

Summary of Notifications, Circulars from 16th August, 2016 to 15th September, 2016

GOODS & SERVICES TAX

1. The Constitution (One Hundred And First Amendment) Act, 2016

The Constitution (122nd Amendment)(GST) Bill, 2014 was passed by Rajya Sabha on 3rd August 2016 and by Lok Sabha on 8th August, 2016 (to confirm to the changes suggested by Rajya Sabha). The Bill was then ratified by more than half of States across the country and received the Presidents assent on 8th September 2016 thereby becoming The Constitution (101st Amendment) Act, 2016.

As per Section 1(2) of the Constitution (101st Amendment) Act, 2016 different dates may be provided by Central Government when the provisions of this Act would come into force. Accordingly, Central Government has notified 12th September 2016 as the date on which the provisions of Section 12 of the said Act will come into force and 16th September 2016 as the date on which rest of the provisions (1-20 except 12) will come into force.

[Notification F No 31011/09/2015-SO(ST) dated 10th September 2016 & F. No. 31011/07/2014-SO (ST) dated 16th September 2016]

2. Constitution of GST Council

In exercise of powers conferred by article 279A of the Constitution, The President constituted GST Council on 15th September 2016 comprising of following members:

S.No.	Particulars	Designation
a)	The Union Finance Minister	Chairperson
b)	The Union Minister of State in charge of Revenue or Finance	Member
c)	The Minister in charge of Finance or Taxation or any other Minister nominated by each State Government	Member

[Notification F. No. 31011/09/2015-SO (ST) dated 15th September 2016]

SERVICE TAX

3. Service tax liability in case of hiring of goods without transfer of the right to use goods

As per clause 29A of Article 366 of the Constitution of India, the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration is deemed to be a sale of those goods by the person making the transfer, delivery or supply and is liable to Sales Tax/ Value Added Tax. However, in terms of section 66E(f) of the Finance Act, 1994, transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods is a "declared service" and hence liable to service tax.

In this regard, CBEC vide *Circular No. 198/08/2016-SERVICE TAX, Dated: August 17, 2016* has provided that in order to distinguish such transactions as sale of goods or supply of services, it is essential to determine whether, in terms of the contract, there is a transfer of the right to use the goods. In order to determine if there is transfer of the right to use the goods, the following criteria provided by the Supreme Court in the case of *Bharat Sanchar Nigam Limited vs Union of India, reported in 2006 (2) STR 161 SC* needs to be referred:

- a. There must be goods available for delivery;
- b. There must be a consensus ad idem as to the identity of the goods;
- c. The transferee should have a legal right to use the goods - consequently all legal consequences of such use, including any permissions or licenses required therefor should be available to the transferee;
- d. For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a "transfer of the right" to use and not merely a licence to use the goods;
- e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

The terms of the contract must be studied carefully *vis-a-vis* the aforesaid criteria in order to determine whether service tax liability will arise in a given case. Cases decided under the Sales Tax/VAT legislations have to be considered against the background of those particular legislative provisions and terms of contract in that case.

[Circular No. 198/08/2016-SERVICE TAX, Dated: August 17, 2016]

4. Water Supply services provided to the Government, a local authority or a governmental authority

With respect to contractors providing the service of construction of tube wells for the Government made liable to service tax, the Central Government vide *Circular No. 199/09/2016-ST, Dated: August 22, 2016* has clarified that exemption is available vide *Mega Exemption Notification No. 25/2012 -ST dated 20.06.2012* to the following services provided to the Government, a local authority or a governmental authority, by way of-

- (a) construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for (i) water supply (ii) water treatment, and
- (b) water supply

It has further been clarified that the term "water supply" will involve providing users, access to a source of water which may be natural or artificial like tanks, wells, tube wells etc. Providing users access to such a source will involve construction of the source (if artificial), the transmission of water to the user and activities like drilling, laying of pipes, valves, gauges etc., fitting of motors, testing etc., so as to eventually result in the supply of water.

Thus the exemption provided under *Mega Exemption notification 25/2012-ST dated 20-6-2012*, will cover a wide range of activities/services provided to a government, a local authority or a governmental authority and will include the activity of construction of tube wells too.

[Circular No. 199/09/2016-ST, Dated: August 22, 2016]

5. Service tax Abatement for transport of passengers by air embarking from or terminating in Regional Connectivity Scheme (RCS) Airport for a period of 1 year

The Central Government vide *Notification No. 38/2016-Service Tax, Dated: August 30, 2016* has amended *Abatement Notification No. 26/2012-Service tax dated June 20, 2012* by inserting a **new entry 5A** to grant service tax abatement of 90% on the value of service of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a RCS Airport subject to the condition that CENVAT credit on inputs, capital goods and input services, used for

providing the taxable service has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.

