

TAX CONNECT

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EDITORIAL



Friends,

The total gross GST revenue collected in the month of May 2018 is **Rs. 94,016 crore** of which CGST is ₹ 15,866 crore, SGST is ₹ 21,691 crore, IGST is ₹ 49,120 crore (including ₹ 24,447 crore collected on imports) and Cess is ₹ 7,339 crore (including ₹ 854 crore collected on imports). The total number of GSTR 3B Returns filed for the month of April up to 31st May, 2018 is 62.47 lakh.

The total revenue earned by Central Government and the State Governments after settlement in the month of May, 2018 is ₹ 28,797 crore for CGST and ₹ 34,020 crore for the SGST.

Though current month's revenue collection is less compared to last month's revenue, still the gross revenue collection in the month of May (Rs. 94,016 crore) is much higher than the monthly average of GST collection in the last Financial Year (Rs. 89,885 crore). The April revenue figure was higher because of year end effect.

On 29.05.2018, ₹ 6696 crore has been released to the states as GST compensation for the month of March, 2018. Therefore, the total GST compensation released to the states for the FY 2017-18 (Jul, 2017 to Mar, 2018) has been ₹ 47844 crore.

Further, Goods and Services Tax (GST), introduced from July 1, 2017 is more than ten months old now but has resulted in operational and implementation disruptions affecting all stakeholders. GST law, as drafted and legislated, is not free from the interpretational hassles. GST Council has however, making regular changes to fix the anomalies and hardships faced by taxpayers.

Taxpayers have already started challenging various provisions of GST laws and rules framed thereunder with more than 180 writs being filed in different courts. High courts and Supreme court have taken a liberal stand so far in view of the fact that law is new and is yet evolving. However, CBIC may move to Supreme court where the verdict is against the Government. This has also been indicated in Circular No. 39 dated 03.04.2018 wherein it has been hinted in relation to resolution of struck TRAN-1 and filing of GSTR-3B that Government has not accepted blanket opportunity to file TRAN-1 but only in cases where technical glitches crept in. It has advised the departmental officers that courts may be suitably informed and if needed review or appeal may be filed.

In this Issue we will discuss judicial pronouncements for information and guidance of various stakeholders.

- In ***Dhanaswaroopdas v. Assistant State Tax Officer 2018 (4) TMI 344 (Kerala)***; the Authority had detained the goods of the assessee under transport on the ground that the consignment of goods was not accompanied by the \necessary declaration in Form KER II.

The assessee filed a writ seeking release of goods. It was contested that the competent authority had not enabled the generation of KER II declaration in the website and as such, it was impossible for the transporter to download the KER II declaration electronically and it was under those circumstances that the detention was necessitated.

It was directed to the adjudicating authority to complete the adjudication process in connection with the detention within a period of one week. While adjudicating the matter, the Adjudicating Authority shall take note of the contention of the assessee that it was on account of the non-availability of Form KER II in the website that the transporter was disabled from producing the same at the time of transportation of the goods.

EDITORIAL

- In **Federation of Hotel & Restaurant Association of India v. Union of India 2018 (1) TMI 1221 - SUPREMECOURT OF INDIA**, where the appellant approached Delhi High Court impugning action of Controller of Weights and Measures against hotels and restaurants of assessee for charging a price higher than printed Maximum Retail Price (MRP) for supply of packaged water bottles during services provided to their customers while in hotels and restaurants.

Appellant association filed Writ Petition seeking a declaration that provisions of Standards of Weights and Measures Act, 1976, Standards of Weights and Measures (Enforcement) Act, 1985 and Standards of Weights and Measures (Packaged Commodities) Rules, 1977 were not applicable to services rendered in premises of hotels/restaurants as sale of food and drinks in hotels consisted of a composite contract and it was not possible to divide service element from sale element .

The Single Judge finally held that charging prices for mineral water in excess of MRP printed on the packaging, during the service of customers in hotels and restaurants does not violate any of the provisions of the Standards of Weights and Measures Act, 1976 as this does not constitute a sale or transfer of these commodities by the hotelier or restaurateur to its customers.

On appeal to the Supreme Court, it was held that neither Standards of Weights and Measures Act, 1976 read with Standards of Weights and Measures (Enforcement) Act, 1985 or Legal Metrology Act, 2009, would apply so as to interdict sale of mineral water in hotels and restaurants at prices which are above MRP.

- In **M. Bagulayan v. Superintendent of Central GST & Central Excise (2018) 2 TMI 194 (Madras)**; where the petitioner had been levied with tax. The demand so raised was accepted by petitioner and same was duly paid. However, petitioner was still liable to pay interest thereon.

