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# ICAI-GST

NEWSLETTER

A Newsletter from The Institute of Chartered Accountants of India on GST



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# President's Communication



**My Esteemed professional colleagues,**

Good and Services Tax (GST) completed first year of its implementation in India on 1st July and the day has been widely celebrated as GST Day. On the occasion, the government acknowledged the remarkable success that GST regime has achieved in a short span of 1 year such as creation of a unified market, elimination of cascading effect of taxes, continuous rationalisation of tax slabs, and increased advance direct tax collections, among others.

For the Accountancy Profession in India, 1st July is celebrated as CA Day. This year, this day is all the more special as ICAI entered into its Platinum Jubilee year on 1st July 2018 and celebrations have been launched at the august hands of the Hon'ble President of India, Shri Ram Nath Kovind as the Chief Guest in the programme organised at New Delhi. On this occasion, the Honourable Prime Minister of India Shri Narendra Modi congratulated CA community, for its vital contribution in GST, by helping businesses to adapt the new tax regime. He has also appreciated ICAI's innovative ways to simplify and guiding people through electronic and physical mode.

Continuing its drive of knowledge dissemination, the ICAI has recently launched two more publications on GST namely "E-Handbook on Job work under GST" and "Background Material on UAE VAT Federal Decree Law (No.8) 2017 (3rd Edition)". These publications are available in soft copy at [www.idtc.icai.org](http://www.idtc.icai.org) and can be ordered online at <https://icai-cds.org/>. Also, the

Indirect Taxes Committee (IDTC) of ICAI has organised a Live Webcast Series on relevant aspects in GST Audit on 7th, 8th, 13th, 14th and 15th July 2018 recording of which can be subscribed at <http://idtc.icai.org/live-webcasts.html>.

With a view to update our members and stakeholders with the latest development in GST, more than 4373 workshops, seminars/conferences on GST have been organised by ICAI since 2017 which have been attended by and benefited to 4.2 lakh participants. Also, 68 batches of Certificate Course on GST have been organised across the country.

The website of IDTC [www.idtc.icai.org](http://www.idtc.icai.org) carries offline webcasts on GST, e-learning, webcast series on UAE VAT, regular GST updates, articles, information on upcoming courses, programmes/seminars, e-publications, GST Newsletter etc., for its registered users.

With all these proactive steps, let us all join hands to provide our unequivocal support for all GST initiatives in the best interest of our Nation.

With Best Wishes,

**CA. Naveen N. D. Gupta**  
President, ICAI



# GST UPDATES

**Rs 95,610 crore of total gross revenue collected in June 2018 as compared to May revenue of Rs. 94,016 Crore**

**Monthly average of GST collection in the last financial year was Rs. 89,885 crore**

## GST revenue collection for June 2018

The total gross revenue collected in the month of June 2018 is Rs 95,610 segregation of which is given below:

S. No.	Tax	Amount
1.	CGST	Rs.15,968 crore
2.	SGST	Rs. 22,021 crore
3.	IGST	Rs 49,498 crore (including Rs. 24,493 crore collected on imports)
4.	Cess	Rs. 8,122 crore (including Rs. 773 crore collected on imports)

The total number of GSTR 3B Returns filed for the month of May upto June 2018 is 64.69 Lakhs.

The total revenue earned by Central Government and the State Governments after settlement in the month of June 2018 is Rs. 31,645 crore for CGST and Rs. 36,683 crore for SGST.

The current month's revenue collection is Rs. 95,610 crore as compared to last month's revenue of Rs. 94,016 crore. Further the gross revenue collection in the month of June 2018 is Rs. 95,610 crore whereas monthly average of GST collection in the last financial year was Rs. 89,885 crore.

In the month of June, 2018 additional provisional settlement has been done and Rs. 50,000 crore has been settled between Centre and States. The said provisional settlement has been done in addition to the earlier provisional settlement of Rs. 35,000 crore in February, 2018.

*(PIB Release ID: 180329 dated 1st July, 2018)*

## Shri S. Ramesh takes over as Chairman, Central Board of Indirect Taxes and Customs

Shri S. Ramesh, IRS (C&CE: 1981) has taken over as Chairman, Central Board of Indirect Taxes and Customs [CBIC], on super annuation of Smt. Vanaja N. Sarna. Prior to his elevation, he was Member (Administration) in the Board.

Shri S. Ramesh began his career in Mumbai as Asst Commissioner, Central Excise and thereafter in Mumbai Customs. He has worked in various capacities in Hyderabad, Nagpur, Chennai, Trichy etc. He was the Chief Commissioner, Chennai Customs Zone from 2013 to 2016. Thereafter, he took over as Director



General, Systems & Data Management. He joined the Board in September, 2016 as Member (IT, Central Excise & Service Tax).

*(PIB Release ID: 180316 dated 30th June, 2018)*

## Deferment of RCM on procurements made from unregistered person till September 30, 2018

The Central Government vide Notification No. 12/2018 – Central Tax (Rate) dated 29th June, 2018 has amended Notification No. 8/2017 – Central Tax (Rate) dated 28th June, 2017 last amended vide notification No. 10/2018 – Central Tax (Rate), dated the 23rd March, 2018

Therefore, any registered person procuring taxable goods/services from unregistered suppliers, shall not be required to pay CGST under reverse charge mechanism U/s 9(4) of CGST Act, 2017 till September 30, 2018.

Similar notification is issued under the IGST Act vide Notification No.13/2018 – Integrated Tax (Rate) dated 29th June, 2018 and under the UTGST Act vide Notification no. 12/2018 – Union Territory Tax (Rate) dated 29th June, 2018.

*[Notification No. 12/2018 – Central Tax (Rate) dated 29th June, 2018, Notification No.13/2018 – Integrated Tax (Rate) dated 29th June, 2018, Notification no. 12/2018 – Union Territory Tax (Rate) dated 29th June, 2018]*

## Modifications to the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular No. 41/15/2018-GST dated 13.04.2018

Circular No. 41/15/2018-GST dated 13.04.2018 was issued to clarify the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.

In order to clarify certain issues regarding the specified procedure and to ensure uniform implementation of the provisions of the CGST Act across all the field formations, the Central Government vide Circular No. 49/23/2018-GST dated 21st June, 2018 has made certain modifications to Circular no. 41/15/2018-GST:

	Existing provision	Revised provision
<b>Para 2 (e) of Circular 41/15/2018</b>	Within a period of 3 working days from the date of issue of the order in FORM GST MOV-02, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf.	Now the 3 working days has been replaced with 3 days. Remarks: Seems like increased rigidity so that power of relaxation by Commissioner be sought, if needed, before extending time for disposal of interception.

<b>Statement after Paragraph 3 in GST MOV-05</b>	In view of the above, the goods and conveyance are hereby released on _____ at _____ AM/PM in good condition.	In view of the above, the goods and conveyance(s) are hereby released on (DD/MM/YYYY) at _____ AM/PM in good condition.  Remarks: Appears to overcome excessive responsibility attendant to stoppage affecting the 'condition' of the goods. Should not cause much concern as the Consignor/Consignee/Carrier would continue to be responsible for care of goods during transit.
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Since the requisite FORMS are not available on the common portal currently, any action initiated by the State tax officers is not being intimated to the central tax officers and vice-versa; therefore it is clarified that the hard copies of the notices/orders issued in the specified FORMS by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.

Further, it is clarified that only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder.

**Illustration:** Where a conveyance carrying twenty-five consignments is intercepted and the person-in-charge of such

conveyance produces valid e-way bills and/or other relevant documents in respect of twenty consignments, but is unable to produce the same with respect to the remaining five consignments, detention/confiscation can be made only with respect to the five consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer.

[Circular No. 49/23/2018-GST dated 21st June, 2018]

### Central Goods and Services tax (Sixth Amendment) Rules, 2018

The Central Government vide Notification No. 28/2018 –GST dated 19th June, 2018 has notified following rules further to amend the Central Goods and Service Tax Rules, 2017.

Particulars	Revised provision
Insertion of sub-rule (1A) in Rule : 58 Records to be maintained by owner or operator of godown or warehouse and transporters	(1A) For the purposes of Chapter XVI of these rules, a transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, he may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his Goods and Services Tax Identification Numbers, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter: Provided that where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the Goods and Services Tax Identification Numbers for the purposes of the said Chapter XVI. Remarks: By this insertion a transporter who is registered in more than one State or Union Territory having the same Permanent Account Number may apply for a unique common enrolment number rather than applying separately for different registrations.
Insertion of Form GST ENR-02: Application for obtaining unique common enrolment number	Remarks: With a view to give effect to the amendment made in Rule 58 a new Form GST ENR-02 has been introduced for transporters registered in more than one state or union territory having the same PAN to apply for obtaining unique common enrolment number.
Insertion of proviso in sub Rule (1) of Rule : 138C: Inspection and verification of goods	(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within 24 hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within 3 days of such inspection. Provided that where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days. Explanation.- The period of twenty four hours or, as the case may be, three days shall be counted from the midnight of the date on which the vehicle was intercepted." Remarks:By insertion of this proviso commissioner has been granted power to allow delay in submission of summary report of inspection upto a period not exceeding 3 days.
Substitution in sub- rule (5) of Rule: 142 Notice and order for demand of amounts payable under the Act.	A summary of the order issued under sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 [or section 129 or section 130] shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. Remarks: Publishing the orders in summary form showing disposal of show cause notices is a new high in transparency in governance.

