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*C N K & Associates LLP*

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# Central Goods and Service Tax Act, 2017 (CGST), Maharashtra State Goods and Service Tax Act, 2017 (Maharashtra SGST), Integrated Goods and Service Tax Act, 2017 (IGST)

## Notifications- CGST

### ■ **CBEC Extends Facility of LUT to all exporters.**

**Notification No.37/2017 –Central Tax, dated 4<sup>th</sup> October 2017.**

- ♦ All registered persons who intend to supply goods or services for export without payment of Integrated Tax shall be eligible to furnish a Letter of Undertaking in place of a bond except those who have been prosecuted for any offence under the CGST Act, 2017 or the IGST Act, 2017 or any of the existing laws in force in a case where the amount of tax evaded exceeds Rs. 250 lakhs; provided the Letter of Undertaking shall be furnished on the letter head of the registered person, in duplicate, for a financial year (**FY**) in the annexure to FORM GST RFD – 11 referred to in sub-rule (1) of Rule 96A of the CGST Rules, 2017 which shall be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor;
- ♦ Where the registered person fails to pay the tax due along with interest, as specified under sub-rule (1) of Rule 96A of CGST Rules, 2017, the facility of export without payment of Integrated Tax will be deemed to have been withdrawn and if the amount mentioned in the said sub-rule is paid, the facility of export without payment of Integrated Tax shall be restored.
- ♦ This notification shall *mutatis mutandis* apply in respect of zero-rated supply of goods or services or both made by a registered person (including a Special Economic Zone (**SEZ**) developer or SEZ unit) to a SEZ developer or SEZ unit without payment of Integrated Tax.

### ■ **Authorization of proper officers for the purpose of Section 54 & 55 of the Act (for processing & grant of GST refunds).**

**Notification No.39/2017 –Central Tax, dated 13<sup>th</sup> October 2017**

Officials under SGST Act and UTGST Act are authorized to issue the refund as per provisions of Section 54 and 55 of the CGST Act 2017 read with the Rules made there under except Rule

96 of the **Central Goods and Services Tax Rules, 2017**, in respect of a registered person located in the territorial jurisdiction of the said officers who applies for the sanction of refund to the said officers.

The Similar Notification has also been provided under IGST Law- **Notification No.11/2017 – Integrated Tax, dated 13<sup>th</sup> October 2017.**

■ **No GST on advance payment for small taxpayers with annual turnover less than Rs.1.5 Crores**

**Notification No.40/2017 –Central Tax, dated 13<sup>th</sup> October 2017**

Following class of persons are exempt from payment of GST on advance under Section 14 of the CGST ACT.

- ◆ Registered person whose aggregate turnover in the preceding FY or in the year in which such person has obtained registration is likely to be less than Rs. 1.50 crores and
- ◆ Who did not opt for the composition levy under Section 10 of the said Act.

■ **Clarification of filing returns in various forms by different Assessee.**

**Notification No.45/2017 –Central Tax, dated 13<sup>th</sup> October, 2017**

A person who has been granted registration on a provisional basis under Rule 24 or certificate of registration under sub-rule (1) of Rule 10 may opt to pay tax under Section 10 (i.e. composition scheme) with effect from the 1<sup>st</sup> day of the month immediately succeeding the month in which he files an intimation in FORM GST CMP-02 (When a dealer wants to opt for Composition Scheme under GST, they have to intimate the government about it, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31<sup>st</sup> March 2018, and shall furnish the statement in FORM GST ITC-03 within 90 days.)

Provided that the said persons shall not be allowed to furnish the declaration in FORM GST TRAN-1 after the statement in FORM GST ITC-03 has been furnished.