The abatement will be valid for a period of **1 year** from the date of commencement of operations of the RCS Airport as notified by the Ministry of Civil Aviation.

[Notification No. 38/2016-Service Tax, Dated: August 30, 2016]

6. Amendment in Entry 62 of Mega Exemption Notification: Time period for Services provided by Government or a local authority amended.

Central Government vide *Notification No. 39/2016-Service Tax, Dated: September 02, 2016* has extended exemption period for “*Services by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum on payment of licence fee or spectrum user charges provide during the period prior to 1st April, 2016* as against the earlier provision of services provided *during the financial year 2015-16 (Notification No. 22/2016-Service Tax, Dated: April 13, 2016)*. Now, all such services provided prior to 1st April 2016 would stand exempted and not only the ones provided during financial year 2015-16.

[Notification No. 39/2016-Service Tax, Dated: September 02, 2016]

7. Clarification regarding services related to renting of precincts of a religious place meant for general public

The Central Government vide *Notification No. 40/2016-Service Tax, Dated: September 6, 2016* has amended Mega Exemption *Notification No. 25/2012-Service tax dated June 20, 2012* by elaborating existing **entry 5(a)** to grant service tax exemption to services by a person by way of “*renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the Income-tax Act; or.*”

Further, Central Government vide *Circular No. 200/10/2016-Service Tax, Dated: September 6, 2016* has also clarified the meaning of the term “**precincts**” and provided that it should not be interpreted restrictively but shall include all immovable property of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located. The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and would be eligible for the benefit of exemption under *Notification No. 25/2012-Service Tax, Sl. No. 5(a) dated 20.6.2012*.

[Notification No. 40/2016-Service Tax, Dated: September 6, 2016 & Circular No. 200/10/2016-Service Tax, Dated: September 6, 2016]

CUSTOMS

8. Customs (Provisional Duty Assessment) Regulations, 2011 rescinded and Guidelines for Provisional Assessment under section 18 of the Customs Act, 1962 provided.

Central Government vide *Notification No. 113/2016-Customs (N.T.), Dated: August 22, 2016* has rescinded The Customs (Provisional Duty Assessment) Regulations 2011 as Section 18 of the Customs Act, 1962 itself defines the cases where provisional assessment may be resorted and requires that:

- a) the importer binds himself for the payment of deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed; and
- b) furnishes such security as the proper officer deems fit for the payment of the deficiency.

Herein the amount of security is at the will of the proper officer which may be different in different cases. Thus to maintain uniformity of practice, transparency and predictability for the tax payer, the Central Government vide *Circular No. 38/2016-Customs, Dated: August 22, 2016* has provided that wherever, duty is to be assessed provisionally, the importer shall:

- a) for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed, execute a bond in the prescribed form; and
- b) furnish such "Amount of Bank Guarantee or Cash deposit to be obtained as "security" of the differential duty" for the payment of the duty deficiency, prescribed as per his class.

It has further been reiterated that the amount of security will be determined on the basis of duty differential and not the CIF value of goods. Also provisional assessments under section 18 will be carried out with respect to cases only where the duty is in dispute.

[Notification No. 113/2016-Customs (N.T.), Dated: August 22, 2016 & Circular No. 38/2016-Customs, Dated: August 22, 2016]

9. Jurisdiction of Customs in Vizag extended

Central Government vide *Circular No. 114/2016-Customs(N.T.), Dated: August 26, 2016* has extended the jurisdiction of Customs in Vizag to include "Port of Visakhapatnam, Gangavaram port, Visakhapatnam International Airport, Container Freight Station at Bayyavaram Village, Kasimkota Mandal, Visakhapatnam District, Visakhapatnam, Special Economic Zone and the areas under the Greater Visakhapatnam Municipal Corporation of Visakhapatnam in the state of Andhra Pradesh".

[Circular No. 114/2016-Customs(N.T.), Dated: August 26, 2016]

10. Handling of Cargo in Customs Areas (Amendment) Regulations, 2009 amended

Central Government vide *Notification No. 115/2016-Customs(N.T.), Dated: August 26, 2016* has amended the following conditions to be fulfilled by Customs Cargo Service provider for custody of imported or export goods and handling of such goods in a customs:

- a) Execute a bond equal to the average amount of duty involved on the imported goods and 10% of value of export goods likely to be stored in the customs area during a period of **10 days**. Earlier this period was of 30 days. (Regulation 5 sub-regulation 3). The value of bond being furnished in respect of imported/export goods has been reduced to the extent of 10 days storage from the current 30 days.
- b) Execute a separate bond for an amount equal to ten percent of value of export goods with a bank guarantee for an amount equal to 10% of the value of the bond, towards the export goods transported from the customs area to any other customs area for export or transshipment, as the case may be.