[Notification No. 28/2018 –GST dated 19th June, 2018]



**Clarifications of certain Issues under GST**

The Central Government vide Circular No. 48/22/2018 –GST

dated 14th June, 2018 has provided clarifications on certain issues under GST which are as follows:

Sl. No.	Issue	Clarification
1.	Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an interstate supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?	<p>As per section 7(5) (b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.</p> <p>Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.</p> <p>In the instant case, section 7(5)(b) of the IGST Act is a specific provision which states that such supplies shall be treated as inter-State supplies.</p> <p>Therefore it is clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.</p> <p>Remarks:Reference may also be had to the UAC list of services approved to have entered for authorized operations <a href="http://sezindia.nic.in/upload/uploadfiles/files/Uniformlist.pdf">http://sezindia.nic.in/upload/uploadfiles/files/Uniformlist.pdf</a></p>
2.	Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc.?	<p>As per section 16(1) of the IGST Act, “zero rated supplies” means supplies of goods or services or both to a SEZ developer or a SEZ unit.</p> <p>Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed.</p> <p>Further, as per the second proviso to rule 89(1) of the CGST Rules, 2017, in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:</p>
		<p>(a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;</p> <p>(b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.</p> <p>A conjoint reading of the above legal provisions reveals that subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.</p> <p>Remarks:It is not being expressly declared that these services are ‘entered’ for authorized operations which need to be examined in each case (see link in previous remarks).</p>
3.	Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017?	<p>Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).</p> <p>Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.</p> <p>Remarks: welcome clarification which has wide implications in other industries where this ratio can provide good guidance as this is laying down a principle rather than declaring a special dispensation.</p>

[Circular No. 48/22/2018 –GST dated 14th June, 2018 ]

### Change of email and mobile number of the authorized signatory by taxpayers with assistance from the jurisdictional tax officer under GST system

Complaints are being received from taxpayers that the intermediaries who were authorized by them to apply for registration on their behalf had used their own email and mobile number during the process. They are now not sharing the user credentials with the taxpayer on whose behalf they had done the registration in the first place and the taxpayer is at their mercy.

With a view to address this difficulty of the taxpayer, a functionality to update email and mobile number of the authorized signatory is available in the GST System. The email and mobile number can be updated by the concerned Jurisdictional tax authority of the taxpayer as per the following procedure:

#### Steps to be followed:-

- Taxpayer is required to approach the concerned jurisdictional Tax Officer to get the password for the GSTIN allotted to the business.
- <https://www.gst.gov.in>. Allotted jurisdiction is displayed in red text
- Taxpayer would be required to provide valid documents to the tax officer as proof of his/her identity and to validate the business details related to his GSTIN.

- Tax officer will check if the said person is added as a Stakeholder or Authorized Signatory for that GSTIN in the system.
- Tax officer will upload necessary proof on the GST Portal in support to authenticate the activity.
- Tax officer will enter the new email address and mobile phone number provided by the Taxpayer.
- After upload of document, Tax officer will reset the password for the GSTIN in the system.
- Username and Temporary password reset will be communicated to the email address as entered by the Tax Officer.
- Taxpayer need to login on GST Portal <https://www.gst.gov.in/> using the First time login link.
- After first time login with the Username and Temporary password that was emailed to him, system would prompt the taxpayer to change username and password. The said username and password can now be used by the taxpayer.

(PIB Release ID: 179956 dated 14th June, 2018)

### Central Goods and Services tax (Fifth Amendment) Rules, 2018

The Central Government vide Notification No. 46 /26/2018 – GST dated 13th June, 2018 has notified following rules further to amend the Central Goods and Service Tax Rules, 2017.

Particulars	Existing provision	Revised provision
<b>Insertion in Rule : 37</b> Reversal of input tax credit in the case of non-payment of consideration	-	New proviso in Rule 37 has been inserted to provide that that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.  Remarks: With the insertion of this proviso any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both shall be deemed to have been paid and no reversal of input tax credit on such amount is required to be made in case recipient fails to pay to the supplier the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice.
Substitution in proviso to sub-rule (3) of Rule : 83 Provisions relating to a goods and services tax practitioner	Provided that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of one year from the appointed date	Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of eighteen months from the appointed date.  Remarks: By this amendment, a person who was enrolled as a sales tax practitioner or tax return preparer under the earlier law for a period of not less than five years shall be eligible to remain enrolled unless he passes the said examination within a period of 18 months from the appointed date. Earlier he was required to pass the said examination within a period of one year.
Substitution in sub-rule (5) of Rule: 89 Refund of input tax credit on account of inverted duty structure.	Maximum Refund Amount = $\frac{\text{Turnover of inverted rated supply of goods} \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$ - tax payable on such inverted supply of goods	Maximum Refund Amount = $\frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$ - tax payable on such inverted rated supply of goods and services.  The above change has been given a retrospective effect from 01.07.2017.

Substitution in clause (a) of sub- rule (3) of Rule 95: Refund of tax to certain persons.	Refund of tax paid by the applicant was available only if the price of supply covered under a single tax invoice exceeds Rs. 5000.	Now, this condition has been omitted from the said rule therefore, no condition of amount of invoice to claim refund. The above change has been given a retrospective effect from 01.07.2017.
Insertion of proviso in sub- rule (1) of Rule 97: Consumer Welfare Fund	-	All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified under C.E Act, CGST Act,2017; IGST Act,2017; UTGST Act,2017 and Compensation to States Act, 2017 shall be credited to the Fund “Provided that an amount equivalent to fifty per cent of the amount of cess determined under sub-section (5) of section 54 read with section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), shall be deposited in the Fund.
Substitution of clause (3) in Rule 133: Order of the Authority	Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order (a) reduction in prices; (b) Return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be; in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the fund referred to in section 57 (c) imposition of penalty as specified under the Act; and (d) cancellation of registration under the Act	Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order- (a) reduction in prices; (b) Return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be; in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the fund referred to in section 57 (c) The deposit of an amount equivalent to 50% of the amount determined under the above clause in the Fund constituted under section 57 and the remaining fifty per cent of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable; (d) imposition of penalty as specified under the Act; and (e) cancellation of registration under the Act. Explanation: For the purpose of this sub-rule, the expression, —concerned State means the State in respect of which the Authority passes an order. Remarks: Amendment in the rule has been made to provide that the funds ordered to be paid by such authority shall be shared equally by Center & the concerned State.
Insertion of clause (o) in sub-rule (14) of Rule 138: E-way bill.	-	A new clause (o) has been inserted to the list of specified goods on which no e-way bill is required to be generated Clause (o) contains “empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.” Remarks: Empty cylinders sent by the fabricator are not eligible for this relaxation which is only available between bolting plant and the distributor-dealer-consumer network which meets the conditions prescribed.



Insertion of sl. No 10 in instructions to Form GSTR 4 (A quarterly return to be filed by the composition suppliers)	-	Serial 4A of Table 4 which requires information about Inward supplies received from a registered supplier (other than supplies attracting reverse charge) is not required to be furnished for the tax periods July, 2017 to September, 2017, October, 2017 to December, 2017, January, 2018 to March, 2018 and April, 2018 to June, 2018.
Insertion in Form GST PCT-01 (Application for Enrolment as Goods and Services Tax Practitioner)		Enrolment sought as: 11. Sales Tax practitioner under existing law for a period of not less than five years 12. Tax return preparer under existing law for a period of not less than five years]
Form GST- RFD-01	-	Changes have been made in the said form in the Statement related to the refund of accumulated ITC due to inverted tax structure. This is to make the form in line with the changes made in the formula for calculating Refund. Similar change has been made in RFD – 01A for online filing.

[Notification No. 46 /26/2018 –GST dated 13th June, 2018]

#### Extension of Special Refund Fortnight till 16.6.2018

The Government has launched the second “Special Drive Refund Fortnight” from 31.5.2018 to 14.6.2018. During the first Refund Fortnight from 15th to 29th March an amount of Rs.5350 crore was sanctioned and during this fortnight over Rs 7500 crore has been sanctioned. In view of overwhelming response from exporters and pending claims, the period of Refund fortnight is being extended by two more days’ i.e up to 16th June, 2018.

All exporters whose refunds have been held up on account of short payment are required to make the payment of IGST equal to short payment and follow the instructions of Circular No.12/2018-Customs dated 29.5.2018.

In IGST short payment cases, small exporters whose aggregate IGST refund amount for the period July, 2017 to March, 2018 is upto Rs. 10 Lakhs are required to submit self-certified copies of proof of payment of IGST to the concerned Customs office at the port of export. Others are required to submit a certificate from a Chartered Accountant including the proof of payment.

All GST refund claimants, whose claims are still pending, are being encouraged to approach their jurisdictional Tax Authority for disposal of their refund claims submitted on or before 30.04.2018. In case the jurisdiction (i.e. Centre or State) has not been defined for a particular claimant, he/she can approach either of the jurisdictional tax authorities.



All claimants may note the refund application in FORM GST RFD-01A will not be processed unless a copy of the application, along with all supporting documents, is submitted to the jurisdictional tax office. Mere online submission is not sufficient.

All IGST refund claimants may register on ICEGATE website, if not already done, to check their refund status. Customs field formations have been informed about the extension of the Refund Drive. Exporters are requested to make the best of this extended drive and avail of the opportunity to get the refunds sanctioned during this special drive. In case of any problem, exporters are advised to approach the Commissioner of Customs /Jurisdictional Tax Authorities. The Government is committed to clear all the remaining refund claims filed upto 30.04.2018 are still pending.

(PIB Release ID: 179914 dated 12th June, 2018)

#### Applicable GST rate on Priority sector lending certificates (PSLCs) Renewable Energy Certificates (RECs) and other similar Scrips

The Central Government vide Circular No. 46 /20/2018 –GST dated 6th June, 2018 has clarified regarding the applicable rate of GST on various Scrips/ Certificates like RECs, PSLCs etc. It is hereby clarified that Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs) and other similar documents are classifiable under heading 4907 and attract 12% GST. The duty credit Scrips, however, attract Nil GST under S. No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017.