■ **Amendments in the notification No.8/2017- Central Tax-i.e. CBEC notifies Revised Turnover Limit for opting for Composition Scheme.**

**Notification No.46/2017 –Central Tax, dated 13<sup>th</sup> October 2017**

- ◆ For the registered person who opts for composition tax, the limit has been increased to Rs.1 crore in all states excepting North-Eastern states.
- ◆ The limit has been increased to Rs. 75 lakh in case of North-Eastern states (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh)

- **GST Refund of deemed exports supply can be claimed by either recipient or supplier.**

**Notification No.47/2017 –Central Tax, dated 18<sup>th</sup> October 2017**

Refund application in respect of supplies regarded as deemed exports may be filed by, -

- ♦ the recipient of deemed export supplies; or
  - ♦ the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund
- **CBEC notifies certain supplies as deemed exports under Section 147 of the CGST Act, 2017**

**Notification No.48/2017 –Central Tax, dated 18<sup>th</sup> October 2017**

Sr. No.	Description of Supply
1	Supply of goods by a registered person against Advance Authorisation
2	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation <b>(EPCGA)</b>
3	Supply of goods by a registered person to Export Oriented Unit.
4	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated 30 <sup>th</sup> June 2017 (as amended) against Advance Authorisation.

For the purposes of this notification,

- ♦ “Advance Authorisation” means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports.
- ♦ “EPCGA” means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.
- ♦ “Export Oriented Unit” means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.

▪ **Evidences required to be produced by the supplier of deemed export Supplies for claiming refund.**

**Notification No.49/2017 –Central Tax, dated 18<sup>th</sup> October 2017**

- ♦ Acknowledgment by the jurisdictional tax officer of the Advance Authorization holder or EPCGA holder, as the case may be, that the said deemed export supplies have been received by the respective recipient, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient.
- ♦ Undertaking from the recipient for having not availed input tax credit & also to the effect that he shall not claim the refund of such supply.

▪ **FORM GSTR-3B Late return filing fees waiver notified by CBEC**

**Notification No.50/2017 –Central Tax, dated 24<sup>th</sup> October 2017**

The Central Government (CG), on the recommendations of the Council, hereby waives the late fee payable for all registered persons who failed to furnish the return in FORM GSTR-3B for the months of August and September 2017 by the due date.

▪ **Substitution of some rules of CGST Rules, 2017.**

**Notification No.55/2017 –Central Tax, dated 15<sup>th</sup> November 2017**

**Insertion of Rule 97A: In respect of refund process**, any electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall in this respect include **manual filing** of the applications in Form-**FORM-GST-RFD-01 A**.

**Insertion of Rule 107A: In respect of advance ruling process**, any electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall in this respect include manual filing of the applications in Form-**FORM-GST-RFD-01 A**.

**Insertion of Rule 109A: Appointment of Appellate Authority:** Any person aggrieved by any decision or order passed under CGST Act / SGST Act / UTGST Act may appeal **within three months** from the date of the communication OR An Officer directed under sec. 107 (2) of CGST Act 2017 may appeal against any decision or order passed under CGST Act / SGST Act / UTGST Act may appeal within **six months** from the date of the communication of the order to:

- ♦ The Commissioner (Appeals) where a decision is passed by Additional or Joint Commissioner
- ♦ The Additional Commissioner (Appeals) where a decision is passed by Deputy or Assistant Commissioner or Superintendent

- **CBEC mandates Monthly Tax Payment & filing of Form GSTR-3B till March, 2018**

**Notification No. 56/2017-Central Tax, dated 15<sup>th</sup> November 2017**

The Commissioner, on the recommendations of the Council, hereby specifies that the return in FORM GSTR-3B for the month of January to March shall be furnished on or before 20<sup>th</sup> day of succeeding month.

- **CBEC notifies revised late fee payable for delayed filing of return in FORM GSTR-3B**

**Notification No.64/2017 –Central Tax, dated 15<sup>th</sup> November 2017**

The Central Government, on the recommendations of the Council, limits the maximum late fees payable for delaying filing of return in FORM GSTR-3B from October 2017 to Rs. 25 for every day during which such failure continues.

Where the total amount of Central Tax payable in the said return is NIL, the maximum late fees payable for delaying filing of return in FORM GSTR-3B from October 2017 to Rs 10 for every day during which such failure continues.

