



6/5/2019

# GST Expertise Indirect Tax Updates



# GST Expertise Weekly Indirect Tax Updates

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## ❖ LEGAL UPDATES-

### ✚ Circulars-

#### 1. **CBIC issues clarification w.r.t. exemption on upfront amount payable in installments for long term lease of plots**

CBIC issues clarification w.r.t. exemption on upfront amount payable in installments for long term lease of plots CBIC clarifies on admissibility of GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41 of Exemption Notification 12/2017 - Central Tax(Rate); Explains that, said exemption shall be available irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.

[\(Click here to read the Circular No. 101/20/2019-GST dated April 30, 2019\)](#)

#### 2. **CBIC clarifies the applicability of GST on supply of Seed Certification Tags**

CBIC clarifies the applicability of GST on supply of Seed Certification Tags; Explains the steps of processing of seed testing and certification followed in Tamil Nadu prescribed in Seeds Act 1966 and elaborated in Manual on Seed Production and Certification, published by Centre for Indian Knowledge Systems, Chennai includes (i) Application for seed production (ii) Registration of sowing report (iii) Field Inspection (iv) Seed Processing (v) Seed Sample and seed analysis (vi) Tagging and sealing; All the charges, including those for issue of seed certificates/tags by the Seed Certification Agency of Tamil Nadu and Uttarakhand to the seed producing organization/ companies are collected for the composite supply of seed testing and certification, which is exempt under Notification No. 12/2017-Central Tax (Rate) Sl. No. 47 (services by Central/State Governments by way of testing/certification relating to safety of consumers and public at large, required under any law); Clarifies that said clarification would apply to supply of seed tags by seed testing and certification agencies of other states also following similar seed testing and certification procedure; However, supply of seed tags by other departments/manufacturers to State Government/Seed Certification Agencies is a supply of goods liable to tax, and whether same would be classifiable as tags made of paper or textile would depend upon the predominant material used in the tags.

[\(Click here to read the Circular No. 100/19/2019-GST dated April 30, 2019\)](#)

## **✚ Writ Petitions**

### **1. Gujarat HC absent reasoned order, directs release of imported goods detained for non-compliance with E-way Bill (Part B)**

#### **Facts of the Case-**

The petitioner is engaged in import and sale of dietary food products such as protein powder of different flavors which are perishable in nature, subject to furnishing of bond; Goods cleared upon payment of customs & IGST, and moved from customs warehouse to petitioner's own godown were detained on the ground that it appears that Part-A of E-way bills was uploaded by the petitioners, but Part-B of these four E-way bills was not generated by the transporter due to some technical problem.

#### **Issue under consideration-**

The second respondent, however, refused to release the goods on the ground of absence of Part-B of E-way bills and issued notices in FORM GST MOV-07 under section 129(3) of the CGST Act and insisted upon payment of GST and 100% penalty of tax payable on such goods under section 129 of the CGST Acts.

#### **Held by HC-**

Gujarat HC observing that, basis for computing the additional tax was IGST paid by the petitioner, finds that order is “totally bereft of any reasoning” for the purpose of holding the petitioner liable to payment of tax and penalty, hence, same stands vitiated; Explains that “Reasons, it is well known, are the heart and soul of an order passed by a judicial/quasi-judicial order, without which it is difficult to pronounce one way or other as regards the validity of such order”; Stating that, “liability of the petitioner shall be considered independently”, directs Revenue to decide matter afresh and pass a speaking order : Gujarat HC

**(Source: TS-280-HC-2019(GUJ)-NT)**

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### **2. NAA: Dismisses profiteering allegation against 'ply' supplier absent increase in base-price post-GST**

#### **Facts of the Case-**

Alleging applicant against “State Level Screening Committee on Anti-Profiteering, Kerala and Directorate General of Anti profiteering (DGAP’s)” in respect of supply of “BWP Trozan Platinum Ply”; Perusing pre and post GST period invoices, notes that, there was decrease in the per unit base price (excluding GST) of the product in the post-GST era as compared to the pre-GST era while noting that applicable tax in pre-GST era was 28.81% (Central Excise 12.5% + VAT @14.5%) and 28% under GST w.e.f. July 01, 2017; Further, notes that per unit base price remained unchanged when rate of GST was reduced to 18% vide Notification No. 41/2017- Central Tax (Rate) w.e.f. November 15, 2017;

#### **Held by DGAP’s-**

Directorate General of Anti profiteering (DGAP’s) observation that there was no increase in base price and price of product remained same after giving discount on base price at 17.05%, holds that, allegation of profiteering in terms of Section 171 of the CGST Act, 2017 is unsustainable.