Provided that the condition of furnishing of bank guarantee shall not be applicable to ports notified under the Major Ports Act, 1962 (38 of 1963) or to the Central Government or State Governments or their undertakings or to the customs cargo service provider authorised under Authorised Economic Operator Programme."

There was no exception to this condition earlier. (Regulation 5 sub-regulation 4)

[Notification No. 115/2016-Customs(N.T.), Dated: August 26, 2016]

11. Amendment in guidelines on safety and security of premises where imported or export goods are loaded, unloaded, handled or stored

Earlier, Central Government vide *Circular No. 4/2011-Cus dt. 10.1.2011* prescribed comprehensive guidelines on safety and security of premises where imported or export goods are loaded, unloaded, handled or stored. It has been specifically provided that imported goods or export goods which are hazardous in nature shall be stored at the approved premises of the customs cargo service provider (CCSP) in an isolated place duly separated from other general cargo, depending upon classification of its hazardous nature such as explosives, gases, flammable liquids, flammable solids, poisonous and infectious substances, radioactive material or any hazardous chemicals defined under respective rules.

It was further provided that the space allocated for storage of hazardous cargo within the notified premises should be of proper construction including appropriate heat or fire resistant walls, RCC roofing, flooring. Such area was required to be situated at a minimum distance of 200 metres away from main office, administrative, customs office building so that the storage of hazardous cargo is in such a manner that it does not endanger the people working in the premises.

Now, Central Government vide *Circular No. 40/2016-Customs, Dated: August 26, 2016* has amended the guidelines in so far as prescribing the distance to be maintained between hazardous cargo including explosives and general cargo or administrative building in a Customs area would be as follows:

- a) Among the various hazardous goods imported or exported, explosives have to be considered separately in view of the severity of hazard, safety procedure and skill etc. required in their handling and storage.
- b) The safe distances between buildings and hazardous cargoes other than explosives varies from 3 meters to 30 meters, in various rules and practices, in other parts outside the country. In order to have uniformity, the distance of 30 meters is prescribed to be maintained between hazardous cargo (other than explosives) and administrative buildings. However, the distance of 200 meter as mentioned in *CBEC Circular No. 4/2011* needs to be observed between the hazardous cargo (explosive in nature) and the administrative buildings. The distance to be maintained between hazardous cargo and general cargo would be as prescribed in IMDG (International Maritime Dangerous Goods) Code for storage in port areas.
- c) The safe distance for storing hazardous goods including explosives on land i.e Container Depot, CCSP area. Customs notified area etc. (other than port area) for which specific rules exists will be guided by said rules i.e. Gas Cylinder Rules, 2004; the Explosive Rules, 2008; Petroleum Rules, 2002; Static and Mobile Pressure Rules, 1981 etc., as applicable.
- d) In case of anomaly, between port rules and respective specific rules governing storage of a particular hazardous good, the provision of specific rules will override the port rules.

12. Revised guidelines for disposal of confiscated goods

Presently, the disposal of confiscated/seized goods is regulated vide *Circular No. 11/2012-Customs dated 12th April, 2012*. Now, Central Government vide *Circular No. 39/2016-Customs, Dated: August 26, 2016* has amended the guidelines with regard to disposal of confiscated goods through NCCF/Kendriya Bhandar and other Consumer cooperatives as follows:-

Particulars	New Instructions	Existing Instructions
Sale through Army Canteen/CSD	No change in existing instructions provided in <i>Circular No. 11/2012-Cus dated 12.4.2012</i>	Confiscated goods, as much as can conveniently be made available, after meeting the earlier demands of Army authorities/Military Canteens/CSD and/or the consumer's cooperative stores, are to be offered to the Central Government Employees Consumer cooperative society Ltd.
Sale through NCCF/KB/consumer cooperatives	Any lot of confiscated/seized consumer goods, which is ripe for disposal and whose value does not exceed Rs. 5 lakh, shall be offered to NCCF/KB/Other Central Government Employees Consumer Cooperative Society/ Multi-State Consumer Cooperative Societies/State Consumer Cooperatives, at a uniform rebate/discount of 10% (<i>superseding existing Board's circulars/instructions to this effect only</i>), subject to the specified conditions. The condition of any lot of confiscated/seized consumer goods of value exceeding Rs. 5 lakhs shall not be sold directly to the aforesaid cooperative societies/federation and shall be sold by E-auction or auction-cum- tender basis has also been removed.	Any lot of confiscated/seized consumer goods of value not exceeding Rs. 5 lakhs which are ripe for disposal shall be offered to NCCF/KB/Other Central Government Employees Consumer Cooperative Society/ Multi-State Consumer Cooperative Societies/ State Consumer Cooperatives, subject to the specified conditions.
Sale through e-auction/auction cum tender	Any lot of confiscated/seized goods of all types and confiscated/seized consumer goods whose value exceeds Rs. 5 lakhs shall not be sold directly to the aforesaid cooperative Societies/Federation and shall be sold by e-auction or auction-cum-tender basis. In such e-auction or auction-cum-tender process, all stakeholders/persons including NCCF/KB/other Central Government employee's consumer cooperatives/Multi-State/State cooperatives or National/State level Cooperative Federations can also participate, subject to the fulfilment of prescribed conditions. However, No discount/rebate shall be available to any organization/Cooperative for the goods disposed through E-Auction/Auction-cum-	All types and confiscated/seized consumer goods exceeding value of Rs. 5 lakhs in single lot, may be disposed through e- auction or auction-cum-tender, since it offers enhanced transparency and accountability for quick disposal of goods. In such e-auction or auction-cum-tender process, all persons including NCCF, KB, other CG employee's consumer cooperatives, Multi-State/State cooperatives or National/State level Cooperative Federations can also participate subject to prescribed conditions.