- **Exemption to suppliers of services through an e-commerce platform from obtaining compulsory registration)**

**Notification No.65/2017 –Central Tax, dated 15<sup>th</sup> November 2017**

The Central Government (**CG**) hereby specifies the persons making supplies of services, other than supplies specified under sub-section (5) of Section 9 of the said Act through an electronic commerce operator who is required to collect tax at source under Section 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of Rs. 20 lakh in a financial year (**FY**), as the category of persons exempted from obtaining registration under the said Act:

Provided that the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of Rs. 10 lakh in case of “special category States” as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution, other than the State of Jammu and Kashmir.

- **Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods**

**Notification No.66/2017 –Central Tax, dated 15<sup>th</sup> November 2017**

With this notification Government has exempted all dealers from paying GST on receipt of advance against their future SUPPLY OF GOODS.



- **Filing of return in FORM GST ITC -01 by 31<sup>st</sup> January 2018.**

**Notification No. 67/2017 – Central Tax, dated 21<sup>st</sup> December 2017**

All taxpayers who have taken registration within 30 days from the date they have become liable to pay tax under CGST Act and who have become eligible to take input tax credit on stock as on the date immediately preceding the date on which they are liable to pay tax under CGST Act as per provision of subsection 1 of Section 18 of the CGST Act are required to file FORM GST ITC – 01 by 31<sup>st</sup> January 2018. This notification is applicable to all taxpayers who have become eligible for the months of July 2017 to November 2017.

- **CBEC revises GSTR-4 Late Return Filing Penalty**

**Notification No.73/2017 –Central Tax, dated 29<sup>th</sup> December 2017**

The CG, on the recommendations of the Council, limits the maximum late fees payable for delaying filing of return in FORM GSTR-4 after due date to Rs. 25 for every day during which such failure continues.

Where the total amount of Central Tax payable in the said return is NIL, the maximum late fees payable for delaying filing of return in FORM GSTR-4 after due date to Rs.10 for every day during which such failure continues

- **Notifies the date from which E-Way Bill Rules shall come into force**

**Notification No.74/2017 –Central Tax, Dated 29th December, 2017**

The CG hereby appoints the 1<sup>st</sup> February 2018, as the date from which the provisions of E-way bills shall come into force.

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## Notifications- CGST (rates)

- **RCM on Supply of services by the members of Overseeing Committee to RBI**

**Notification No.33/2017 –Central Tax (Rate), dated 13<sup>th</sup> October 2017**

The CG on the recommendations of the Council hereby notifies that the whole of Central Tax leviable under Section 9 of the said CGST Tax Act on supply of services by the members of Overseeing Committee to RBI shall be paid on Reverse Charge Basis by the Recipient (i.e. RBI) of such Services.



- **CBEC exempts GST on Duty Credit Scrips, Govt. to Govt. supplies, etc.**  
**Notification No.35/2017 –Central Tax (Rate), dated 13<sup>th</sup> October 2017**

IGST on Duty Credit Scrips and on Govt. to Govt. supplies of goods is exempted.

The phrase “Government Entity” shall mean an authority or a board or any other body including a society, trust, corporation, which is:

- ♦ set up by an Act of Parliament or State Legislature; or
  - ♦ established by any Government, with 90% or more participation by way of equity or control, to carry out a function entrusted by the CG, State Government (**SG**), Union Territory or a Local Authority.
- **GST under RCM sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government**  
**Notification No.36/2017 –Central Tax (Rate), dated 13<sup>th</sup> October 2017**

The CG, on the recommendations of the Council, hereby specifies that used vehicles, seized and confiscated goods, old and used goods, waste and scrap supplied by CG, SG, Union territory or a local authority to any registered person then Central Tax shall be paid on reverse charge basis by the recipient of the intra-state supply of such goods.

- **Reverse charge mechanism u/s 9(4) of CGST Act suspended till 31<sup>st</sup> March 2018**  
**Notification No.38/2017 –Central Tax (Rate), dated 13<sup>th</sup> October 2017**

The CG makes the amendment in Notification No.8/2017-Central Tax (Rate) dated 28<sup>th</sup> June 2017 by granting an exemption where the aggregate value of supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds Rs. 5,000 in a day.