Comment: Apart from clarifying the taxability of the specific cases covered, this circular also provides guidance on taxability of such entitlement scrips/certificates. Other specific cases would require a mere application of the approach provided in this circular to know the likely view of the Government on the same.

[Circular No. 46 /20/2018 –GST dated 6th June, 2018]

# CUSTOM UPDATES

## Intellectual property rights (imported goods) Rules, 2018

The Central Government vide Notification No. 56/2018 – Customs (N.T) dated 22nd June, 2018 has notified following rules further to amend the Intellectual property right Rules, 2007 notified vide Notification No. 47/2007 dated 8th May, 2007.

Particulars	Revised provision
Omission in Rule 2: Definitions	(b) “intellectual property” means a copyright as defined in the Copyright Act, 1957, trade mark as defined in the Trade Marks Act, 1999, patent as defined in the Patents Act, 1970, design as defined in the Designs Act, 2000 and geographical indications as defined in the Geographical Indications of Goods (Registration and Protection) Act, 1999; (c) “Intellectual property law” means the Copyright Act, 1957, the Trade Marks Act, 1999, the Patents Act, 1970, the Designs Act, 2000 or the Geographical indications of goods (Registration and protection) Act, 1999;
Insertion in Rule 5: Grant of registration under rule 4 shall be subject to 2 more conditions	(c) the right holder or his authorized representative shall inform the commissioner of Customs at the time of giving notice about any amendment, cancellation, suspension, or revocation of the intellectual property right by the authorities under the intellectual property laws or any court of law or Appellate Board, subsequent to its registration with the authorities under the intellectual property Law and in case of any such amendment, cancellation, suspension or revocation of the intellectual property right during the validity of the notice registered under rule 4, the same shall be brought to the notice of the commissioner of Customs by the right holder within a period of 1 month of the date of communication of any such amendment, cancellation, suspension or revocation of the intellectual property right to the right holder or any person authorized by him in this regard; (d) In the event of any amendment, cancellation, suspension or revocation of the intellectual property right by the authorities under the intellectual property Law or by any Court of Law or Appellate Board, the Commissioner of Customs may accordingly amend, suspend or cancel the notice and corresponding protection.

[Notification No. 56/2018–Customs (N.T) dated 22nd June, 2018]

### Amendment in the notification prohibiting import of specified goods

The Central Government vide Notification No. 57/2018 –



Customs (N.T) dated 22nd June, 2018 has made certain amendments in the Notification No. 51/2010 dated 30th June, 2010 (Prohibiting the import of certain goods intended for sale or use in India, subject to the conditions and procedures as specified in the intellectual property rights (imported goods) enforcement Rules, 2007 which are explained as below:

- Clause (iv) of the Notification no. 51/2010 has been omitted which provides for the prohibition of import of the product made or produced beyond the limits of India for which a patent is in force under the Patents Act, 1970 (39 of 1970), except in cases where the consent from the patentee in India has been obtained provided that such prohibition is not applicable to the cases where such importation is allowed under the Patents Act, 1970 (39 of 1970).
- Clause (v) of the Notification no. 51/2010 has been omitted which provides for the prohibition of import of the product obtained directly by the process made or produced beyond the limits of India where patent for such process is in force under the Patents Act, 1970 (39 of 1970), except in cases where the consent from the patentee in India has been obtained provided that such prohibition is not applicable to the case where such importation is allowed under the Patents Act, 1970 (39 of 1970).
- In the Explanation for the purposes of this notification, the terms and expressions used in various clauses of the notification have been assigned the meanings same as assigned to them in their respective Acts. However the Patents Act, 1970 (39 of 1970) has been omitted from the said explanation.

**Comment:** By view of the amendments made vide above two notifications it is being interpreted that that the right holder alleging infringement of the patent shall along with notice of the commissioner provide an order of the authorities under the intellectual property law and only on the provision of such order, the Commissioner can allow suspension of clearance of goods. In the absence of such order, the Commissioner will now not be in a position to grant temporary suspension. Hence right holder will left with no remedy

[Notification No. 57/2018 – Customs (N.T) dated 22nd June, 2018]

### Submission of application seeking authorization for import / export of restricted items through e-mail

The Director General Foreign Trade vide Trade notice no.

18/2018 dated 20th June, 2018 has provided that applicants seeking import/export license from DGFT for “restricted” items, having paid the applicable fees can w.e.f 21.06.2018 submit online application to the concerned jurisdictional authority and subsequently send their application through email to either import-dgft@nic.in (for import licenses) or exportdgft@nic.in (for export licenses) as the case may be, along with proof of the application fee paid besides attaching the necessary documents for processing the case.

Applications are required to be submitted in prescribed proforma ANF-2M (for import license) and ANF- 2N (for export license) along with ANF-I (Applicant’s Importer Exporter Profile), copy of IEC and other supporting documents, as applicable. AayatNiryat forms are available on the DGFT’s website www.dgft.gov.in . In case the applicant firm has received the NOC from the concerned administrative Ministry, the same should invariably be attached with the application and it should necessarily be in the pdf format.

*[Trade notice no. 18/2018 dated 20th June, 2018]*

### **Electronic sealing - Deposit in and removal of goods from Customs bonded Warehouses**

The Warehouse Regulations prescribe the affixation of a one-time-lock for transport of goods to be deposited in a warehouse or removed therefrom. Further Circulars 36/2017, 37/2017 and 41/2017 - Customs prescribe the use of “RFID tamper proof one-time-bolt seal” and providing of readers / procedure for its use by Customs.

Now, the Central Government vide Circular No. 19/2018 – Customs dated 14th June, 2018 has clarified that RFID sealing shall be extended to transport of goods for deposit in a warehouse as well as removal therefrom. Therefore, where ever the Warehousing Regulations prescribe affixing of a One Time Lock”, the importer or owner of the goods shall use RFID anti-tamper one-time-locks.

Considering the fact that goods may be removed through a variety of vehicles, different types of RFID OTLs, such as bolt seals) or wire - cable seal shall be used. The specifications, data elements and procedure to be used under the Regulations for Warehousing shall be as follows:

#### **Types of Seals**

- (i) For containers (RFID One-Time-Bolt Seal)
- (ii) For closed body vehicles (RFID Wire Cable seal)
  - (a) Each seal shall be a one-time-lock bearing a unique serial number and brand of the vendor.
  - (b) The RFID seal shall conform to ISO 17712: 2013 and ISO/IEC 18000-6 Class 1 Gen 2.
  - (c) The manufacturer or vendor, as the case may be, shall be in possession of certifications required for conformance of the ISO standard.
  - (d) Before commencement of sales, the vendor shall submit self-certified copies of the above certifications to the Risk Management Division (RMD).

#### **Procedure**

- (a) All licensees of customs bonded warehouses shall have to procure Readers for scanning of RFID OTLs at the bonded warehouse at their own cost.
- (b) The licensee shall also procure RFID OTLs from the vendors for providing the same to importer, owner and exporter or in case of private bonded warehouses for their own use. It is clarified that licensees are free to procure RFID OTLs from any one or more vendors.
- (c) The vendors shall be required to provide Readers to Customs locations. Readers already deployed by vendors to Ports and ICDs for RFID sealing can also be used for this procedure. Air Cargo Complexes, CFS and LCSs are also covered under this procedure for transport of bonded goods.
- (d) Any importer permitted to remove goods for deposit in a warehouse shall obtain an RFID seal from the Warehouse where the goods are to be deposited.
- (e) Vendors shall ensure that the TID number is captured in their data base and warehouse code of the licensee is linked to the same at the time of sale of seals.
- (f) Vendors shall ensure that data can be uploaded from internet enabled Readers as well as desktops.
- (g) Circular No 19/2016-Cus dated 20th May 2016 prescribes that the importer shall declare the warehouse code in the Bill of Entry for warehousing. The Out of Charge officer releasing the cargo for deposit in a warehouse is advised to match the warehouse code declared in the bill of entry with that linked to the seal. This procedure shall dispense the need for securing any space availability certificates by importers.
- (h) The exporter of warehoused goods will be obligated to declare the physical serial number of the RFID OTL at the time of filing the online integrated shipping bill or in the case of manual shipping bill, before the container or cargo is dispatched from the warehouse.
- (i) In case the RFID OTL is found to be tampered at the Customs Station at the time of export, then mandatory examination would be carried out by the Customs authorities.
- (j) In case at the time of arrival of the goods at the warehouse, the RFID OTL is found to be tampered, then the licensee shall not permit unloading of the goods and shall inform the bond officer
- (k) The “trip report” generated by scanning the RFID OIL at the destination customs station or warehouse, shall be printed and retained for records by the customs station, bond officer





and licensee. This will enable discharge of the requirement of acknowledgement enjoined under the regulation (5) of the Warehoused Goods (Removal) Regulations 2016. However, this is notwithstanding the obligation cast on the licensee under Warehouse (Custody & Handling) Regulations 2016 for account of goods.

- (l) For the purposes of risk management, if there is any inordinate delay in the due arrival of goods, the bond officer may be alerted by the customs station or vice versa.
- (m) Where any procedure requires that goods removed from a warehouse shall move under physical escort by customs (e.g. as prescribed by circular 32/2016 regarding Duty Free Shops), the use of RFID OIL shall not apply.

The Principal Commissioner of Customs/Commissioner of Customs is duly empowered to permit movement of goods without affixation of RFID OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipe Lines and Over Dimensional Cargo).

It is to be noted that the above procedure shall come into force with effect from 1st August 2018.

