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EDITORIAL

Friends,

The bygone week has seen a lot of activity.

1. First The State Budget was placed on 31st Jan, just one day before The Union Budget
2. Then the Union Budget was placed on 1st Feb
3. Then the E Waybills under GST kicked off from 1st Feb and it got deferred on the same day as www.ewaybill.nic.in refused to move.

   By far this has been the biggest failure of The GST IT Infrastructure thus far, causing embarrassment to the Government and hardship to Trade in the Entire Country.

We have already done a detailed Analysis of The Budget Proposals and also come out with Critical Issues under Waybills which you must have received during the week.

The most talked about Budget Proposal is New proposed S.112A introducing Tax on Long Term Capital Gain (LTCG) of 10% on equities. The following is an example of the provision –

If you bought a share for Rs 100 and have held it for more than 12 months (to qualify for LTCG) ; and say the fair market value of the asset on 31.01.2018 is Rs 120 and you sell it for Rs 130 on 1.5.2018 then the cost of acquisition of this share would be Rs 120. You would (for tax purposes) have realised LTCG of Rs 130 minus Rs 120 i.e. Rs 10.

Further, the Economic Survey 2017-18 gave certain important statistics about GST. Some of these are listed as below –

1. There has been a 50% increase in the number of indirect taxpayers
2. As on December 2017, there were 9.8 million unique GST registrants slightly more than the total Indirect Tax registrants under the old system (where many taxpayers were registered under several taxes).

Therefore, adjusting the base for double and triple counting, the GST has increased the number of unique indirect taxpayers by more than 50 percent –a substantial 3.4 million.

3. The profile of new filers is interesting of their total turnover, business-to-consumer (B2C) transactions account for only 17 percent of the total. The bulk of transactions are business-to-business (B2B) and exports, which account for 30-34 percent apiece.

4. There are about 1.7 million registrants who were below the threshold limit (and hence not obliged to register) who nevertheless chose to do so. Indeed, out of the total estimated 71 million non-agriculture enterprises, it is estimated that around 13 percent are registered under the GST.

5. Maharashtra, UP, Tamil Nadu and Gujarat are the States with the greatest number of GST registrants. UP and West Bengal have been large increases in the number of tax registrants compared to the old tax regime.

6. Distribution of the GST base among the States is closely linked to the size of their economies, allaying fears of major producing States that the shift to the new system would undermine their tax collections.

7. Five States-Maharashtra, Gujarat, Karnataka, Tamil Nadu and Telangana account for 70% of India's exports. New data on the international exports of States suggests a strong correlation between export performance and States' standard of living.

8. The RNR Committee had estimated a base of ₹ 68.8 lakhcrore and the GST Council had estimated a base of ₹ 65.8 lakh crore. Current data suggest that the GST tax base (excluding exports) is ₹ 65-70 lakh crore, broadly similar to these two previous estimates.

9. Based on the average collections in the first few months, the implied weighted average collection rate (incidence) is about 15.6 percent. So, as estimated by the RNR committee, the single tax rate that would preserve revenue neutrality is between 15 to 16 percent

In a very important development, vide Notification No. 4/2018-Central Tax (Rate) dated 25th January, 2018, some confusion on Time of Supply in Joint Development Agreements (JDA) has been clarified. The clarification brought out in this notification is similar to what existed in the Pre GST Era. As per the notification, the time of supply in case of issue of development rights and construction services in its consideration shall rise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

Further on GST, The **Kerala High Court has ruled in the case of M/s Indus Towers Limited Versus The Assistant State Tax Officer** that The detention of goods merely for infraction of the procedural Rules in transactions which do not amount to taxable supply, is without jurisdiction.

In the said Judgement it has held that, A combined reading of Sections 129 and 130, especially the provision contained in sub section (6) of Section 129 indicates that the detention of the goods is contemplated under the statutes only when it is suspected that the goods are liable to confiscation. This aspect is seen clarified by the Central Board of Excise and Customs in the FAQs published by them on 31.3.2017 also. Section 130 dealing with the confiscation of goods indicates beyond doubt that the confiscation of goods is contemplated under the statutes only when a taxable supply is made otherwise than in accordance with the provisions contained in the statutes and the Rules made there under with the intent to evade payment of tax. If that be so, mere infraction of the procedural Rules like Rules 55 and 138 of the State GST Rules cannot result in detention of goods, though they may result in imposition of penalty.