**(Source: TS-276-NAA-2019-NT)**

### **3. Karnataka HC directs Nodal officer to redress the technical glitch in filing FORM GST TRAN 2**

#### **Facts of the Case-**

The petitioner “M/S Arvind Lifestyle Brands Ltd.” attempted to file FORM GST TRAN - 2 on March 28, 2018 so as to carry forward credit but could not upload the Form due to technical error in not filling the details of inputs held in stock in table 7B of FORM GST TRAN – 1.

#### **Held by Karnataka HC-**

Karnataka HC directs Nodal Officer to redress the grievance of the petitioner and observing that FORM GST TRAN - 2 portal was not available when the petitioner filed FORM GST TRAN - 1, explains that, “The object and purpose of the transitional provisions has to be achieved to its logical end and the same cannot be rejected/denied on technicalities”.

**(Source: TS-281-HC-2019(KAR)-NT)**

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### **4. Rajasthan HC: Dismisses writ where ITC was availed basis fictitious sale invoices, imposes cost**

#### **Facts of the Case-**

Raid conducted at petitioner's "Bharat Raj Punj, Managing Director, M/s Leel Electricals Limited and M/s Leel Electricals Limited" premises revealed that company has not done any business and fake sale purchase bills were prepared and only trading activities were shown, without any banking transaction or movement of goods. It was also revealed from the statements that input tax credit was wrongly claimed

Petitioner was residing at United States of America, he was the Director of the company from August, 2012 and was receiving managerial remuneration from the company to the tune of about Rs.60 lakhs per annum. Hence, he cannot shake off his responsibilities from the criminal act committed by him and the company.

#### **Held by Rajasthan HC-**

Clarifies that the petitioner's contention that the tax is to be first determined under Section 73 & 74 of the Act does not have any force for the very reason that "in an offence committed under Section 132 of the Act determination of tax is not required and the Department can proceed straight away by issuing summons or if reasonable grounds are available by arresting the offender".

**(Source: TS-282-HC-2019(RAJ)-NT)**

### **5. Delhi HC: Quashes freezing of bank accounts by Revenue, directs petitioner to join investigation proceedings**

#### **Facts of the Case-**

Notices issued to freeze petitioner's 'M/S CAMRON EXPORTS and ELEGANT EXPORTS' bank account by Revenue to enquire into allegations of bogus addresses for the purposes of claiming IGST refunds.

#### **Held by Delhi HC-**

Delhi HC quashes notices issued to freeze petitioner's bank account where find that, notices were identical to those issued in case of S. B. International wherein it was held that the power to freeze or suspend operations of a bank account cannot legally be

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exercised; However, directs the petitioner to join the investigation proceedings and furnish an undertaking in the Court, to this effect.

**(Source: TS-283-HC-2019(DEL)-NT)**

### **6. NAA: Finds no profiteering against 'Courier Service' provider where tax-rate increased post GST**

#### **Facts of the Case-**

NAA dismisses case of applicant "M/s A B V & Company and Directorate General of Anti profiteering (DGAP's)" profiteering finding no reduction in rate of tax on supply of 'Courier Service' after GST implementation; Perusing the rate of tax pre and post GST regime, observes that, rate of tax increased from 15% under pre - GST regime to 18% under post- GST regime vide Notification No. 11/2017 - Central Tax (Rate).

#### **Held by NAA-**

NAA finds that, fact that base price increased from Rs. 69.5 to Rs. 80 has no relevance in view of the fact that there has been no reduction in rate of tax nor increased benefit on account of ITC was available; Consequently, holds that "there is no case of contravention of the provisions of Section 171 of the CGST Act, 2017"

**(Source: TS-289-NAA-2019-NT)**

## Advance Rulings-

### 1. Odisha AAR: Upholds AAR, supply of energy efficient street lighting service taxable as 'works contract'

#### Facts of the Case-

The applicant M/s Super Wealth Financial Enterprises Pvt. Ltd., Bhubaneswar is engaged in providing street lighting service to Bhubaneswar Municipal Corporation (BMC) under an Energy Performance Contract dated 05.10.2013. As per Energy Performance Contract, the appellant has installed energy saving equipment on existing street light poles in the city of bhubaneswar and has been operating and maintaining the said infrastructure since 2013.

#### Issue under consideration-

What is the applicability of Entry No 3 of Notification No 12/2017-Central Tax to the services provided by the applicant by way of providing energy saving street lighting service including operation and maintenance of the street lighting installations to Bhubaneswar Municipal Corporation?