- **CBEC prescribe Central Tax rate of 0.05% on intra-State supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions mentioned below:**  
**Notification No.40/2017 –Central Tax (Rate), dated 23<sup>rd</sup> October 2017**

- ♦ The registered supplier shall supply the goods to the registered recipient on a tax invoice;
- ♦ The registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier;
- ♦ The registered recipient shall indicate the GST Identification Number (**GSTIN**) of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;

- ♦ The registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce;
- ♦ The registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;
- ♦ The registered recipient shall move the said goods from place of registered supplier –
  - ▲ directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
  - ▲ directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- ♦ If the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
- ♦ In case of situation referred to in the above condition , the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and
- ♦ When goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

The registered supplier shall not be eligible for the above mentioned exemption if the registered recipient fails to export the said goods within a period of 90days from the date of issue of tax invoice.

■ **Reverse charge on raw cotton.**

**Notification No.43/2017 –Central Tax (Rate), dated 14th November 2017**

The CG, on the recommendations of the Council, hereby specifies that if the supply of Raw Cotton made by any Agriculturalist to any Registered Person then the Central Tax shall be paid on reverse charge basis by the recipient of the intra-state supply of such goods.

**This notification has come into force with effect from the 15<sup>th</sup> November 2017.**

The similar Notification has also been provided under IGST Law - **Notification No. 32/2017 – Integrated Tax (Rate), dated 13<sup>th</sup> October 2017**

- **Concessional Rate of Tax on Equipments supplied to public funded research institution.**

**Notification No.45/2017 –Central Tax (Rate), dated 14<sup>th</sup> November 2017**

CBEC to provide concessional GST rate of 2.5% on scientific and technical equipments supplied to public funded research institution as listed in the said notification provided the all the conditions listed in notification shall be complied with.

- **Seeks to amend notification No. 11/2017-CT(R) so as to specify rate @ 2.5% for restaurants, etc. and to reduce rate of job work on “handicraft goods” @ 2.5%.**

**Notification No.46/2017 –Central Tax (Rate), dated 14<sup>th</sup> November 2017**

The CG to specify the rate of 2.5% for 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 Rs. 7,500 and above per unit per day or equivalent.

Explanation.- “declared tariff” includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.

**This notification has come into force with effect from 15<sup>th</sup> November 2017.**

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## IGST- Notifications

- **GST not payable on inter-State supplies of taxable services by exempt persons :**

**Notification No.10/2017 –Integrated Tax, dated 13<sup>th</sup> October 2017.**

The CG has exempted the persons making inter-state supplies of taxable services and having an aggregate turnover not exceeding an amount of Rs. 20 lakhs / Rs. 10 lakhs (in case of Special Category States-i.e. North-Eastern states- Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh other than J&K) in a FY from obtaining compulsory registration in GST.

- **Cross-empowerment of State Tax officers for processing & grant of refund. Notification No.11/2017 –Integrated Tax, dated 13<sup>th</sup> October 2017.**

Officials from under SGST Act and UTGST Act are authorized to issue the refund as per provisions of Section 54 and 55 of the CGST Act 2017 read with the Rules made thereunder except Rule 96 of the CGST Rules, 2017, in respect of a registered person located in the territorial jurisdiction of the said officers who applies for the sanction of refund to the said officers.

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## IGST- Notifications (rates)

- **CBEC exempts IGST on Government to Government supply of services and on GTA to certain entities**  
**Notification No. 33/2017- Integrated Tax (Rate) dated 13th October, 2017.**

Supply of service by a Government Entity to CG, SG, Union territory, local authority or any person specified by CG, SG, Union territory or local authority against consideration received from CG, SG, Union territory or local authority, in the form of grants would attract NIL rate of IGST.

Moreover, services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely: - (a) any factory registered; or (b) any Society registered; or (c) any Co-operative Society; or (d) any body corporate; or (e) any partnership firm including association of persons; (f) any casual taxable person registered would also attract NIL rate of IGST.

- **IGST under RCM sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Govt.**  
**Notification No.37/2017 –Integrated Tax (Rate), dated 13<sup>th</sup> October 2017**

The CG, on the recommendations of the Council, hereby specifies that used vehicles, seized and confiscated goods, old and used goods, waste and scrap supplied by CG, SG, Union territory or a local authority to any registered person then IGST shall be paid on reverse charge basis by the recipient of the inter-state supply of such goods.

