloy of Aluminium and Zinc originating in, or exported from China PR, Vietnam and Korea RP
41 and 42/ 2019	Relates New Shipper Review investigation issued by DGTR pertaining to f import of 'Saturated Fatty Alcohols' from Indonesia, Malaysia and Thailand

## Clarification regarding inclusion of cesses, surcharge, duties, etc. in Brand Rate of duty drawback:

- Education cess, Secondary and Higher Education cess, Social Welfare Surcharge, Clean Environment cess to be factored in Brand Rate of duty drawback.
- Stowage Excise duty and other levies which do not make applicable any of the provisions like refund, drawback, etc. of Central Excise Act or Customs Act cannot be considered for inclusion in the calculation of duty drawback on any export goods.





# FTP updates

- Notifications



# Notifications

Subject	Implications
<b><i>Amendment in Import Policy Condition</i></b>	
1) Urea under Exim Code 31021000	<p>Import policy of Technical Grade Urea ('TGU') and Industrial Urea is amended from "Free with Actual User Condition" to "Free" with effect from 11.10.2019.</p> <p>M/s. Rashtriya Chemicals &amp; Fertilizers ('RCF') is designated as State Trading Enterprises ('STE') for import of Urea on account of Government.</p>
2) Indian National Flag	<p>Import of Indian National Flag not adhering to the specifications prescribed under Part-I, Section 1.2 of Flag Code of India, 2002 is Prohibited.</p> <p><i>Section 1.2 of Flag Code of India, 2002 states as under: The National Flag of India shall be made of hand spun and hand woven wool / cotton / silk khadi bunting.</i></p>
3) PET Flakes	Import of PET Flakes made from used PET bottles etc is "Prohibited"
<b><i>Amendment in Export Policy</i></b>	
Onions	Export of Bangalore Rose Onion (Serial Number 52, Chapter 7 i.e. HSN Codes 07031010 & 07122020) up to quantity of 9000MT has been allowed for the period up to 30.11.2019 with effect from 28.10.2019
<b><i>Incorporation of new provision in the Foreign Trade Policy 2015-20</i></b>	
Regarding cases referred to National Company Law Tribunal (NCLT).	<p>Any firm/company coming under the adjudication proceedings before the NCLT should inform the Concerned Regional Authority ('RA') and NCLT of outstanding export obligations/liabilities under any of the FTP schemes.</p> <p>The total outstanding duty saved amount/dues along with interest and any penalty imposed under FTDR Act or any other dues shall be counted as part of the dues to the government against the said firm/company.</p>



## 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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