*[Circular No. 19/2018 – Customs dated 14th June, 2018]*

#### **Procedure for E-commerce exports through Post and Clarification regarding personal imports**

In order to facilitate exporters engaged in fulfilling multiple low-value- small-shipment orders the Central Government vide Circular No. 18/2018 – Customs dated 13th June, 2018 has permitted that PBE-11 may be used for this purpose.

*[Circular No. 18/2018 – Customs dated 13th June, 2018]*

#### **Explanatory Notes to the Scheme of Classification of Services**

CBIC has hosted explanatory notes to the Scheme of Classification of Services on the website of CBIC. The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services. Such explanatory notes are available at [http://www.cbic.gov.in/resources//htdocs-cbec/gst/Explanatory\\_notes.pdf](http://www.cbic.gov.in/resources//htdocs-cbec/gst/Explanatory_notes.pdf).

The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the United Nations Central Product Classification.

**Comment:** It may be noted that UN CPC of services have not been referred anywhere in the Law. It has been recommended by the committee constituted for that purpose.

*[<http://www.cbic.gov.in> ]*

#### **Refund of IGST on export of goods- Extension of date in SB005 alternate mechanism cases and clarification in other cases**

As exporters are facing difficulties in getting refunds due to SB005 errors (occurs when there is a mismatch between GSTIN entity mentioned in the Shipping bill and the one filing GSTR-1/ GSTR-3B). Therefore, in this respect, the Central Government vide Circular No. 15/2018 dated 6th June, 2018 has provided a correction facility in cases where although GSTIN of both the

entities are different but PAN is same. This happens mostly in cases where an entity filing Shipping bill is a registered office and the entity which has paid the IGST is a manufacturing unit/ other office or vice versa.

However, in all such cases, entity claiming refund (one which has filed the Shipping bill) will give an undertaking to the effect that its other office (one which has paid IGST) shall not claim any refund or any benefit of the amount of IGST so paid. The undertaking shall be signed by authorized persons of both the entities. This undertaking has to be submitted to the Customs officer at the port of export.

Further, DG Systems have developed the correction tool, on lines of one developed for SB005, for sanction of refund in cases where PAN provided in Shipping Bill is same as PAN of GSTR 1 which would facilitate processing of IGST refund claims stuck due to SB003 error in the manner similar to SB005 error

**Comment:** This is a welcome move to address concerns of exporters who have faced difficulty in submitting refund claims. Now, project exporters and other such exporters can ensure their applications do not face these hurdles.

*[Circular No. 15/2018 dated 6th June, 2018 ]*

#### **Exports by Post Regulations, 2018 w.e.f 21st June, 2018**

The Central Government vide Notification No. 48 /2018 – Customs (N.T) dated 4th June, 2018 has provided Post Regulations, 2018 which shall apply to export of goods by any person, holding a valid Import-export Code issued by the Director General of Foreign Trade, in furtherance of business from any foreign post office notified under sub-section (e) of section 7 of the Customs Act, 1962.

As per the Regulations, in case of goods to be exported through a foreign post office, an entry shall be required to be presented to the proper officer at the foreign post office of clearance, in the prescribed form.

**Comment:** These regulations are another step towards creating a conducive environment for doing business especially, in case of exports by post.

*[Notification No. 48 /2018 – Customs (N.T) dated 4th June, 2018]*

#### **Procedure for e-commerce exports through Post and clarification on personal imports**

The Central Government vide Circular No. 14/2018 dated 4th June, 2018 has provided that exports under e-commerce, not involving MEIS, may be done through any notified Foreign Post Office (FPO). However, exports under MEIS through Post will continue to be governed through the circular 36/2016-Customs dated 29th July, 2016, except that the declaration form appended thereto shall now be replaced with PBE-1, which has been prescribed under the new Regulations.

Further, the procedure for E-commerce Export through Post as stipulated in Circular No. 14/2018 dated 4th June 2018 is as under:

1. Any exporter holding a valid Import-Export Code shall be permitted to export goods by filing a Postal Bill of Export (PBE) in the form prescribed under the “Export by Post Regulations 2018”.

2. Every PBE-I (for e-commerce exports) shall be filed in duplicate and there will be no limit on the number of postal shipments which can be effected using a single Postal Bill of Export - I. Also the exporter shall be required to attach the invoice(s) with the PBE.
3. The PBE along with goods shall be presented to the Customs at the FPO. The PBE shall be processed manually. Upon completion of processing of the PBE by Customs, the goods shall be presented to the Postal department, who will acknowledge receipt of the shipment on the PBE and affix the tracking number of each shipment on the same. Upon affixation of the tracking number by postal authorities, the PBE shall be brought back to the Proper Officer for grant of "Let Export Order".
4. In the case of exports, not involving e-commerce, the PBE-II shall be filed in duplicate and shall cover only one consignor and one consignee though multiple packages between a given consignor and a given consignee can be covered in the same PBE.
5. The Postal Authorities will furnish the proof of export of the goods i.e. copy of relevant CN / CP forms, as applicable to different categories of postal mails, to the Customs at the FPO. Essentially, the document must contain the tracking nos. of the parcel along with dispatch identifier. A corresponding entry relating to proof of export will be made in noting register. Only after receipt of such proof of export,

should details in ICAN be uploaded.

Further, In order to ensure transparency and visibility, CB's are required to on board any third- party web application before commencing operations at the FPO and Web-application shall have the required functionalities.

It is also clarified that Customs will not be onboarding the web application for conducting any regulatory process. All customs procedures will remain in manual mode, till introduction of EDI at FPOs. The application will be essentially used between the exporter and customs broker to facilitate communication, enable shipment visibility and printing of PBE or any such other value-added services for B2B use.

In the case of natural persons (i.e. other than firms & companies) exporting parcels, there is no change in procedure being followed hitherto. It is clarified that they will not be required to file any PBE.

**Comment:** This circular clarifies any doubts about export by e-com and other operations. Compliance with Customs procedures continues to be monitored through Customs officer at the Post Office or through Customs Broker duly licensed under Customs Broker Regulations, 2013 being involved. No new or special dispensation is being allowed through this circular except to allay fears about exports by e-com/post office.

[Circular No. 14/2018 dated 4th June, 2018]



**INDIRECT TAXES COMMITTEE (IDTC) OF ICAI**  
**A ONE STOP DESTINATION FOR INDIRECT TAXES i.e. IDTC**  
 website: [www.idtc.icai.org](http://www.idtc.icai.org)



The Indirect Taxes Committee of ICAI has launched its website viz. [www.idtc.icai.org](http://www.idtc.icai.org) to provide the users a well set platform for sharing and gaining knowledge on indirect taxes and easy accessibility to the Indirect taxes Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in the Indirect tax laws vide various mediums like, organising programmes, updating study materials, sending regular updates etc.

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# IMPACT OF GST ON FREE SUPPLIES & FREE SAMPLES:

The Goods and Services Tax (GST) regime has introduced the concept of 'supply' as a taxable event and done away with the erstwhile taxable events of sale, service, manufacture etc. The taxability and valuation of 'Free Supplies' has been a subject matter of dispute qua taxation, valuation and credit restrictions in the past under erstwhile indirect tax laws.

While the term 'free supply' is not defined under GST law, a 'free supply' in general sense, means a supply of goods or services without consideration. Under GST law, the incidence of tax is 'supply'. The term 'supply' has been defined in an inclusive manner under Section 7 of the CGST Act. The term 'supply' as defined under Section 7 of CGST Act, 2017, includes all forms of supply such as sale, transfer, exchange, barter etc. made or agreed to be made for a consideration in the course or furtherance of business.

## Free Supplies between related /distinct person

Further, clause (c) of Section 7 (1) provides that the activities specified in Schedule I, made or agreed to be made without a consideration, is a supply under GST. As per Para 2 to said schedule, supplies between related persons or distinct persons in the course or furtherance of business even if not for a consideration shall be termed as supply. As a result, free supplies between unrelated persons are not 'supplies', therefore, not taxable, whereas free supplies between related persons are 'supplies' and therefore, such supplies are exigible to GST. In other words, GST shall be levied on the supplies made even without consideration between distinct or related persons on such value as determined in accordance with Section 15 of CGST Act, 2017 read with Valuation Rules under CGST Rules, 2017.

## Scope of Para 1 to Schedule I to Section 7 of CGST Act, 2017

The said schedule also provides under Para 1 that the permanent transfer or disposal of business asset where input tax credit (hereinafter referred to as ITC) has been availed on such asset is treated as supply. The term Business Assets has not been defined under the Act. According to general rule of interpretations, if the language used has a natural meaning we cannot depart from that meaning unless, reading the statute as a whole, the context directs us to do so. According to the plain meaning rule, absent a contrary definition within the statute, words must be given their plain, ordinary and literal meaning. In the instant case, the term Business Asset is of very wide connotation. It includes every asset of the business including capital goods, finished goods etc. The clause stated above includes free supplies between both related and unrelated person.

As per our understanding, such clause shall cover following types of situations:

(a) Disposal of Old Machinery to NGO – A company has

purchased a machinery and has availed input tax credit in respect of GST paid on such procurement. Further after few years, company disposed of such machinery by transferring it to NGO. Such transfer shall be considered as supply in terms of para stated above. Thus, GST shall be levied on the transfer of such assets on the value as determined under Section 15 of CGST Act, 2017 read with CGST Rules, 2017.

(b) Disposal of old machinery to related person / distinct person without consideration can also be covered under the said Para as there is no restriction to the same and consequently the same shall be considered as supply in terms of Para 1 and Para 2 of Schedule I to the CGST Act, 2017.

In the opinion of the author, business assets specified in Para 1 shall include only those capital assets which are being used in the course or furtherance of business. Thus, input tax credit reversal is not required in the said case. However, transfer and disposal of such assets shall be considered as supply and GST is leviable on the same. Department should clarify in this regard to bring clarity and to avoid unnecessary litigation.