- **Seeks to reduce IGST rate on Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government.**

**Notification No.40/2017 –Integrated Tax (Rate), dated 18<sup>th</sup> October 2017.**

The CG, on the recommendations of the Council, hereby notifies the IGST rate of 5% inter-State supplies of goods comprising of food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the CG or any SG when the supplier of such food preparations produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the SG or the Deputy Secretary in the Union Territory concerned to the effect that such food preparations have been distributed free to the economically weaker sections of the society under a programme duly approved by the CG or the SG concerned, within a period of 5 months from the date of supply of such goods or within such further period as the jurisdictional commissioner of the Central Tax or jurisdictional commissioner of the State Tax, or jurisdictional officer of the Union Territory Tax as the case maybe, may allow in this regard.

- **CBEC prescribe Central Tax rate of 0.10 % on inter-State supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions mentioned below:**

**Notification No.41/2017 –Integrated Tax (Rate), dated 23<sup>rd</sup> October 2017.**

- ♦ The registered supplier shall supply the goods to the registered recipient on a tax invoice;
- ♦ The registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier;
- ♦ The registered recipient shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;
- ♦ The registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce;
- ♦ The registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;
- ♦ The registered recipient shall move the said goods from place of registered supplier –
  - ▲ directly to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported; or
  - ▲ directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported;

- ♦ If the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
- ♦ In case of situation referred to in the above condition, the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and
- ♦ when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

The registered supplier shall not be eligible for the above mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

■ **NIL IGST rate supply of services to Nepal and Bhutan.**

**Notification No. 42/2017-Integrated Tax (Rate), dated 27<sup>th</sup> October 2017.**

Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees would attract NIL rate of IGST.

■ **Reverse charge on raw cotton.**

**Notification No.45/2017 –Integrated Tax (Rate), dated 14<sup>th</sup> November 2017**

The CG, on the recommendations of the Council, hereby specifies that if the supply of Raw Cotton made by any Agriculturalist to any Registered Person then the IGST shall be paid on reverse charge basis by the recipient of the inter-state supply of such goods.

**This notification will come into force with effect from the 15<sup>th</sup> November 2017.**

■ **Concessional Rate of Tax on Equipments supplied to public funded research institution.**

**Notification No.47/2017 –Integrated Tax (Rate), dated 14<sup>th</sup> November 2017**

CBEC to provide concessional IGST rate of 5% on scientific and technical equipments supplied to public funded research institution as listed in the said notification provided the all the conditions listed in notification shall be complied with.

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# Service Tax / Maharashtra Value Added Tax (MVAT) Act, 2002 and MVAT Rules, 2005

## Recent Judicial Decisions

- **Whether the money retained by the hospitals after paying the professional charges to doctors, be chargeable to service tax?**

M/s Sir Ganga Ram Hospital, Bombay Hospital & Medical Research Centre, Apollo Hospitals, M/s Max Health Care Institute Ltd and others vs. CCE Delhi-I, CCE&ST Indore, CCE&ST Raipur, CST New Delhi.

### **Facts:**

The appellant assessee are engaged in providing health care services to the patients and they are managing well-known hospitals/medical centres at various places. To provide the medical services to different patients, the appellants engage professionals and doctors on contractual basis where the fees are paid at a pre-determined ratio. These doctors are provided space in the hospitals with required facilities to attend to the patients coming to the hospitals, run by the appellants. The revenue was of the opinion that the appellant hospitals retain certain amount from the charges collected from the patients as “business support services” and as such would be liable to service tax.

### **Decision:**

Even though the respondent contested the appeal by stating that “the method of sharing revenue etc. cannot alter the nature of service provided by the appellant hospitals to various doctors”, it was held that the appellant hospitals were in fact providing health care services in association with doctors engaged by contractual agreements. In such arrangement, the doctors of required qualification are engaged/contractually appointed to provide health care services. It is a mutually beneficial arrangement. There is a revenue sharing model. The agreements do not specify the specific nature or list of facilities which can be categorized as infrastructural support to the doctors. The revenue model, as agreed upon between the contracting parties also, did not refer to any consideration attributable to such infrastructural support service. Thus the entire amount paid by the patient to the appellant hospitals is for the health care service which is exempt from the levy of service tax as per Notification No. 25/2011-ST from 1<sup>st</sup> July 2012. Thus the contention of the revenue was not tenable.