Under Reverse Charge in GST, Entry No B4 of the Press Note on the decisions of the 25th GST Council had unambiguously held to exclude Corporate Agents from Reverse charge. However, Clause (ii) of Notification No 3/2018- Central Tax (Rate) dated 25th January 2018 amended N No.13/2017- Central Tax (Rate) dated 28th June 2017 by inserting Clause 'e' in The Explanation to the said Notification whereby "insurance agent" would have the same meaning as assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938).

Defining "Insurance Agents" as per S 2(10) of The Insurance Act, 1938, does not fulfil the requirement of excluding corporate agents from Reverse Charge. Hence we feel that the Notification shall see an amendment very soon.

We do hope that this bulletin adds value to your professional sphere.

Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

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SYNOPSIS

TAX CALENDAR

Due date	COMPLIANCES FROM 04th FEBRUARY, 2018 to 10th FEBRUARY, 2018	Description
07th Feb 2018	Income Tax Form 15G and Form 15H	Submission of copy of declaration forms received from deductee by the deductor for non deduction of TDS under section 197A before the Chief Commissioner or Commissioner
07th Feb 2018	Income Tax Form No. 27C	Last date of submission of declaration i.e., for no TCS u/s 206C(1A) obtained from manufacturer to the Commissioner/Chief Commissioner of Income Tax as the case may be.
07th Feb 2018	Income Tax Challan Form ITNS 281	Monthly payment of TCS u/s 206C (other than government assessee)
07th Feb 2018	Income Tax Form No.26QB	Payment on transfer of certain immovable property other than agricultural land
07th Feb 2018	Income Tax Challan Form ITNS 281	Monthly payment of TDS on all types of payments (Except in the case where amounted is credited in the Month of March 31)
10th Feb 2018	GSTR - 1	Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or, section 51 or section 52 for the month of December 2017
10th Feb 2018	GSTR - 7	TDS - Return for Tax Deducted at Source
10th Feb 2018	GSTR - 8	TCS - Statement for tax collection at source

GST: CGST

NOTIFICATIONS/CIRCULARS

COMMON GST PORTAL AND E-WAY BILL WEBSITE.

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 9/2018-Central Tax dated 23rd January, 2018** hereby makes amendment in the Notification No. 4/2017 - Central Tax dated 19th June, 2017, regarding Notifying common GST portal and e-way bill website.

The Central Government hereby notifies www.gst.gov.in as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns and computation and settlement of integrated tax and www.ewaybillgst.gov.in as the Common Goods and Services Tax Electronic Portal for furnishing electronic way bill.

CROSS-EMPOWERMENT OF STATE TAX OFFICERS FOR PROCESSING AND GRANT OF REFUND.

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 10/2018-Central Tax dated 23rd January, 2018** hereby makes amendment in the Notification No. 39/2017 - Central Tax dated the 13th October, 2017 regarding cross-empowerment of State tax officers for processing and grant of refund.

In exercise of the powers conferred by sub-section (1) of section 6 of the CGST Act, 2017 on the recommendations of the Council, the Central Government hereby specifies that the officers appointed under the respective SGST Act, 2017 or the UTGST Act, 2017 who are authorized to be the proper officers for the purposes of section 54 or section 55 of the said Acts by the Commissioner of the said Acts, shall act as proper officers for the purpose of sanction of refund under section 54 or section 55 of the CGST Act read with the rules made thereunder except sub rules (1) to (8) and sub rule (10) of 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.

RATES FOR SUPPLY OF SERVICES UNDER CGST ACT

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 1/2018-Central Tax (Rate) dated 25th January, 2018** hereby makes amendment in the Notification No. 11/2017- Central Tax (Rate), dated 28th June, 2017, regarding rates for supply of services under CGST Act.

For further details reader may refer the above mentioned notification.

RENTING OF IMMOVABLE PROPERTY TO A REGISTERED PERSON

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 3/2018-Central Tax (Rate) dated 25th January, 2018** hereby makes amendment in the Notification No. 13/2017- Central Tax (Rate), dated 28th June, 2017, regarding Central Tax (Rate) as to specify services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a registered person under CGST Act, 2017 to be taxed under Reverse Charge Mechanism (RCM).