## Gifts to incentivise Distributors

These are marketing strategy adopted by various companies. Gifts provided to Distributors includes:

- (a) Goods which are manufactured by company itself or goods in which they are dealing on their own
- (b) Goods purchased from other vendors

On procurement of such goods or manufacturing of such goods, input tax credit in respect of the same is availed by the companies. Considering the wide definition of business assets (as discussed above), such goods shall easily be referred to as business assets. Hence, transfer of such business assets on which input tax credit has already been availed shall be considered as supply and hence the same shall be exigible to GST.

However, in term of Section 17(5)(h) of CGST Act, 2017, not with standing anything contained in Section 16(1) and Section 18(1) of CGST Act, 2017, input tax credit in respect of goods, destroyed, written off or disposed of by way of gift or free samples shall not be available. The term gift has not been defined in the Act, thus, we would like to resort to definition provided under Gift Tax Act, 1858.

Section 2 (xii) "Gift" means the transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or moneys worth and includes transfer or conversion of any property referred in Section 4, deemed to be a gift under that section.

As per above stated definition, any transfer by one person to another of any existing movable or immovable property voluntarily and without consideration shall be considered as Gift. Thus, goods provided free of cost shall fall under definition



of gifts and accordingly input tax credit in respect of them has to be reversed.

A conjoint reading of Section 17(5)(h) of CGST Act, 2017 and Schedule I to CGST Act, 2017 demands harmonious interpretation of law. Such harmonious interpretation clearly indicates that if the goods are disposed of by way of gift, section 17(5)(h) of CGST Act, 2017 shall be applicable and accordingly input tax credit in respect of the same shall not be allowed. Thus, the same shall not be considered as supply. However, if such goods are disposed of by any way other than gift, then the same shall be considered as supply in terms of Para stated above and accordingly shall be exigible to GST and reversal of credit shall not be required.

According to the opinion of the author, goods distributed to distributors free of cost is a sales promotion expense in the hands of the companies, thus it cannot be considered as gift. In this regard, we would like to refer to the case of FEDERAL COMMISSIONER OF TAXATION v. McPHAIL (1968) 117 CLR 111 26 March 1968 wherein Hon'ble High Court has provided that to constitute a "gift", the property should be transferred voluntarily and not as a result of a contractual obligation and no advantage of material character was received by transferor. Relevant text of the judgement is reproduced as under:

6. But it is, I think, clear that to constitute a "gift", it must appear that the property transferred was transferred voluntarily and not as the result of a contractual obligation to transfer it and that no advantage of a material character was received by the transferor by way of return.

Goods distributed to distributors is benefitting the companies in promoting their sales. Thus, the same shall not be considered as gift. Hence, input tax credit should be available in respect of such goods. Here it is essential to highlight here that Department might litigate on the said issue and disallow the input tax credit in respect of goods distributed to incentivise the distributors considering them as Gift as there is no clarity in this regard.

### Gifts for Marketing

Companies offer various schemes in the market so as to increase the sale of the products such as buy 2 get 1 free etc. Here we would like to mention that such gifts are in the nature of discounts. Such schemes are introduced to give to the buyer an Incentive to purchase more quantity at a lesser price indirectly by giving something free & hence it is actually a Discount in real sense ( which we may call by whatever name Trade Discount/ Quantity discount etc.....) One may also refer the decision of Hon'ble Supreme Court in CCE Vs. Hindustan Lever Ltd (2002) (142) ELT 513 (SC).

In terms of Section 15 of CGST Act, 2017, such value of discount, shall not be included in the value of supply so as to compute GST liability. According to the opinion of the author, no reversal is required in respect of such goods provided free of cost.

However, in terms of Section 17(5)(h) of CGST Act, 2017, such goods provided free of cost can be considered as gift and department may ask for the reversal of the credit in respect of the same. Thus, it is recommended that in the invoice under such schemes, companies shall reduce the value of the product

provided free of cost, as a trade discount, from the total value of the products including the product which is to be provided as gift. In such a case, companies shall be eligible to avail input tax credit of such goods sold without any fear of litigation.

Further, CBIC's Sectoral FAQ ( available on CBIC website ) further suggested following : –

**Question** – How the Invoicing should be done for free goods given along with sale so that corresponding input tax credit is not required to be reversed for products under scheme ?

**Answer** – Invoice Value would include value of all goods including those supplied free. In such cases, ITC is not required to be reversed.

### Disposal by way of Free Samples

Various Companies engaged in Pharmaceuticals, Cosmetics, Food Products etc. distributes free samples to customers/ branches across the country. Such free samples transferred to customers shall not fall under definition of supply and accordingly no GST shall be leviable on the same.

For Free Samples there is provision for ITC Reversal u/s 17(5). The same reads as under:

(5)..Not with standing anything contained in sub-section (1) of section 16 and subsection(1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) .....

(b) .....

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

Further, it is also essential to bring to your attention the CBIC's Sectoral FAQ ( available on CBIC website where following has been provided:

**Question** – What are the requirements for clearance of physician samples distributed free of cost?

**Answer** – In case of clearance of physician samples distributed free of cost, the ITC availed on the said samples has to be reversed in view of the provisions under Section 17(5)(h) of the CGST Act, 2017. No tax is payable on clearance of physician samples distributed free of cost as the value of supply is zero and no credit has been availed.

Hence according to section 17(5) of the CGST Act, input tax credit will not be available for goods given as gifts or free samples. Thus, if the taxpayer avails the input tax credit on account of a purchase of goods, and later gives these goods as free samples, then he will have to reverse the input tax credit so availed.

### Distribution of Samples through Branches

Further, we would like to deal a scenario where a company distributes free samples through its branches. In such a case, transfer of free samples to the branch, being related person, shall be exigible to GST and further input tax credit in respect of such samples shall be allowed. However, branch needs to reverse the input tax credit of GST paid on such samples to the company. The same can be explained with the help of an example:

A supplied 2000 sample costing (including all inputs used for manufacturing samples and are eligible for ITC) Rs 60 each to its Branch located in Haryana. Accordingly, A charged GST on supply of such samples on value as provided under Section 15 of CGST Act, 2017 read with Rules thereunder, say Rs 100 (including the value of all inputs, salary and other expenses). Consequently, tax invoice shall be issued in respect of the same. In view of the same, A is entitled to avail the credit in respect of the inputs used for manufacturing such goods, i.e. Rs 60.

Further, when B shall distribute the samples free of cost to the customers, then B is required to reverse the credit in respect of GST paid on amount charged by A from branch i.e. on Rs 100. Such reversal would be much more than what is required to be reversed by A, had the samples were given free of cost by A only. A would have reversed the credit on Rs 60, however, branch needs to reverse the credit on Rs 100. Thus, this aspect also has to be taken into consideration while deciding on distributing free samples via branches.

# PUBLICATIONS

3<sup>rd</sup> Edition  
**Background Material**  
 on  
**UAE VAT**  
 Federal Decree Law (No.8) 2017  
 (June, 2018)



The Indirect Taxes Committee of ICAI keeps the members updated by providing timely guidance in the form of its updated/revised publications which members may subscribe. The Committee has recently launched/revised the publication:

## Background Material on UAE VAT- June 2018 (Revised Edition)

Background Material on UAE VAT- June 2018 Revised Edition contains variants of VAT Law and inter alia includes the analysis of various Articles of Federal Decree Law No. 8 of 2017/ Statutory Provisions of UAE VAT Law pertaining to definitions (inter alia supply of goods, services), scope of tax, Registration, Place of Supply of Goods and Services, Reverse charge mechanism, Transitional Provisions, penalties, right of the Authority to perform a tax audit etc. It also provides the GCC VAT Framework and its features, Overview of UAE Excise Law.

## E-Publication on E-way bill under GST- July 2018 (Revised Edition)

E-publication on E-way bill under GST- July 2018 Revised Edition aims to provide detailed analysis of provisions pertaining to E-way bill under GST in a simplified manner. This e-publication inter alia contain the legal provisions, analysis, frequently asked question and diagrams on e-way bill describing the meaning, need, when, where, how, forbearance, issues, intricacies, practical challenges, some solutions and also some case laws etc. of e-way bill.

## E-Handbook on Job Work under GST- June, 2018 (Revised Edition)

E-Handbook on Job Work under GST- June 2018 Revised Edition contains the provisions relating to job work under one umbrella to enable job workers, manufacturers and consultants to do their SWOT analysis and materialize the benefits of GST as envisaged. The publication will help to provide in depth and detailed knowledge about the procedure, conditions and restrictions for supplying the goods to Job worker.

## E-Handbook on GST Amendments- June, 2018

E-Handbook on GST Amendments- June, 2018 has been specifically designed to provide an in-depth knowledge of various aspects/ provisions under GST which has undergone changes impeccable for smooth implementation of GST vide Notification, Circulars, and Orders. Topic wise discussion of the relevant portion of Notification, Circulars, and Orders will enable the readers to understand intricacies involved in GST Law and keep pace with rapid changes taking place in GST.

### Ordering Information

The Publications (other than E-Publications) can be purchased directly from the sales counter at the ICAI's Regional Offices / Branches or at the Head Office. Member may also download it from the website of Indirect Taxes Committee <http://idtc.icai.org/publications.php>. To order online, requisition may be made at <https://icai-cds.org/>

# SPECIAL AUDIT IN THE AREA OF EXCESS CREDITS

In order to check “frivolous and fraudulent” tax credit claims by businesses, the CBEC has decided to verify demands of top 50,000 tax payers claiming maximum GST transitional credit, starting with those where the quantum exceeds Rs 25 lakh.