- **Whether the supply of drugs, medicines, stents and other goods used in the course of treatment of inpatients in hospitals amounts to sale under the provisions of MVAT Act?**

**M/s Saifee Hospital (The “Appellant”) vs. The State of Maharashtra,[Second Appeal No. 190 of 2016 dated 8<sup>th</sup> December 2017-Mah Sales Tax Tribunal]**

**Facts:**

The Appellant is a public charitable trust running a hospital, which also has a pharmacy from where medicines are supplied to inpatients and outpatients.

In the assessment by Sales Tax officer, set-off was disallowed and a demand was raised including interest and penalty. Aggrieved by the said order, the hospital filed a first appeal before the Deputy Commissioner (Appeals), who was of the opinion that the hospital was under-assessed and raised an additional demand than that made by the Sales Tax Officer towards the supply of drugs and medicines to patients admitted in the hospital claiming the same was sale or deemed sale liable to MVAT. He also held that provision of food in hospital to admitted patients received in composite charges from the patients for the bed-charge is a sale of food and liable to VAT. Besides supply of dental materials, dental implants, hire charges for mattresses and provision of goods like special beds and equipment in course of treatment was also held liable to VAT.

**Decision:**

The Appellant’s counsel submitted that the hospital mentions the list of medicines in the consolidated invoice issued to the inpatients only to comply with the provisions of the Drugs and Cosmetic Act which mandates disclosure of all details. It was also submitted that on introduction of MVAT, the department had clarified in its letter to the Association of Hospitals in December 2007 that since the dominant intention in administering medicines to inpatients is treatment of disease and not supply/ sale of medicines, consumable, or implants, therefore, the activity would not amount to “deemed sale”. It was also added that there is no delivery but instead consumption of the said drugs and medicines in course of treatment.

The Tribunal relied on Allahabad High Court decision in Tata Main Hospital case to say that supply of medicines to inpatients during course of treatment does not fall in the category of deemed sale. It further added that when a patient is admitted to a hospital, his intention is not to buy medicines, nor are the medicines identified or agreed to be delivered to patient before administering the same during the course of treatment and therefore the said activity is not liable to VAT. It also further held that the special kind of mattresses required for treatment of patients are given only on prescription of the doctor and their charges are not included in the room rent and therefore held them to be not eligible to tax.

- **Whether reversal of CENVAT Credit is required on the inputs which are shown as scrap & value of such inputs was shown at lesser value and not written off in the books of account?**

**Autoline vs. Commissioner of Central Excise, Kolhapur [2017 (1) TMI 297 – CESTAT MUMBAI]**

**Facts:**

M/s Autoline (“the Appellant”) a manufacturer of automobile components for 2,3 and 4 wheelers has availed CENVAT Credit paid on inputs, input services and capital goods. Certain inputs were shown in the books of the Appellant as scrap and lesser value was shown (“the Impugned inputs”) but the said inputs were not written off and remained in the factory.

However, the Department has alleged that as per Rule 3(5B) of the Cenvat Credit Rules, 2004 (“the Credit Rules”), if the assessee has written off the value of the inputs or made a provision for writing off, then, the CENVAT Credit on such inputs is required to be reversed. Accordingly, CENVAT Credit in respect of the Impugned inputs has been denied.

**Decision:**

The Honorable CESTAT, Mumbai has held that though the impugned inputs were shown in the books of the Appellant as scrap and lesser value was shown, it is not the case where the value of the inputs was written off. Therefore, Rule 3(5B) of the Credit Rules has no application. Further, so long the inputs are lying in the factory, the credit cannot be asked to be reversed. However, it is needless to say that as and when the inputs are cleared from the factory, the credit availed on the same would be liable to reversal in terms of Rule 3(5B) of the Credit Rules.