It has further been reiterated that E-auction or auction-cum-tender prescribed vide *Circular No.50/2005-Customs dated 1.12.2005* and reiterated in *Circulars No.12/2006-Customs dated 20.2.2006* and *11/2012-Customs dated 12.4.2012*, will continue to be utilised in respect of confiscated/seized goods.

[Circular No. 39/2016-Customs, Dated: August 26, 2016]

13. Admissibility of un-utilized CENVAT credit of DTA unit converted into EOU

Central Government vide *Circular No. 41/2016-Customs; Dated: August 30, 2016* has withdrawn the earlier *Circular No. 77/99-Cus dt. 18.11.99* which was issued in view of the erstwhile Rule 100H of Central Excise Rules, 1944 which specifically prohibited EOU's from availing MODVAT Credit of Inputs / Capital Goods under Rule 57A and 57Q. But consequent to supersession of Central Excise Rules, 1944 by Central Excise Rules, 2002 there is no provision similar to Rule 100 H of CER, 1944 which prohibits the EOU from availing CENVAT Credit of Inputs/ Capital Goods.

It has further been clarified that on conversion from a DTA unit to EOU, the transfer of unutilized CENVAT credit lying in the books of DTA unit on the date of conversion into EOU unit is admissible under Rule 10 of CENVAT Credit Rules, 2004 which provides that if manufacturer transfers his factory on account of change in ownership or lease, then the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to transferred entity.

[Circular No. 41/2016-Customs; Dated: August 30, 2016]

14. Courier bond executed by Customs Cargo Service Provider CCSPs

With regard to Handling of Cargo in Customs Area Regulations, 2009 (HCCAR), Central Government vide *Circular no. 32/2013-Customs dated 16.08.2013* had provided that the amount of insurance to be provided by Customs Cargo Service Provider (CCSPs) will be equal to the average value of goods likely to be stored in the Customs area for a period of 30 days (based on projected capacity) and for an amount as Commissioner of Customs may specify having regard to the goods that are already insured by the importers or exporters.

In order to take into account dwell time for clearance of imported goods and transit time for export goods for calculation of insurance amount and Bond amount under HCCAR, Central Government vide *Circular No. 42/2016-Customs; Dated: August 31, 2016* has provided that the **amount of insurance to be provided by CCSPs** would be equal to the **average value of goods likely to be stored in the Customs area for a period of 10 days** (based on projected capacity) and for an amount as Commissioner of Customs may specify having regard to the goods that are already insured by the importers or exporters.

[Circular No. 42/2016-Customs; Dated: August 31, 2016]

15. Direct Port Entry of factory stuffed (including self-sealed) export containers into port terminals for all manufacturing entities

Central Government vide *Instruction F. NO. 450/25/2009-Cus-IV Dated September 7, 2016* has provided that all manufacturing firms will be allowed Direct Port entry (DPE) for which necessary orders will be issued by CBEC, Terminals / Port should provide requisite facilities for processing of export documents by Customs.

This permission is granted in addition to existing permissions of Direct Port Entry for:

- a) Refrigerated Containers.
- b) Over Dimensional Cargo (ODC)
- c) Motor Vehicles.
- d) Perishable non-refrigerated cargo: Containers stuffed under the supervision of the Central Excise/Customs officers, containing perishable non-refrigerated cargo like onion, garlic etc.
- e) Factory stuffed Cargo of Exporters having Status Certificate, 100% EOUs and units of SEZs.
- f) AEO Tier-I/II/III status holders.

[Instruction F. NO. 450/25/2009-Cus-IV Dated September 7, 2016]