The verification of “unreasonable” transitional credit claims would be conducted in four phases. In the first phase, the tax officers will verify transitional credit claims where the growth is more than 25 per cent or the credit availed is in excess of Rs 25 lakh. One-third of the remaining claims of 50,000 taxpayers will be verified in three phases -- July-September, October-December and January-March (2019). Credit verification will remain one of the focus areas in 2018-19. One of the important tools for credit verification available with the government is special audit u/s 66. As per section 66, at any stage of scrutiny, inquiry, investigation or any other proceedings direction to registered person to get accounts examined and audited can be given. Direction has to be given by Proper Officer before whom scrutiny, inquiry, investigation or any other proceeding is done (and none else). Direction for special audit can be made only by officer not below the rank of Asstt Comm. Direction for special audit is given having regard to nature and complexity of the case and the interest of the revenue

Direction for special audit can be given only if officer is of the opinion that

- a) value has not been properly declared or
- b) the credit availed is not within normal limits

Hence if proper officer wants to direct special audit to examine proper claim of credit he has to form opinion that the credit availed is not within normal limits. The following areas of excessive input tax credit in general, industry specific and transitional credit can be identified triggering the special audit by Chartered Accountant or Cost and Works Accountant.

#### Areas where excess credit may be taken:

- 1 ITC being claimed for the period prior to application/grant of registration in case of compulsory/voluntary registration (in respect of purchases not being represented by inputs available on the effective date of registration) [[S. 16(1), 18(1) & S. 2(62)]
- 2 ITC of some other establishment in different state being used against output tax of impugned unit. [S. 16(1) and S. 2(62)]
- 3 ITC being taken against supplies not for use in course or furtherance of business e.g. personal expenditure. [S. 16(1), 17(1)& 17(5)(g)].
- 4 ITC of following input supplies taken which are not qualified for ITC u/s 17(5) in normal course i.e.
  - a) Food and Beverages
  - b) Outdoor Catering
  - c) Beauty Treatment
  - d) Health Services
  - e) Cosmetic and Plastic surgery
  - f) Membership of a club, health and fitness centre
  - g) Rent a Cab
  - h) Life Insurance
  - i) Health Insurance
  - j) Works Contract Service supplied for construction of an immovable property
  - k) Goods or services covered by composition scheme u/s section 10.
  - l) Travel benefits extended to employees on vacation such as leave or home travel concession
  - m) Goods or Services received by non-resident taxable person
  - n) Goods or Services used for personal consumption
- 5 Taking credit of tax payable on RCM without making payment of the same. [S. 16(2)(c) & 49(4)]
- 6 Taking Credit without being in possession of
  - a) tax invoice issued by supplier or
  - b) self Invoice made u/s 31(3)(f) in case of RCM
  - c) debit note or
  - d) bill of entry
  - e) ISD Invoice
  - f) ISD Credit Note

[S. 16(2)(a) read with Rule 36(1)]





- 7 Taking ITC on Invoice without mention of particulars specified in Rule 46 [Rule 36(2)]
- 8 Taking ITC against amount paid u/s 74, 129 or 130 [S. 17(5)(i)]. Taking credit against demand paid u/s 73 is not prohibited.
- 9 Taking ITC without evidence of receipt of goods or service [S. 16(2)(b)]. One may be claiming ITC on advance payment against services on account of invoice issued by prospective supplier of service.
- 10 Taking ITC against goods shipped to impugned person while billed to some other person [Expl. to S. 16(2)(b)]
- 11 Taking ITC on goods received on lots without receipt of last lot [First proviso to S. 16(2)]
- 12 ITC not reversed against goods or services for payment not made within 180 days from date of issue of invoice. [2nd Proviso to S. 16(2)]
- 13 ITC not reversed for Depreciation claimed on ITC part of capital goods [S. 16(3)]
- 14 Taking ITC for omissions/commissions of earlier financial years after 20th October following relevant financial year [S. 16(4)]
- 15 ITC claimed against tax paid on purchase of securities, petroleum products and supplies notified in 2/2017-CTR and 12/2017-CTR [S. 17(2)]
- 16 ITC against inputs/inputs services being used exclusively for non business purpose/exempt supply/Prohibitive ITC u/s 17(5) not disallowed at Invoice level in GSTR-2 and allowed to be taken in common credit [Rule 42(1)(g) read with Rule 42(1)(b)/(c)/(d)]
- 17 Not including stamp duty value of land and building and 1% of sale value of securities in exempt supply [Explanation to Rule 45]
- 18 Non reversal of 5% of Common Credit on account of non business use of inputs/input services [Rule 42(1)(i)]
- 19 Non Inclusion of non taxable supplies in total turnover while calculating ITC attributable to exempt supplies [Rule 42(1)(i)]
- 20 Non Adjustment of final eligible ITC u/R 42(2), where aggregate of D1 and D2 for tax periods is lesser than final calculation of D1 and D2,  
D1= Ineligible ITC attributable to exempt supplies and  
D2= Ineligible ITC attributable to supplies for non business purpose
- 21 Not segregating capital goods being exclusively used in making exempt supplies and allowing ITC to merged for ITC of common capital goods u/R 43(1)(c)
- 22 Not reducing 5% per quarter or part of quarter out of ITC taken for capital goods earlier being used exclusively for exempt supplies and subsequently used for common purpose [Proviso to Rule 43(1)(c)]
- 23 Not reducing 5% per quarter or part of quarter out of ITC taken for capital goods in earlier tax periods being used exclusively for taxable supplies and subsequently used for common purpose [Proviso to Rule 43(1)(d)]
- 24 Taking 100% ITC on common capital goods instead of taking credit on proportionate basis i.e. aggregate of 5% per quarter or part of Total credit on Common Capital Goods
- 25 Not disallowing 50% of ITC on capital goods in case of banking company, if option given u/s 17(4) has exercised.
- 26 ITC taken against motor vehicles and other conveyance [not used for transportation of goods and also not used in providing taxable supplies of further supply of such vehicle, and further also not used for transportation of passenger, and imparting training . ]
- 27 ITC taken against works contract service or goods or services used for construction of immovable property other than plant and machinery except when used for further supply of works contract service or such goods or service [S. 17(5)(c)/(d)]
- 28 ITC taken on goods or services received by non-resident taxable person [S. 17(5)(e)]
- 29 ITC taken against goods or services or both used for personal consumption [S. 17(5)(g)]
- 30 ITC taken against goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples [S. 17(5)(h)]
- 31 Taking credit against capital goods against for pre-registration date [S. 18(1)(a)]
- 32 Taking credit against input held in stock on date of application for registration inspite applying for registration after 30 days from the date of liability to get registered [S. 18(1)(a)]  
Taking ITC for input held in stock on registration date without making declaration in Form GST ITC -01 by providing information of stock [Rule 40(1)(b)]  
CA/ CWA Certificate also required where aggregate of CGST/SGST/IGST exceeds Rs. 2 lakhs [Rule 40(1)(d)]
- 33 Not making Proportionate Reduction on capital goods in case of Switch from Composition Scheme by five percentage points per quarter of a year or part thereof from the date of the invoice [proviso to S. 18(1)(c) read with Rule 40(1)(a) ]
- 34 Not making Proportionate Reduction on capital goods in case of Switch from exempted supply to taxable supply by five percentage points per quarter of a year or part thereof from the date of the invoice [proviso to S. 18(1)(d) read with Rule 40(1)(b)]
- 35 Taking credit against inputs or capital goods older than one year from date of registration/switch to normal scheme/transition to taxable category. [S. 18(2)]
- 36 Non reversal of ITC on switch to composition scheme/Exemption/Cancellation of registration against inputs on transition date and on capital goods, reduced by 5% for every quarter or part. [S. 18(4)/S. 29(5) and Rule 44]
- 37 Not making ITC reversal against prevailing market price of goods on switch to composition scheme/Exemption / Cancellation of registration where the tax invoices related

- to the inputs held in stock are not available, supported by CA/CWA certificate
- 38 In case of supply of capital goods including cancellation of registration/discontinuance of business non reversal of ITC reduced by 5% per quarter (or part), where the amount is higher than tax calculated on transaction value.[S. 18(6) read with Rule 44(6) and Rule 40(2)]
- 39 Taking credit when tax is paid u/R 32(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and the value of supply is the difference between the selling price and the purchase price.
- 40 Taking ITC where 5% tax is payable for supply of Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22[ SI No. 3(ix)of 11/2017-CTR]
- 41 Taking ITC where 5% tax is payable for supply of Services, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. [Para 7(i) of 11/2017-CTR]
- 42 Utilization of ITC on goods where 5% tax is payable on
- Transport of passengers, with or without accompanied belongings, by rail in first class or air conditioned coach. [SI 8(i) of 11/2017-CTR]
  - Transport of goods by rail [SI 9(i) of 11/2017-CTR]
- Hence taking of credit is not prohibited, only utilization is prohibited.
- 43 Taking ITC on goods and services where 5% tax is payable on Transport of passengers, with or without accompanied belongings by air conditioned contract carriage other than motorcab or AC stage carriage or Radio Taxi [SI. 8(ii) of 11/2017-CTR]
- 44 Taking ITC on goods where 5% tax is payable on
- Transport of passengers, with or without accompanied belongings, by air in economy class.or
  - Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport, as notified by the Ministry of Civil Aviation.[8(iii) and (iv) of 11/2017-CTR]
  - Leasing of aircrafts by an operator for operating scheduled air transport service or scheduled air cargo service by way of transaction covered by clause (f) paragraph 5 of Schedule II of the Central Goods and Services Tax Act, 2017 i.e. transfer of right to use [SI. 15(iv) of 11/2017-CTR]
- 45 Taking ITC on goods and services taken where 5% tax is payable on Renting of motor vehicle or Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, except input tax credit of input service in the same line of business [SI. 10(i) and 8(vi) of 11/2017-CTR]
- 46 Taking ITC on goods where 5% tax is payable on Transport of goods in a vessel or Time charter of vessels for transport of goods. [SI. 9(ii) and 10(ii) of 11/2017-CTR]
- 47 Taking ITC on goods and services by GTA where 5% tax is payable on Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). [SI. 9(iii) of 11/2017-CTR]
- 48 Taking ITC on goods and services where 5% tax is payable on Transportation of natural gas, petroleum crude, motor spirit (commonly known as petrol), high speed diesel or aviation turbine fuel] through pipeline [SI. 9(v) of 11/2017-CTR]
- 49 Taking ITC on goods where 12% tax is payable on Services provided by a foreman of a chit fund in relation to chit [SI No. 15(i) of 11/2017-CTR]
- 50 Taking Credit of input tax charged on goods and services used in supplying the service 2, [other than the input tax credit of input service in the same line of business (i.e. tour operator service procured from another tour operator)] taken where 5% tax is payable on Supply of Tour Operator services

