

4/23/2019

GST Expertise Indirect Tax Updates

GST Expertise Weekly Indirect Tax Updates

❖ Quick Snapshot of the GST Updates issued by CBIC till 22 April, 2019

A	<u>Circulars-</u>
1	Service providers opting for composition levy to file prescribed form by April 30, clarifies CBIC
B	<u>Case Laws-</u>
1	Telangana HC rules that interest payable on total tax liability including ITC, rejects reliance on Council's recommendation
2	HC directs release of vehicle seized not finding any cogent material with Revenue
3	Orissa HC's notice in writ challenging levy of IGST on ocean freight
4	Madhya Pradesh HC refuses to grant bail in case involving bogus firm creation for tax evasion
5	Kerala HC dismisses writ appeal; Upholds penalty u/s 129 on transporter for incomplete e-way bill (Part-B)
C	<u>Advance Rulings-</u>
1	Maharashtra AAR holds that electricity/water charges ancillary to 'lease renting', does not constitute 'reimbursements'
2	Maharashtra AAR holds that ice-cream sold in packs and scoops from retail outlets, taxable as supply of 'goods'
3	West Bengal AAR upholds AAR, Membership Fees charged under Inner Wheel Club's affiliation, liable to GST
4	Maharashtra AAR holds that 'Geared Motors' classifiable under HSN 8501 as 'electric motors', not under HSN 8483
5	Maharashtra AAR holds that returnable interest free security deposit, not 'Consideration'; GST not leviable
D	<u>GST News & Legal Updates</u>
1	Govt. extends GSTR 3B time limit upto April 23, 2019
2	Form GSTR-9C utility available on portal with FAQs and User Manual
3	National Informatics Centre (NIC) Forthcoming changes in E-way bill system

GST Expertise Weekly Indirect Tax Updates

❖ LEGAL UPDATES-

✚ Circular-

1. **Service providers opting for composition levy to file prescribed form by April 30, clarifies CBIC**

CBIC requires a registered person opting for payment of Central Tax at 3% by availing benefit of Notification No.2/2019-Central Tax (Rate) to file FORM GST CMP-02 by selecting category of registered person as “Any other supplier eligible for composition levy” as listed at Sl. No. 5(iii) by April 30, 2019; Also, requires such person to furnish a statement in FORM GST ITC 03 in accordance with the provisions of sub-rule (3) of rule 3 of Central Goods and Services Tax Rules, 2017; Further, prescribes that any person who applies for registration and wants to opt for payment of central tax @ 3%, may do so by indicating the option at serial no. 5 and 6.1(iii) of FORM GST REG-01 at the time of filing of registration application; Moreover, option of payment of tax in respect of any place of business in any State or Union territory shall be deemed to be applicable in respect of all other places of business registered on the same PAN; Explains that, the option to pay tax by availing the benefit of the said notification would be effective from the beginning of the financial year or from the date of registration, as the case may be.

[\(Click here to read the Circular No. 97/16/2019-GST dated April 05, 2019\)](#)

✚ Writ Petitions

1. Telangana HC rules that interest payable on total tax liability including ITC, rejects reliance on Council's recommendation

Facts of the case-

The company had delayed filing the GST returns from July 2017 to May 2018 when its tax liability added up to Rs 1,014 crore. It had ITC of Rs 968 crore and it claimed that the shortfall was to the tune of Rs 45 crore. While the tax authorities demanded 18% interest on the entire amount, Megha Engineering argued that interest should only be calculated on the net tax liability, after deducting ITC from the total liability.

Held by HC-

The Telangana High Court has ruled that no input tax credit (ITC) is available unless GST returns are filed and a taxpayer is liable to pay penalty on the entire liability. The ruling is expected to have a significant impact on all businesses that use tax credits available on inputs and raw materials to reduce payment in cash. "...until a return is filed as self-assessed, no entitlement to credit and no actual entry in the electronic credit ledger takes place. As a consequence, no payment can be made from out of such a credit entry.

Therefore, it is clear that the liability to pay interest under Section 50 (1) is self-imposed and also automatic, without any determination by anyone. Hence, the stand taken by the department that the liability is compensatory in nature appears to be correct.