Further it is notified that on services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017) supplied by Central Government, State Government, Union territory or local authority the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by Any person registered under the Central Goods and Services Tax Act, 2017.

GST: IGST

ANALYSIS

IGST RATES OF VARIOUS SERVICES

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 1/2018-Integrated Tax (Rate) dated 25th January, 2018** hereby makes amendment in the Notification No. 8/2017- Integrated Tax (Rate), dated 28th June, 2017, regarding IGST rates of various services as recommended by Goods and Services Tax Council in its 25th meeting held on 18.01.2018.

For further details reader may refer the above mentioned notification.

EXEMPTION OF CERTAIN SERVICES

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 2/2018-Integrated Tax (Rate) dated 25th January, 2018** hereby makes amendment in the Notification No. 9/2017- Integrated Tax (Rate), dated 28th June, 2017, regarding Integrated Tax (Rate) as to exempt certain services as recommended by Goods and Services Tax Council in its 25th meeting held on 18.01.2018.

For further details reader may refer the above mentioned notification.

RENTING OF IMMOVABLE PROPERTY TO A REGISTERED PERSON

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 3/2018-Integrated Tax (Rate) dated 25th January, 2018** hereby makes amendment in the Notification No. 10/2017- Integrated Tax (Rate), dated 28th June, 2017, regarding Integrated Tax (Rate) as to specify services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a registered person under CGST Act, 2017 to be taxed under Reverse Charge Mechanism (RCM).

Further it is notified that on Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017) supplied by Central Government, State Government, Union territory or local authority the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by any person registered under the IGST Act, 2017.

CONSTRUCTION AGAINST TRANSFER OF DEVELOPMENT RIGHT

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 4/2018-Integrated Tax (Rate) dated 25th January, 2018** hereby notifies regarding special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development right and vice versa.

Further it is hereby notifies the following classes of registered persons:-

- registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights, as the registered persons in whose case the liability to pay integrated tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

NOTIFICATIONS/CIRCULAR

E WAY BILL

According to Rule 138 of CGST Rules, 2017, every registered person who causes movement of goods of consignment whose value including tax exceeds ₹ 50,000

- in relation to a supply; or
- for reasons other than supply; or
- due to inward supply from an unregistered person,

Shall, before commencement of such movement, furnish information relating to the said goods in Part A of FORM GST EWB-01, electronically, on the common portal.

E-Way Bill is an electronic way bill for movement of goods which can be generated on the e-Way Bill Portal. Transport of goods of more than ₹ 50,000 in value cannot be made by a registered person without an e-way bill.

When an e-way bill is generated a unique e-way bill number (EBN) is allocated and is available to the supplier, recipient, and the transporter.

<u>Documents and devices to be carried by a person-in-charge of a conveyance</u>

The person in charge of a conveyance shall carry-

- the invoice or bill of supply or delivery challan, as the case may be; and
- a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.

Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

Notwithstanding anything contained clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill: -

- tax invoice or bill of supply or bill of entry; or
- a delivery challan, where the goods are transported for reasons other than by way of supply.

<u>Who should generate an e-Way Bill</u>

- Registered Person – E-way bill must be generated when there is a movement of goods of more than ₹ 50,000 in value to or from a Registered Person. A Registered person or the transporter may choose to generate and carry e-way bill even if the value of goods is less than ₹ 50,000.
- Unregistered Persons – Unregistered persons are also required to generate e-Way Bill. However, where a supply is made by an unregistered person to a registered person, the receiver will have to ensure all the compliances are met as if they were the supplier.
- Transporter – Transporters carrying goods by road, air, rail, etc. also need to generate e-Way Bill if the supplier has not generated an e-Way Bill.

NOTIFICATIONS/CIRCULARS

M/S LPG EQUIPMENT RESEARCH CENTRE ('LERC')

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 05/2018 dated 22nd January, 2018** hereby notifies regarding Central Government approved for organization M/s LPG Equipment Research Centre ('LERC').