#### Areas of Excessive Transitional Credit

- Credit taken against Return of goods by unregistered person on or after 01-07-2017 against goods supplied between 01-01-17 to 30-6-2017 on payment of tax  
Tax paid on goods returned by unregistered person on or after 1-7-17, can be claimed back as refund under the existing law.  
[S. 142(1)]
- ITC taken on goods in transit on 30-6-17, Invoice of which has not been recorded in books of accounts upto 31-07-2017. [Sec. 140(5)].
- ITC taken against amount refundable pertaining to pre GST regime
- Credit of CST paid on stock as at 30-6-17 taken.
- Credit taken against pending Vat assessment for which C/H/F forms are not available.
- Transitional Credit taken both in TRAN-1 as well as GSTR-3B.
- 100% Transitional Credit taken on the basis of Credit transfer document against non identifiable goods not

bearing distinct number and/or, not bearing brand name of manufacturer and/or goods having unit value lesser than Rs. 25000

- 9 Transitional Credit taken against stock without being in possession of invoice or invoice being older than 1-7-2016
- 10 Enhanced Input credit taken on the basis of revised return for period ending 30-6-2017 whereas law does not allow to take higher credit in revised return as compared to original return.
- 11 50% Credit of tax taken against capital goods inspite credit not being admissible under existing law
- 12 ITC taken against reversal of credit under 2nd Proviso to Rule 4(7) where consideration and tax was not paid within 3 months from the date of invoice, inspite the payment not made within 3 months from appointed date.
- 13 ITC taken against carry forward of service tax without reversal of cenvat credit under 2nd Proviso to Rule 4(7) where consideration and tax was not paid within 3 months from the date of invoice
- 14 ITC against inputs taken by supplier u/s 140(3) who though liable to be registered under existing law failed to take registration.
- 15 ITC taken against goods entitled to credit on sale without reversing credit under existing law
- 16 Credit of service tax taken against services used against inputs lying on 30-6-17
- 17 Deemed Transitional Credit taken against non-identifiable goods.
- 18 Deemed credit under proviso to S. 140(3) taken by service provider or manufacturer where tax amount is not indicated in invoice.
- 19 Deemed Credit of SGST taken by trader against sale of stock (other than first stage goods) lying on 30-6-17, where tax amount was not mentioned in supporting invoices.
- 20 Deemed credit of CGST and SGST taken against stock without there being any evidence for procurement of goods



- 21 Deemed credit of CGST taken by trader against taxable goods which enjoyed conditional exemption under CETA.

Prior approval of Commissioner is required for special audit. Direction for Special audit has to be made by communication in writing to Registered Person. Direction for special audit has to be communicated in ADT-03. Direction to special audit shall involve getting records including Books of accounts examined and audited. Special audit has to be done by Chartered Accountant or Cost and Works Accountant nominated by Commissioner. Expenses And Remuneration of CA/CWA shall be determined and paid by Commissioner and such determination shall be final. Report of Audit has to be submitted by such nominated CA or CWA within 90 days. Special Audit may be directed even if accounts of the registered person have been audited under any other law or under other provisions of this Act. Registered Person shall be given an opportunity of being heard in respect of material gathered on the basis of special audit which is proposed to be used in any proceedings against RP under this Act or Rules. On conclusion of special audit Registered Person shall be informed about the findings of special audit in ADT-04. Where audit results in detection of tax not paid/short paid etc, Proper Officer may initiate action u/s 73 or 74.

## FORTH COMING EVENTS UNDER THE AEGIS OF INDIRECT TAXES COMMITTEE

**20th & 21st July, 2018**

Place : Madurai • CPE Hours : 12 Hours

**Title of the Event** : Two Days Workshop on GST  
**Contact Details** : Madurai Branch of SIRC of ICAI  
 Ph : 452-2640968  
 Email : madurai@icai.org

**Title of the Event** : Seminar on GST  
**Contact Details** : EIRC of ICAI  
 Ph : (33) 39893989  
 Email : eirc@icai.org

**2nd August, 2018**

Place : Kolkata • CPE Hours : 6 Hours

**Title of the Event** : Advance Workshop on GST  
**Contact Details** : Bangalore Branch of SIRC of ICAI  
 Phone : (80) 30563510  
 Email : blrprogrammes@icai.org

**16, 17, 18, 19th August, 2018**

Place : Bangalore • CPE Hours : 24 Hours



# GST CASE LAW UPDATE

## 1. **Coimbatore Road Contractors Welfare Association vs. State of Tamil Nadu, The Chief Engineer National Highways, The Chief Engineer Highways Construction and Maintenance, The Regional Officer National Highways and The Commissioner of Commercial Taxes - 2018(3) TMI 900- Madras High Court**

The Petitioner being an association registered under the provisions of the Tamil Nadu Societies Act has preferred this writ petition on behalf of the members who carries works for the National Highways and Highways department and other Governmental organisations. The issue in the present writ petition relates to the applicable rate of tax on the works contract services supplied by the members to the Government on the contract executed in the earlier regime. The rate of tax applicable in the earlier regime was 2% whereas, under the GST regime the rate is notified to be at 12%.

The Petitioner-Association filed representations before the Respondent stating that in respect of the agreements entered prior to 01.07.2017 (pre-GST regime), GST cannot be imposed. In the event GST is applicable, the Respondent would be liable to bear the additional amount of tax. The Respondent did not respond to the multiple representations filed by the Petitioner-Association. Therefore, the Petitioner-Assessee has preferred this writ petition.

The Hon'ble High Court issued directions to the Commissioner of Commercial Taxes being the Respondents to consider the representation given by the petitioner/association and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order after giving an opportunity of personal hearing to the authorised representative of the Petitioner-Association.

Thus, it was concluded that the tax authorities shall issue the necessary clarifications in terms of the provisions of the law where the issues have been represented by the registered persons.

## 2. **Sachdeva Overseas vs. State of U.P 2017 (10) TMI 252 - Allahabad High Court**

The Respondent-Department issued the registration certificate indicating the Petitioner-Assessee as proprietor firm instead of partnership firm at the time of migration of registration. The password and ID is also issued as sole proprietorship. Therefore, the Petitioner-Assessee has preferred a petition before the Hon'ble High Court.

The Hon'ble High Court issued directions to the department to take the necessary steps and rectify the mistake within 10 days. The Department is free to allot a new ID and password to the petitioner as a partnership firm as was existing prior to the migration or implementation of the GST.

Thus, it was concluded that the incorrect migration of registration or any error / mistake on the part of the department shall be diligently rectified by the department.

## 3. **M/s Metro Institutes of Medical Sciences Pvt. Ltd. vs.**

## **State of U.P. & 5 Others 2017 (10) TMI 784 - Allahabad High Court**

The Petitioner-Assessee preferred this writ petition for non-issuance of appropriate user name and password in terms of the Section 139 of the CGST / SGST Act, 2017 for migration into GST. Consequent to non-issuance of correct user name and passwords on multiple attempts, the Petitioner-Assessee was unable to comply with the statutory provisions viz., filing of returns, remittance of tax etc. Therefore, Petitioner-Assessee preferred this petition.

The Hon'ble High Court directed the department to issue appropriate password to a Petitioner-Assessee company to complete the migration process and enable the Petitioner-Assessee to upload the returns and deposit tax. Further, it is directed that the commercial tax department shall allow the petitioner to complete the migration of registration.

Thus, it was concluded that the incorrect migration of registration or any error / mistake on the part of the department shall be diligently rectified by the department

## 4. **M/s Reliance Industries Limited vs. State of Uttar Pradesh – 2018 (3) TMI 678 - Allahabad High Court**

**And**

## **M/S Special Ashoka Beedi Works vs. The Goods and Service Tax Officer, Madanapalle And Two Others 2018 (3) TMI 739 – Allahabad High Court**

The Petitioner-Assessee preferred this writ petition before the Hon'ble High Court in order to seek directions for releasing the seized goods by the Respondent-Department under Section 129 of the CGST / SGST Act, 2017.

The GST law and Rules made thereunder provide for a mechanism for adjudicating the issue involving detention and seizure of goods. The relevant provisions also permit provisional release of goods on furnishing of the bond in Form GST INS – 04.

The Hon'ble High Court considering the relevant provisions of the law directed the Respondent-Department to complete the adjudication proceedings within two weeks. Thus, it was concluded that in case of detention and seizure of the goods or conveyances, the adjudication of the tax, interest and penalty payable thereon should be completed expeditiously.

## 5. **Mariyam Steel vs. State Tax Officer, (Intelligence Inspector) - 2018(3) TMI-969–Kerala High Court**

The Petitioner-Assessee preferred this petition before the Hon'ble High Court in order to seek relief from the demand of security deposit by the respondents in order to release the seized goods. The Petitioner-Assessee has preferred this Writ Petition aggrieved by the insistence of the respondent that the Petitioner-Assessee must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.