- **Whether the services procured on behalf of group companies and expenditure incurred by one and is thereafter shared with other group companies are taxable under the category ‘Business Auxiliary Service’?**

**M/s Historic Resort Hotels Pvt. Ltd.(the “Appellant”) vs. Commissioner of Central Excise, Jaipur-II-2017 (9) TMI 1066 – CESTAT New Delhi.**

**Facts:**

The appellant and group companies are engaged in the hotel business. As per the terms of Memorandum of Arrangement amongst the group companies, the appellant incurred general business promotion expenditure for all the group companies which were later shared in proportion of their respective turnover. Revenue alleged that the appellant acted as the procurer of various services that promoted the business for the group companies and merely because the expenditure was shared by the appellant without profit the relationship between the appellant and the group companies of service provider and service recipient cannot be denied.

It was submitted by the appellant that the services provided by 3<sup>rd</sup> parties were actually availed by the group companies and the appellant only incurred the expenditure on behalf of them which was later recovered. It was further contended that the expenditure was recovered without any profit element and such sharing of expenditure will not attract service tax liability.

**Decision:**

Tribunal observed that the appellant per se is not engaged in the business of sales promotion of its group companies. There is no scope for tax liability in the present arrangement where the expenditure is borne by the appellant and thereafter shared. In this regard, reference was made to the decision of the Apex Court in the case of Gujarat State Fertilizers and Chemicals Ltd. and another. vs. Commissioner of Central Excise wherein it was held that sharing of expenditure for common facilities cannot be treated as service by one to another. Reference was also made to the decisions of Old World Hospitality Limited vs. CST, New Delhi wherein it was held that the intent of the agreement was to create a common pool of resources for running and maintaining common facilities and therefore, no service provider service recipient relationship exists. Accordingly, it was held that there is no taxable service in the arrangement of sharing of business promotion expenditure among the companies.

- **Whether ITC claim of the dealer can be denied on the basis of cancellation of hawala dealers registration number without giving opportunity to the genuine dealer to cross examine the hawala dealer on production of records available with the Department.**

**M/s Mahalaxmi Cotton Ginning Pressing & Oil Industries vs. The State of Maharashtra (Second Appeal No. 195 of 2015 dated 30th October, 2017- Maharashtra Sales Tax Tribunal)**

**Facts:**

The claim of ITC was disallowed to the appellant u/s 48(5) of the MVAT Act on the basis of mismatch report generated by 'Mahavikas'. It was the stand of the appellant that he has been put in an adverse position on the basis of the so called "correct" information from Mahavikas. The suppliers were not properly examined by the Department nor were their records provided by the Department to the appellant to cross-examine these suppliers. The Sales Tax Department retrospectively cancelled such hawala supplier's registration and disallowed the claim of ITC by the Appellant.

**Decision:**

The Tribunal observed that most of the registrations of such non-genuine dealers were cancelled retrospectively. The effect of this retrospective cancellation is that these suppliers have collected large amount of tax not only from the appellant but also from other parties and have now been absolved of the liability to pay tax. The Department has made it impossible to proceed against these dealers for transactions after effective date of cancellation. Since there is

no possibility of any recovery being made from these suppliers, the burden is permanently shifted to the purchaser, in this case the appellant. The precondition for allowing set-off as per Section 48(5) is that tax has been paid into Government treasury therefore setoff would not be allowed. The decision of the Bombay High Court in *Vasanji Ghela & Co (1977)* was relied on where it was held that where a conclusion adverse to the assessee is sought to be arrived at by the Sales Tax Authority, there is general speaking duty cast on it to disclose to the assessee the material sought to be relied on. Therefore, order was passed to set aside hawala transactions and case was remanded back to Appellate Authority to give opportunity to contest the claim in respect to those transactions.