- In **Etten Craft Holding Pvt. Ltd. v. State of Kerala 2018 (5) TMI 1280 (Kerala)**, where the petitioner filed the writ for directing the respondent to notify Authority for Advance Ruling in terms of section 96 of the Act. It was claimed that although the statutory provisions contemplate an Authority for Advance Rulings within the State, the respondents had not constituted the Authority, and hence, the petitioner is not able to approach an authority for advance rulings. The portal of the taxing authority did not provide for a method of filing applications before the authority for advance ruling.

The respondent submitted that till such time as electronic filing system was put in place on portal, assessee would be permitted to file application manually before authority apprehensions of assessee allayed.

Based on such submissions, court observed that the apprehensions of the petitioner in the writ petition now stand allayed. The writ petition was therefore closed.

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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TAX CALENDAR

Due date	COMPLIANCES FROM 03 RD JUNE, 2018 to 09 TH JUNE, 2018	Description
07 TH JUNE 2018	Income Tax Challan Form ITNS 281	Monthly payment of TDS on all types of payments (Except in the case where amount is credited in the Month of 31 st March 2018)
07 TH JUNE 2018	Income Tax Challan Form ITNS 281	Monthly payment of TCS u/s 206C (other than government assessee)
07 TH JUNE 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.
07 TH JUNE 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
07 TH JUNE 2018	Income Tax Form No.26QB	Payment on transfer of certain immovable property other than agricultural land

GST: CGST

NOTIFICATIONS/CIRCULARS

EXAMINATION FOR GST PRACTITIONERS.

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 24/2018-GST dated 28th May, 2018** hereby notifies that the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, has the authority to conduct the examination of the GST Practitioners.

For further information kindly refer the above mentioned notification.

LEVY OF PRIORITY SECTOR LENDING CERTIFICATE (PSLC) UNDER REVERSE CHARGE MECHANISM (RCM)

OUR COMMENTS: The Department Revenue, Ministry of Finance, Government of India, vide **Notification No. 11/2018-Central Tax (Rate) dated 28th May, 2018** hereby makes amendment in the **Notification No. 4/2017-Central Tax (Rate), dated 28th June, 2017**, regarding the levy of Priority sector lending certificate under Reverse Charge Mechanism.

It is further notified that in case of priority sector lending certificate the supplier of goods and recipient of supply shall be any registered person .

For further information kindly refer the above mentioned notification.

EXTENTION OF THE DUE DATE FOR FILING OF FORM GSTR-6

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 25/2018-GST dated 31st May, 2018** hereby makes amendment in the **Notification No. 19/2018-Central Tax, dated 28th March, 2018**, regarding extention of the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under section 39(4) of the CGST Act for the months of July, 2017 to June, 2018, till the 31st day of July, 2018.

REIMBURSEMENT - LEVIABLE TO TAX IN GST REGIME

In case of a supplier incurs certain expenses (e.g. travelling) and seeks reimbursement of the same along with his charges from his customer. Such supplier shows the reimbursement amount separately in the invoice.

Sec 9(1) of the CGST Act, 2017 provides that the tax shall be levied on the value determined u/s 15 of the said Act. It is said that in reference to provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Sec 15 of the CGST Act, 2017 can be looked at as comprising of two parts. First part u/s 15(1) provides that the value of supply of goods or services or both shall be the transaction value. Second part u/s 15(2) on the other hand provides for various inclusions to the said transaction value.

Above clause covers two types of inclusions. First type covers incidental expenses charged by the supplier to the recipient. Second type covers any amount charged for anything done by the supplier in respect of supply at the time of, or before delivery of goods or supply of services.

Reimbursements cannot be covered in the second type since the same cannot be said to be the amount charged in respect of anything done by the supplier.

However in our view reimbursements will be included in the first type. This is because it covers all incidental expenses charged by the supplier. Reimbursement is clearly in respect of incidental expenses (e.g. travelling). Also reimbursement is charged by the supplier.

GST: IGST

NOTIFICATION/CIRCULAR

LEVY OF PRIORITY SECTOR LENDING CERTIFICATE (PSLC)
UNDER REVERSE CHARGE MECHANISM (RCM)

OUR COMMENTS: The Department Revenue, Ministry of Finance, Government of India, vide **Notification No. 12/2018-Integrated Tax (Rate)** dated **28th May, 2018** hereby makes amendment in the **Notification No. 4/2017-Integrated Tax (Rate)**, dated **28th June, 2017**, regarding the levy of Priority sector lending certificate under Reverse Charge Mechanism.

It is further notified that in case of priority sector lending certificate the supplier of goods and recipient of supply shall be any registered person .

For further information kindly refer the above mentioned notification.