(Source: TS-248-HC-2019(TELandAP)-NT)

2. HC quashes detention absent mention of reasons in order for seizure of vehicle/goods [G. Murugan vs. GOI and the State Tax Officer/Proper Officer]

Facts of the case-

The admitted facts are that the petitioner had carried goods of Schaeffler India Ltd, from its warehouse at Chettipedu, Sriperumbudur, Tamil Nadu to Sriperumbudur. According to the petitioner, the goods were accompanied by all required documents, such as tax invoices, E-Way bills and delivery Challan. The value of the goods was Rs.8,63,595/-. While this was so, the vehicle was intercepted by the officials of the Commercial Taxes, Department who proceeded to cause inspection of the same. A statement had been recorded in Form GST Mov-01, from the driver who was incharge of the goods in conveyance. Admittedly, the statement at Column 10 thereof, admits that there is a mistake in the

GST Expertise Weekly Indirect Tax Updates

vehicle number mentioned. Thereafter, Form GST Mov02, ordering the physical verification/inspection of the conveyance, goods and documents was issued. The order, dated 04.02.2019, though signed by the Proper Officer is blank in so far as all relevant fields are concerned.

Held by HC-

A perusal of the impugned order reveals that none of the relevant fields have been ticked and almost all fields have been left blank. It is thus entirely unclear as to what statutory provision or Rule the petitioner has contravened. A pointed query put in this regard to the learned Additional Government Pleader appearing on behalf of the respondents also elicits no details and he is also unable to enlighten the Court on what the contraventions might be. Admittedly, in the sworn statement recorded from the lorry driver, a mistake had crept in, in the mentioning of the lorry number as TN 19 U 7857 instead of TN 19 U 7873. One assumes this to be a reason for the detention. However, detention of the conveyance and goods is an extreme step that seriously prejudices an assessee. In the light of the above discussion, the judges were of the view that the present order of detention cannot be sustained and the same is quashed. The vehicle shall be released forthwith upon receipt of a copy of this order

(Source: TS-214-HC-2019(MAD)-NT)

3. HC directs release of vehicle seized not finding any cogent material with Revenue

Facts of the case-

The learned Standing Counsel has placed before court the written instructions and the only reason which has come up before the judges is that there was a delay of one day in transportation of goods. Admittedly the vehicle was coming from Haridwar and it was intercepted at the Lucknow, there is a distance of 600 Kms. and the delay could have been bonafide (which is accepted by the court). Notice was given to the driver and not to the owner, more over the tax has already been paid. The purchaser and the buyer both are registered with the GST, prima facie it cannot be a case of tax evasion, subject to further arguments of the learned counsel for the parties. The counsel for the petitioner has forcefully argued that no criminal intention could have been attributed to the vehicle or the owner/driver also finds that there is no cogent material for the Revenue to seize the vehicle.

Held by HC-

It is held by the high court that So far the vehicle and goods is concerned, the petitioner shall move an application for release of goods before the authority concerned, who shall consider and decide the same within a maximum period of seven days from the date of filing of the application for the release of goods.

GST Expertise Weekly Indirect Tax Updates

So far the release of the vehicle is concerned it shall be released forthwith on personal bond provide by the petitioners.

(Source: TS-175-HC-2019(ALL)-NT)

4. Orissa HC's notice in writ challenging levy of IGST on ocean freight [India Coke and Power Pvt. Ltd. vs. UOI & Ors.]

Facts of the case-

The Writ Petition challenged constitutional validity of the Notification No. 10/2017 - Integrated tax (Rate) r/w Notification No. 8/2017 - Integrated Tax (Rate) vide which levy of IGST has been imposed on an importer of goods under reverse charge mechanism for the transportation service provided by a person located in the non-taxable territory to a person located in non-taxable territory from a place outside India to the customs station in India.

Issue under consideration-

The challenge to the levy of IGST under reverse charge mechanism is inter alia on the basis of following key grounds:

- The importer of goods cannot be deemed to be a 'recipient' of transportation services as per the definition of 'recipient of services' as per Section 2(93) of the CGST Act r/w Section 5(3) of the IGST Act.
- The transportation service does not qualify as 'import of service' as defined under Section 2(11) r/w Section 7(4) of the IGST Act.
- Import of Coal on CIF basis is a composite supply of goods and cannot be separately made amenable to IGST as a service under reverse charge.

Held by HC-

Orissa HC has issued notice to Revenue and challenged constitutional validity of the aforesaid notification and listed matter for hearing on April 17, 2019

GST Expertise Weekly Indirect Tax Updates

5. Madhya Pradesh HC refuses to grant bail in case involving bogus firm creation for tax evasion

Facts of the case-

Petitioner along with his partner obtained registration certificates of around 59 fake firms, issued fake invoices to get ITC and defrauded Govt. Exchequer. Petitioner's statements were recorded u/s 70 who admitted to not have sold/received any goods nor submitted any GST returns.