It is hereby notifies for general information that the organization M/s LPG Equipment Research Centre ('LERC') (PAN:- AAAAL0454G) has been approved by the Central Government for the purpose of clause (ii) of section 35(1) of the Income-tax Act, 1961 with Rules 5C and 5D of the Income-tax Rules, 1962 from Assessment year 2017-2018 onwards in the category of 'Scientific Research Association', subject to the following conditions:-

- The sole objective of the approved 'Scientific Research Association' 'LERC' shall be to undertake scientific research;
- The approved organization shall carry out scientific research by itself;
- The approved organization shall maintain separate books of accounts for 'LERC' in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under section 139(1) of the said Act;
- The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research for 'LERC' and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

The Central Government shall withdraw the approval if the approved organization:-

- fails to maintain separate books of accounts referred to in sub-paragraph (iii) of paragraph 1 ; or
- fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- ceases to carry on its research activities or its research activities are not found to be genuine; or
- ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of section 35 of the said Act read with rules 5C and 5D of the said Rules.

For further details reader may refer the above mentioned notification.

CUSTOM

NOTIFICATIONS/CIRCULARS

EFFECTIVE RATES OF CUSTOMS DUTY AND IGST FOR GOODS IMPORTED INTO INDIA

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 5/2018-Customs dated 25th January, 2018** hereby makes amendment in the **Notification No. 50/2017- Customs, dated 30th June, 2017,** regarding the effective rates of customs duty and IGST for goods imported into India.

For further details reader may refer the above mentioned notification.

EFFECTIVE RATE OF BASIC CUSTOMS DUTY (BCD) CONSEQUENT TO THE CHANGES PROPOSED IN THE UNION BUDGET 2018-19.

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 6/2018-Customsdated 02nd February, 2018** hereby makes amendment in the **Notification No. 50/2017-Customs, dated 30th June, 2017,** regarding the effective rate of basic customs duty (BCD) consequent to the changes proposed in the Union Budget 2018-19.

For further details reader may refer the above mentioned notification.

EXEMPT LEVY OF THE WHOLE OF THE EDUCATION CESS ON ALL GOODS IN THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975.

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 7/2018-Customsdated 02nd February, 2018** hereby exempts all goods specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India, from whole of Education Cess leviable thereon under section 94 of the said Finance Act.

EXEMPT LEVY OF THE WHOLE OF THE SECONDARY AND HIGHER EDUCATION CESS ON ALL GOODS IN THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975.

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 8/2018-Customsdated 02nd February, 2018** hereby exempts all goods specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India, from whole of Secondary and Higher Education Cess leviable thereon under section 139 of the said Finance Act.

EXEMPTING SPECIFIED GOODS FROM THE LEVY OF EDUCATION CESS.

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 9/2018-Customsdated 02nd February, 2018** hereby makes amendment in the Notification No. 69/2004-Customs, dated 9th July 2004 regarding exempting specified goods from the levy of Education Cess except as respects things done or omitted to be done before such rescission.

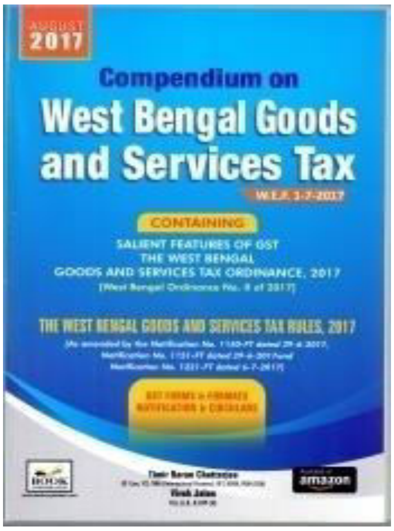
EXEMPTING SPECIFIED GOODS FROM THE LEVY OF SECONDARY AND HIGHER EDUCATION CESS.

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 10/2018-Customsdated 02nd February, 2018** hereby makes amendment in the Notification No. 28/2007-Customs, dated 1st March 2007 regarding exempting specified goods from the levy of Secondary and Higher Education Cess except as respects things done or omitted to be done before such rescission.

AVAILABLE IN STANDS

A COMPENDIUM ON WEST BENGAL GOODS & SERVICES TAX

(Including ALL Notifications till date)



ABOUT THE BOOK: PART A of the Book provides a Chapter wise and Topic wise Analysis of the Law. Along with this it provides Section and Rules where in the reader may find the Legal Provisions. It will help the reader to first understand the provision and then to exactly locate the provision. It provides an insight into the following:

1. The Rules related to WBGST available in public Domain till date.
2. The Notifications, Circulars and Orders issued by The SGST Authority till date.
3. The Forms and formats related to GST available in public Domain till date.

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