PROCEDURE FOR CLAIMING DUTY DRAWBACK ON
SUPPLY OF GOODS BY A DTA UNIT TO AN SEZ UNIT

Rule 30 of Special Economic Zones Rules, 2006 specifies the procedure to be followed for procurement of goods by an SEZ unit or Developer from a DTA unit. This procedure is to be mandatorily followed to get export benefits. The relevant point for our consideration under the said rule are as follows:

- The goods procured by a Unit or Developer under claim of export entitlements shall be allowed admission into the Special Economic Zone on the basis a Bill of Export filed by the supplier or on his behalf by the Unit or Developer and which is assessed by the Authorised Officer before arrival of the goods. So Bill of Export has to be filed and assessed by the Customs Officer before goods reaches SEZ Unit.
- Copy of Bill of Export with an endorsement by the authorized officer that goods have been admitted in full into the SEZ shall be filed with jurisdictional GST officer of Supplier within forty-five days.
- On arrival of the goods procured from the Domestic Tariff Area at the Special Economic Zone gate, the Authorized Officer shall examine the goods in respect of description, quantity, marks and other relevant

particulars given in the invoice, Bill of Export of packing list and also as per the examination norms laid down in respect of export goods in cases where the goods are being procured under claim of an export entitlement.

- A copy of the Bill of Export with an endorsement of the Authorised Officer that the goods have been admitted in full in the Special Economic Zone, shall be treated as proof of export.

Circular No. 24/2003-Cus., dated 1-4-2003 is the first Circular issued by the Customs department treating the supply of goods by DTA Unit to SEZ Unit is export transaction and eligible for duty drawback. The later developments are as follows. Board's Circular No.6/2005-Cus, dated 3.2.2005 specifies that with operationalization of the provisions of Chapter X-A of the Customs Act, 1962 w.e.f. 11.5.2004, drawback is to be granted for the supplies made from the DTA to the SEZ. Circular No. 43/2007 - Cuss dated 5th December, 2007 specifies that in cases where the unit or developer issues a disclaimer to the DTA supplier, the Commissionerate of Central Excise /Customs & Central Excise having jurisdiction over the DTA unit would sanction the drawback.

The said Circular also specifies that that the disclaimer certificate issued by the SEZ unit or the Developer to the DTA supplier is supported by a certificate from the Specified Officer in the SEZ to the effect that drawback has not been claimed/availed of on the goods by the SEZ unit or the Developer, as the case may be. With the implementation of GST, Circular No. 24/2017 - Customs dated 30th June 2017 issued wherein it specified that the Board has decided to re-organize the Customs functions hitherto handled by Central Excise formations. In this context, it has been decided that in respect of supplies made by DTA unit to SEZ Unit or developer and where the SEZ Unit or developer issues a disclaimer to the DTA supplier and drawback is claimed by the DTA supplier, the drawback shall be processed and paid by the office of Principal Commissioner or Commissioner of Customs/ Customs (Preventive) in whose jurisdiction the DTA Unit falls. In terms of the above Circular the application for the drawback shall be filed with the Principle Commissioner of Customs.

GST: SGST/UTGST

NOTIFICATIONS/CIRCULARS

WAIVER OF LATE FEE FOR FAILURE TO FURNISH RETURN
IN FORM GSTR-3B

OUR COMMENTS:The Commercial Taxes Department, Government of Tripura vide **Notification No.F.1-11 (91)-TAX/GST/2018/4194-263 dated 23rd May, 2018** hereby waives the late fee payable under section 47 of the SGST Act for failure to furnish the return in FORM GSTR-3B by the due date for each of the months from October, 2017 to April, 2018, for the class of registered persons whose declaration in FORM GST TRAN-1 was submitted but not filed on the common portal on or before the 27th day of December, 2017.

Moreover such registered persons have filed the declaration in FORM GST TRAN-1 on or before the 10th day of May, 2018 and the return in FORM GSTR-3B for each of such months on or before the 31st day of May, 2018.

For further information kindly refer the above mentioned notification.

PROPER OFFICER TO INTERCEPT ANY CONVEYANCE TO
VERIFY THE E-WAY BILL

OUR COMMENTS:The Commercial Taxes Department, Government of Rajasthan vide **Notification No.F. 17 (131) ACCT/GST/2017/ 3560-3563 dated 23rd May, 2018** hereby empower Additional Commissioner, State Tax, Anti Evasion, Joint Commissioner (Adm.), Anti Evasion and all the Joint Commissioner (Adm.), State Tax to authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-state and intra-State movement of goods in their respective territorial jurisdiction and to carry out the physical verification of intercepted conveyances.

For further information kindly refer the above mentioned notification.

EXAMINATION FOR GST PRACTITIONERS

OUR COMMENTS:The Commercial Taxes Department, Government of Tripura vide **Notification No.F.1-11(91)-TAX/GST/2018(Part-1) dated 28th May, 2018** hereby notifies that the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, has the authority to conduct the examination of the GST Practitioners.

The Commercial Taxes Department, Government of Madhya Pradesh vide **Notification No.F-A-3-17-2018-1-V (48) dated 25th May, 2018** hereby notifies that the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, has the authority to conduct the examination of the GST Practitioners.