Held by HC-

1. Madhya Pradesh HC dismisses writ while refusing to grant bail to petitioner in a case involving evasion of GST by creating bogus firms.
2. Notes Revenue's plea that statement recorded by petitioner is admissible in evidence and can be used against him in trial as held by this Court in case of R.S. Company case; Stating that, main accused was not arrested and statement of the Petitioner was recorded u/s 70 of CGST Act, 2017, holds that "the petitioner is not entitled for grant of bail".

(Source: TS-234-HC-2019(MP)-NT)

6. Kerala HC dismisses writ appeal; Upholds penalty u/s 129 on transporter for incomplete e-way bill (Part-B)

Facts of the case-

Petitioner contended that transporter could not be mulcted with liability, remarked that "Section 129(1) makes it adequately clear that any person who is interested in the goods shall be liable under Section 129(1)(b). He also placed reliance upon Section 126 to argue that no officer shall under this Act impose any penalty for minor breaches of tax regulations or procedural requirements.

Issue under consideration-

Whether furnishing incomplete details in Part-B of the e-way bill is considered as a minor breach under Section 126 or attracts penalty under Section 219?

Held by HC-

1. Kerala HC dismisses writ appeal against order of Single Judge upholding penalty u/s 129 of CGST Act, 2017 against transporter of goods where Part-B of the e-way bill was incomplete.

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2. States that Section 126 refers to a 'minor breach' while Explanation (a) to Section 126 prescribes that a breach shall be considered a 'minor breach', if the amount of tax involved is less than Rs. 5000/-, hence, Section 126 is not attracted in present case.
3. Further explains that, "The non-obstante clause in Section 129 indicates that neither Section 126, nor the general provision of penalty under Section 125, or Section 122 would apply in cases where Section 129 is attracted".

(Source: TS-235-HC-2019(KER)-NT)

Advance Rulings-

1. Maharashtra AAR: Electricity/water charges ancillary to 'lease renting', does not constitute 'reimbursements'

Facts of the Case-

The Applicant "M/s E-Square Leisure Private Ltd., Pune is engaged in supply of various services including renting of immovable property to business entities for commercial purpose. Applicant intends to enter into a contractual agreement of renting of immovable property with the lessee for leasing of the immovable property for rent. Apart from rent applicant also plans to collect actual expenses incurred on electricity, water charges, property tax and cooking fuel from lessee.

Issue under consideration-

- (i) Whether GST is levied on the reimbursement of expenses from the lessee by the lessor at actuals?
- (ii) In case GST is levied, what is the rate of GST applicable to said reimbursement of expenses?

Ruling-

- (i) Yes, GST is levied on the reimbursement of expenses from the lessee by the lessor.
- (ii) As the reimbursement of the expenses constitute composite supply, GST would be payable at a rate as applicable to the principal supply.

(Source- TS-941-AAR-2018-NT)

GST Expertise Weekly Indirect Tax Updates

2. Maharashtra AAR: Ice-cream sold in packs and scoops from retail outlets, taxable as supply of 'goods'

Facts of the Case-

The Applicant "M/s Arihant Enterprises, Pune is a partnership firm incorporated under the provisions of Indian Partnership Act, 1932, engaged in the business of reselling ice-creams in whole sale as well as retail sale packages. The applicant purchases the said goods from its sole manufacturer, M/s Kamath Ourtimes Ice-creams Pvt. Ltd. The applicant exclusively deals in the ice-cream to their customers without any further processing/ alteration/ structural or chemical change, in the same form as it is acquired from franchisor.

Issue under consideration-

- i) Whether supply of Ice-cream by the applicant from its retail outlets would be treated as supply of goods or supply of service or a composite supply and subject to GST accordingly?
- ii) Whether the supply not being a composite supply, would be treated as supply of service in terms of entry 6(b) of schedule II attached to the CGST Act, 2017 and leviable to CGST @2.5% in terms of notification no 11/2017 as amended by notification no. 46/2017-Central Tax (rate)?
- iii) In case the supply is held to be "composite supply" whether the taxability of same should be treated as supply of service in terms of entry 6(b) of Schedule II of CGST Act, 2017 or should be taxable on the basis of nature of principal supply in accordance with Section 8 of Act?
- iv) In case the supply is held to be a supply of service in terms of entry 6(b) of Schedule II to the CGST Act, 2017, would it be mandatory for the applicant to collect and pay CGST @ 2.5% inspite of the fact that entry 7(i) of notification no. 11/2017 as amended by notification no. 46/2017- Central tax is a conditional entry?

Ruling-

The supply of Ice-cream by the applicant from its retail outlets would be treated as supply of goods.