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# The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017

The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (New Act) was published in the Maharashtra Official Gazette on 7<sup>th</sup> September 2017, replacing the 60-year old Maharashtra Shops and Establishments Act, 1948 (1948 Act)

## Key Changes

### ▪ **Applicability**

- ♦ The provisions of the New Act will apply to all establishments which employ 10 or more workers. Substantive provisions of the New Act would not be applicable to small establishments employing less than 10 workers.
- ♦ The New Act will be applicable to all commercial establishments in the State, unlike the 1948 Act which was applicable to establishments located in certain notified areas.
- ♦ The term 'employee' has been replaced by 'worker' in the new Act. 'Worker' under the New Act has been defined on the same lines as the term 'workman' under the Industrial Disputes Act, 1947. Thus, the New Act applies to 'workers' which are directly employed by the establishment.

### ▪ **Registration**

- ♦ Registration under the New Act is required only when the number of workers employed exceeds 10. Establishments which employ less than 10 workers are required to give intimation to Facilitator appointed under the New Act by submitting online application. However, once the number of workers employed exceeds 10, registration shall be required.
- ♦ The term of registration certificate granted under the Act will be for a period as requested by the applicant. However, such term shall not exceed 10 years.

### ▪ **Working Pattern**

- ♦ All establishments would be able to remain open on all 7 days of the week so long as every worker is given a weekly holiday.

- ♦ No woman worker will be required or allowed to work in any establishment except between the hours of 7 a.m. and 9.30 p.m. However, the woman worker with her consent will be allowed to work beyond the said hours provided adequate protection of her dignity and safety, protection from sexual harassment and her transportation is provided for by the establishment.
  - ♦ Under the New Act, a worker would be able to work overtime for a maximum of 125 hours in a period of 3 months. Overtime, under the previous law, was a maximum of 3 hours per week.
  - ♦ Every worker will be entitled to 8 days casual leave with wages, which will lapse if unavailed at the end of the year. Every worker can now accumulate earned leave up to a maximum of 45 days [erstwhile entitlement was 42 days]. The number of national and festival holidays has also been doubled from 4 to 8 days.
  - ♦ The spread-over (commencement and the termination of the work on any day) of a worker in establishment will not exceed ten and half hours in any day, and in case a worker entrusted with intermittent nature of work or urgent work, the spread over shall not exceed 12 hours.
- **Compliance**
    - ♦ In line with the Centre's initiatives on 'ease of doing business', the New Act provides for registration and maintenance of registers/records electronically.
    - ♦ While the maximum penalty under the 1948 Act is of Rs.15000, penalty under the New Act can go up to Rs.5 lakh. The New Act also provides for imprisonment in certain cases.

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### Our Offices in India

#### Ahmedabad

'Hrishikesh',  
2<sup>nd</sup> Floor, Vasantbaug Society,  
Opp Water Tank, Gulbai Tekra  
Ahmedabad 380 006  
Tel. No. +91 79 2630 6530

#### Bengaluru

96, 7th Cross,  
Domlur,  
Bengaluru 560 071  
Tel. No.+91 80 2535 1353

#### Chennai

Kochu Bhavan  
Ground Floor, Old No 62/1, New No 57,  
McNichols Road, Chetpet  
Chennai 600 031  
Tel No. +91 44 4384 9695

#### Mumbai

Mistry Bhavan, 3rd Floor,  
Dinshaw Vachha Road, Churchgate  
Mumbai 400 020  
Tel No. +91 22 6623 0600

#### Mumbai (Suburban Office)

501/502, Narain Chambers,  
M.G. Road, Vile Parle ( East)  
Mumbai 400 057  
Tel No +91 22 6457 7600/01/02

#### New Delhi

Suite 1101,  
KLJ Towers, NSP  
New Delhi 110 034  
Tel No.+91 11 2735 7350/7030

#### Pune

4, Kumar Panorama, 1<sup>st</sup> Floor  
45/18 Shanker Seth Road  
Pune 411 037  
Tel No. + 91 20 2645 7251/52

#### Vadodara

C-201/202, Shree Siddhi Vinayak Complex,  
Faramji Road, Alkapuri,  
Vadodara 390 005  
Tel. No. +91 265 234 3483

### Our Overseas Office

#### Dubai

Suite#17.06 Dubai World Trade Centre  
Shaikh Zayed Road, Dubai, P.O.Box.454442  
Tel. No. +971 04 355 9533