The Hon'ble High Court directed the Respondent-Department to release the goods after the Petitioner-Assessee furnishes the bank guarantee for the amount

demand and transfer the files to adjudicating authority so that order can be passed by him upon completion of adjudication within two weeks.

Thus it was concluded that in case of detention and seizure of the goods or conveyances, for not accompanying the proper documents shall be released provisionally after furnishing the bank guarantee for the amount demanded by the officer

#### 6. **Mohit Minerals Private Limited vs. Union of India - 2018(2) TMI-770–Gujarat High Court**

The Petitioner-Assessee being an importer of non-cooking coal preferred this petition before the Hon'ble High Court challenging the levy of IGST on the ocean freight separately in terms of the Notification No. 10/2017 – Integrated Tax (Rate) dated 28.06.2017 even though the value for the levy of customs duty includes the ocean freight.

It was disputed that whether the IGST is leviable on ocean freight even after the customs duty is levied on the value including the ocean freight?

The Petitioner contends that the tax levied under IGST Act is on the entire value of imports which includes ocean freight, thus IGST cannot be levied on the ocean freight all over again through a different notification;

In case of CIF contracts, as the service provider and the service recipient both are outside the territory of India, taxes on such service cannot be collected even under reverse charge mechanism;

In the given case, the recipient of service is the seller of the goods who has received services from the exporter/ transporter and since it is a high sea sales where the burden of payment of tax lies on the recipient of service, the petitioner is not liable to pay tax

The Hon'ble High Court considering the submissions of the Petitioner-Assessee granted the interim relief and adjourned the matter to 09.03.2018.

#### 7. **M/S Anappuram Steels Private Limited vs. The Commissioner State Goods And Service Tax Department ,Thiruvananthapuram and the Secretary Government of Kerala, Taxes Department, Thiruvananthapuram 2018 (2) TMI 1622 – Kerala High Court**

The Petitioner preferred this petition before the Honorable High Court in order to seek directions for releasing the seized goods expeditiously by the Respondent-Department under Section 129 of the CGST / SGST Act, 2017.

Section 129 of the CGST / SGST Act, 2017 read with Rule 140 of CGST / SGST Rules, 2017 provides for a mechanism for adjudicating the issue involving detention and seizure of goods. The relevant provisions also permit provisional release of goods on furnishing of the bond in Form GST INS – 04. Therefore, The Hon'ble High Court considering the relevant provisions of the law directed the Respondent-Department to complete the adjudication proceedings within a week.

Thus it was concluded that the adjudication of the tax, interest and penalty payable thereon should be completed expeditiously in case of detention and seizure of the goods or conveyances.

#### 8. **Aphro Ecommerce Solutions Pvt. Ltd. Versus Union of**

#### **India & Others [2017 (11) TMI 731 – Delhi High Court**

The Petitioner preferred this petition in order to export goods/services without payment of Integrated Tax through Bond. It was disputed as to whether for the purpose of export of goods/services without payment of Integrated Tax, furnishing of Bond with bank guarantee is required or LUT.

Notification No. 37/2017-Central Tax dated 04.10.2017 specifies that LUT shall be required for supply goods or services for export without payment of integrated tax in place of a bond for all taxable person except for the person specified in the notification. However, Circular No. 8/8/2017-GST dated 04.10.2017 clarified that the facility to furnish the LUT is extended all the taxable persons effecting exports of goods. This Circular was issued by rescinding the Circular No. 4/4/2017-GST dated 07.07.2017.

The Honourable High Court dismissed the petition on the ground that the conditions no longer exists since, the requirement for filing bond for export of goods / services is done away by way of rescinding the Circular which specified such requirements.

Thus, it was concluded that goods / services can be exported without payment of IGST by filing LUT even though Bond is not furnished.

#### 9. **Mohit Minerals Private Limited versus Union of India & Another [2017 (8) TMI 1194 – Delhi High Court**

The Petitioner is a trader of imported as well as Indian coal having its operation in various parts of country. This petition is preferred before the Honourable High Court of Delhi challenging the levy of Compensation Cess under GST. Under the erstwhile laws, Clean Energy Cess was leviable @ Rs. 100/tonne while under GST the same has been introduced in the name of Compensation Cess @ Rs.400/tonne. Therefore, the petitioner is required to pay Compensation Cess on the stock of coal under the GST regime on which Clean Energy Cess has already been paid under erstwhile law. Also, the Petitioner is not entitled to claim transitional credit of such Cess paid earlier under GST laws.

The Hon'ble High Court admitting the case passed an interim order holding that in the event the Petitioner succeeds in the present, the Petitioner would be entitled for refund of Clean Energy Cess paid under the erstwhile Act. Further, it was also held that the officers of the concerned department to visit the premises of the petitioner and verify the stock on which such cess has been paid by it. Upon verification of proof of payment, the petitioner shall not be required to pay Compensation Cess for effecting sale and clearances. Also, no coercive steps will be taken against the Petitioner for recovery of such Cess. However, on those stocks for which the Petitioner will not be able to produce a satisfactory proof of payment of the Clean Energy Cess under the erstwhile law, the Petitioner will be required to pay the cess under this Act.

Thus, it was concluded that credit shall be allowed on the stock of coal on which Clean Energy Cess has been paid under the erstwhile law and thus payment of Compensation Cess under GST shall not be required if the assessee has proper documents to claim the credit of such cesses paid.

# ICAI'S CONTRIBUTION IN GST IMPLEMENTATION AS PARTNER IN NATION BUILDING

## 1. Suggestions on GST Law

The Institute has recently developed and submitted 121 suggestions on GST law for contributing and supporting Government in the drafting of simple, transparent, & fair GST laws in India.

## 2. Background Material on UAE VAT- June 2018 (Revised Edition)

The Institute has recently revised the publication incorporating the variants of VAT Law and inter alia includes the analysis of various Articles of Federal Decree Law No. 8 of 2017/ Statutory Provisions of UAE VAT Law.

## 3. Publications on GST

In order to facilitate members to have understanding of GST law, The Indirect taxes Committee has launched/ revised the following publications:-

- a. E-publication on E-way bill under GST- July, 2018 Revised Edition
- b. E-Handbook on Job work under GST-June, 2018 Revised Edition
- c. Background Material on GST Acts and Rules- May, 2018 Revised Edition
- d. E-Handbook on GST Amendments- May, 2018
- e. Compliances of Service Tax/GST in Banking Sector- April, 2018 Revised Edition
- f. FAQs & MCQs on GST- January, 2018 Revised Edition
- g. Background Material on Exempted Services under GST- January, 2018
- h. Hand Book on GST for Service Providers- November, 2017
- i. Booklet on-Seamless Credit- October, 2017
- j. Simplified GST Guide for Manufacturer- August, 2017
- k. Study Paper on Taxation of E-Commerce under GST- August, 2017
- l. E-Book on How to Get Registered under GST- July, 2017
- m. Bare Law on GST Act(s) and Rule(s)- July, 2017

**4. Certificate Course on GST:** Committee has organised 69 batches of the Course across India since 28th April, 2017. Further, 2 batches of the Course have been organised online. The Course has been attended by 6075 members.

**5. E-Learning on GST:** Two series of e-learning hosted on the website of the committee at <http://idtc.icai.org/e-learning.html>, which were subscribed by 2600.

## 6. Live Webcast Series on relevant aspects in respect of GST

**Audit:** 5 live webcasts were organised recently on various relevant aspects in respect of GST Audit. Recordings of the same are available in the offline mode for the reference.

**7. Programme, Workshops and Conferences:** ICAI organised 4369 programme, workshop, conferences etc. on GST from 1st January, 2017 which have been attended by approx. 4.14 lakh participants.

## 8. Indirect Taxes / Legal update

With a view to update the members, summary of significant notifications, circulars and other important development in the area of Indirect Taxes are regularly been circulated and further uploaded on the website of the Committee.

The Committee has recently started sending Legal Update on Indirect Taxes to the members registered on its website. Members can subscribe at <http://idtc.icai.org/cc/apps/register-for-update>.

**9. Interactive Programme on GST for trade association:** 25 interactive programme on GST for trade and industry in 2017 as part of its initiatives for partner in nation building.

**10. Faculty Identification and Train the trainer Programme - An effort to develop new faculties:** 547 new faculties identified across India, making total pool of 800 faculties for knowledge dissemination. List of faculties identified is available at <http://idtc.icai.org/programme-seminar.php>

## 11. Support to UAE VAT Implementation

With a view to support the members in UAE, the Committee developed Background Material on UAE VAT (2 edition), 5 Articles and Standardized PPT etc. In addition, 10 batches of Certificate Course, a LIVE Webcasts series of 14 lecture, E-learning containing 14 video, 3 series of Identification and Training of new speakers etc. were organised for mass awareness.

**12. Support extended to Goods and Services Tax Network (GSTN) Based on the request from GSTN, ICAI extended following support:**

- a) List of IT Firm collected and provided to GSTN for providing training so that IT Firm may make necessary changes compatible with GST.
- b) Sharing data of ICAI's members for online validation by GSTN.
- c) Nominating 23 members for providing feedback on the software module of GST developed by GSTN.
- d) Nominated 4 senior experts for a Committee to be constituted by GSTN for evaluating and finalising proposal for its GST accounting and billing software.





Two days National Conference on GST at Ernakulam



National Conference on GST at Indore



Release of publication BGM on UAE VAT at CA Day Celebration



Workshop on GST at Varanasi



Workshop on GST, Benami Transactions at Tinsukia



Workshop on GST at Ajmer



Workshop on GST at Bikaner



Workshop on GST at Sriganganagar