#### Ruling-

The services provided by the applicant by way of providing energy saving street lighting service including operation and maintenance of the street lighting infrastructure during the contracted period to Bhubaneswar Municipal Corporation do not constitute supply of pure services as it involves significant use of goods/materials with stipulation to transfer the total business assets to BMC at the end of the contract period. The benefit of exemption from tax in terms of Sl. No. 3 of the Notification No. 12/2017- Central Tax(Rate) dated 28.06.2017 is not available to the applicant. The ruling of AAR upheld.

(Source- TS-290-AAAR-2019-NT)

### 2. West Bengal AAR: Construction bundled with other services constitutes 'Composite supply', taxable under GST

#### Facts of the Case-

The Applicant is a joint venture of The West Bengal Housing Board and The Peerless General Finance and Investment Company Limited for developing real estate projects in West Bengal. Applicant is engaged in developing a residential housing project named 'Avidipta II' and supplying construction service to the recipients for possession of dwelling units in the year 2023. In addition to the



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construction service, the Applicant provides services like preferential location service, which includes services of floor rise and directional advantage.

### **Issue under consideration-**

- (i) Whether the supply of these services constitutes a composite supply with construction service as the principal supply?
- (ii) If answer to above question is affirmative, then whether abatement is applicable on the entire value of the composite supply?

### **Ruling-**

The Applicant is providing service of construction of a dwelling unit in a residential complex, bundled with services relating to the preferential location of the unit and right to use car parking space and common areas and facilities. It is a composite supply, construction service being the principal supply. Entire value of the composite supply is, therefore, to be treated, for the purpose of taxation, as supply of construction service, taxable under SI No. 3(i) read with Paragraph 2 of Notification No 11/2017 - CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), as amended from time to time.

**(Source-** TS-286-AAR-2019-NT)

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## GST Latest news and updates

### . **Govt. releases revenue figures for month of April 2019 and record GST collections for April at Rs. 1.13 lac crores**

Govt. releases revenue figures for month of April 2019, collections highest since GST implementation; Records total gross GST revenue of Rs. 1,13,865 crores, comprising of CGST Rs. 21,163 crores, SGST Rs. 28,801 crores, IGST Rs. 54,733 crores (including Rs 23,289 crore collected on imports) and Cess Rs 9,168 crore (including Rs 1,053 crore collected on imports); Total number of GSTR-3B Returns filed for month of March (up to April 30) is 72.13 lakh; The total revenue earned by Central and State Governments after regular and provisional settlement in the month of April, 2019 is Rs 47,533 crore for CGST and Rs 50,776 crore for SGST; Reports that, Govt. settled Rs. 20,370 crores to CGST and Rs 15,975 crore to SGST from IGST as regular settlement while Rs. 12,000 crores have been settled from balance IGST available with Centre on provisional basis in ratio of 50:50 between Centre and States; Revenue during April, 2019 is a growth of 10.05% over the revenue recorded in April, 2018 which was Rs. 1,03,459 crore and revenue in April, 2019 is 16.05% higher than monthly average of GST revenue in FY 2018-19 (Rs 98,114 crore)

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## Our Leaders

Kapil Mahani  
Leader  
Indirect tax



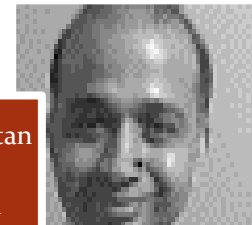
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Leader  
Audit &  
Assurance



Jai  
Tahalani  
Leader  
Litigation



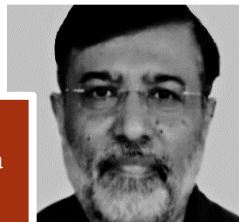
Arun Khetan  
Leader  
Foreign  
Trade Policy



Arvind Modi  
Indirect Tax  
Jharkhand



Ajay  
Mankotia  
Leader  
Direct tax



Ashish  
Kumar  
Partner  
Mumbai



Naresh  
Dhoot  
Partner  
Mumbai



**Head office** : Office no. 201 Aggarwal Chambers| CD Block, Pitam Pura| New Delhi  
**West India Office** : 207, Apollo Complex, RK Singh marg, Parsi Panchayat Road, Andheri ( E), Mumbai  
**East India Office** : 2nd Floor, Samriddhi Building, Opposite Akash Aluminium, Lalji Hirji Road, Ranchi  
**South India Office** : 208, Eldams Square, Second Floor, 167, Alwarpreet  
**International Office** : UAE- Dubai- 35, Exchange Towers, 15th floor, Business Bay, UAE- Dubai  
Website | India [www.gstexpertise.com](http://www.gstexpertise.com) | UAE [www.uaevatexpertise.com](http://www.uaevatexpertise.com)