(Source- TS-229-AAR-2019-NT)

GST Expertise Weekly Indirect Tax Updates

3. West Bengal AAR: Upholds AAR, Membership Fees charged under Inner Wheel Club's affiliation, liable to GST

Facts of the Case-

The Applicant "M/s the Association of Inner Wheel Club of India", not registered under GST Act, stated to be affiliated to International Inner Wheel and the administrative body for all inner wheel club spread in 27 inner wheel districts all over India (two of which falls under West Bengal) engaged in sale of Souvenirs and other services.

Issue under consideration-

Whether the activities undertaken by Association of inner Wheel Club of India may be termed as "business" and "supply of services" as defined under West Bengal Goods and Service Tax Act 2017?

Ruling-

- i. Applicant's activities involve the supply of services classifiable under SAC heading 99959 against consideration received in the form of subscription and membership fees. Also services classifiable under SAC heading 99836 are also supplied.
- ii. Sale of souvenirs is to be considered as a supply of goods.
- iii. The nature of supply for miscellaneous income as recorded in the Financial Accounts is to be determined by the nature of services.

Applicant's Action-

Applicant filed an appeal to set aside/ modify the above mentioned advance ruling passed by West Bengal AAR.

Result of Appeal-

Appellate Authority find no infirmity in the ruling pronounced by the West Bengal AAR. Thus the Appeal fails and stands disposed of accordingly

(Source- TS-943-AAR-2018-NT)

GST Expertise Weekly Indirect Tax Updates

4. Maharashtra AAR: 'Geared Motors' classifiable under HSN 8501 as 'electric motors', not under HSN 8483

Facts of the Case-

The Applicant "M/s Premium Transmission Private Ltd., Pune is a supplier, exporter and manufacturer of various industrial products mainly specialized in manufacturing geared boxes, geared motors, fluid couplings etc. One of the product Geared Motor is a combination of gear box and electric motors. Both the products have specifically been classified under the HSN. Gear Box is classified under HSN Code 8483 while electric motors are classified under HSN code 8501.

Issue under consideration-

What is the correct classification of Geared Motor supplied by the applicant?

Ruling-

Geared Motor supplied by the applicant fall under tariff heading 8501.

(Source- TS-940-AAR-2018-NT)

5. Maharashtra AAR: Returnable interest free security deposit, not 'Consideration'; GST not leviable

Facts of the Case-

The Applicant "M/s E-Square Leisure Private Ltd., Pune is engaged in supply of various services including renting of immovable property to business entities for commercial purpose. Applicant is discharging GST on rent received from the lessees. Applicant also taken interest free security deposit from the lessees on account of security against the damages, if any caused to property.

Issue under consideration-

- (i) Whether GST would be applicable on interest free security deposit and notional interest, if any?
- (ii) In case GST is applicable, what would be value of notional interest for levy of GST?

GST Expertise Weekly Indirect Tax Updates

Ruling-

GST is not applicable on interest free security deposit.

(Source- TS-945-AAR-2018-NT)

GST Latest news and updates

- **Govt. extends GSTR 3B time limit upto April 23, 2019**

CBIC extends the time limit for furnishing GSTR 3B for the month of March 2019 upto April 23, 2019 vide press release.

- **Form GSTR-9C utility available on portal with FAQs and User Manual**

Govt. provides offline utility for filing FORM GSTR-9C (reconciliation statement) along with FAQs and User Manual; Explains that, said reconciliation statement reconciling turnover declared in audited Annual Financial Statement with Turnover declared in furnished Annual Return can be filed only after filing the annual return in Form GSTR-9.

[\(Click here to read the detailed FAQ's on GSTR- 9C\)](#)

- **National Informatics Centre (NIC) issues forthcoming changes in E-way bill system**

National Informatics Centre (NIC) explains the forthcoming changes in E-way Bill System; E-Way Bill system is being enabled to auto calculate the distance for movement of goods based on the postal PIN codes of source and destination locations; Generation of multiple e- way bills shall not be allowed based on one invoice which means that, once e-way bill is generated with an invoice number, then none of the parties - consignor, consignee or transporter can generate the e-Way bill with the same invoice number; Proposes extension of e-way bill when goods/consignment are in transit (i.e. on Road or Warehouse) while not allowing generation of e-way bill for inter-state movement, if the supplier is composition tax payer

GST Expertise Weekly Indirect Tax Updates

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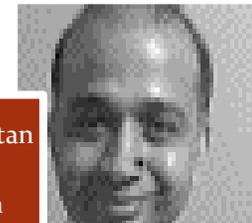
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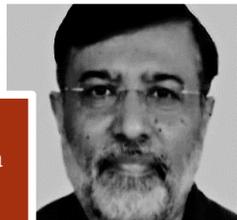
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