The Commercial Taxes Department, Government of Rajasthan vide **Notification No.F. 17 (131) ACCT/GST/2017/ 3578 dated 28th May, 2018** hereby notifies that the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, has the authority to conduct the examination of the GST Practitioners.

The Commercial Taxes Department, Government of Maharashtra vide **Notification No.24/2018 –State Tax dated 28th May, 2018** hereby notifies that the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, has the authority to conduct the examination of the GST Practitioners.

For further information kindly refer the above mentioned notification.

INCOME TAX

ANALYSIS

DETERMINATION OF FMV OF SHARES AND SECURITIES

OUR COMMENTS:The CBEC, Department of Revenue, Government of India vide **Notification No.23/2018 dated 24th May, 2018** hereby notifies regarding determination of FMV of shares and securities. It is notified that only merchant bank can give the valuation report for the purpose of section 56.

For further information kindly refer the above mentioned notification.

RELAXATION FROM THE CONDITIONS OF ISSUE OF SHARES AT PREMIUM IN EXCESS OF FAIR MARKET VALUE

OUR COMMENTS:The CBEC, Department of Revenue, Government of India vide **Notification No.24/2018 dated 24th May, 2018** hereby notifies regarding determination of FMV of shares and securities. It is notified that only merchant bank can give the valuation report for the purpose of section 56.

It is further hereby notifies that the provisions of clause (viib) of sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification.

This notification shall be deemed to have come into force retrospectively from the 11th April, 2018.

EXEMPTION OF SKILL DEVELOPMENT TO COMPANY , SEC 35CCD

The National Manufacturing Policy (NMP) 2011 proposed to provide *inter alia*, the following direct taxes incentives to promote skill development:

“Weighted deduction of 150% of the expenditure (other than land or building) incurred in Public Private Partnership (PPP) projects for skill development in manufacturing sector in separate facilities in coordination with National Skill Development Corporation (NSDC).”

The guidelines for approval of skill development project are prescribed in new Rules 6AAF, 6AAG and 6AAH inserted in the Income-tax Rules, 1962 by Notification No. S.O.2166 (E) dated 15th July, 2013. The salient features of the guidelines are as under:

- A company engaged in the business of manufacturing any article or thing (other than alcoholic spirits and tobacco products) or engaged in providing specified services, as listed under Rule 6AAH, shall be eligible for weighted deduction of the expenditure incurred on skill development.
- The project should be undertaken in separate facilities in a training institute set up by the Central or State Government or a local authority or a training institute affiliated to National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT). Besides Government training institutes, private sector training institutes affiliated to NCVT or SCVT shall also be eligible.
- National Skill Development Agency (NSDA) shall be the nodal agency to scrutinize the applications made by eligible companies in Form No. 3CQ. The Central Board of Direct Taxes (CBDT) shall notify the skill development project based on the recommendation of NSDA in this regard.
- All expenses (not being expenditure in the nature of cost of any land or building), incurred wholly and exclusively for undertaking a notified skill development project shall be eligible for deduction under section 35CCD, except the expenditure which is reimbursed or reimbursable to the company by any person, whether directly or indirectly.
- The company undertaking skill development project shall be required to maintain separate books of account of the project notified under section 35CCD and get such books of account audited.
- It is intended that the skill development project shall provide training to potential employees or newly recruited employees. Skill development of existing employees of the company shall not be eligible for notification under section 35CCD, if the training of such employees commences after six months of their recruitment.

CUSTOM

NOTIFICATIONS/CIRCULARS

PROVISIONAL ASSESSMENT OF JUTE GOODS EXPORTED FROM BANGLADESH OR NEPAL

OUR COMMENTS:The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 30/2018-Customs (ADD) dated 30th May, 2018** hereby notifies regarding the import of 'Jute Products' namely, Jute Yarn/Twine, Hessian fabric, and Jute sacking bags falling under the First Schedule to the Customs Tariff Act, 1975 originating in, or exported from Bangladesh and Nepal and imported into India.

The designated authority, in Notification No. 14/19/2015-DGAD, dated 20th October, 2016, had come to the conclusion that-

- there is dumping of subject goods from the subject countries;
- imports from subject countries are undercutting and suppressing the prices of the domestic industry;
- (iii) performance of domestic industry has deteriorated in the terms of profitability return on investments and cash flow;
- injury to domestic industry has been caused by dumped imports;

and had recommended continued imposition of definitive anti-dumping duty on imports of the subject goods originating in, or exported from, the subject countries;

Thus on the basis of the aforesaid findings of the designated authority, the Central Government had imposed an anti-dumping duty on the subject goods, referred to in the Notification No. 01/2017-Customs (ADD), dated 5th January, 2017.

For further information kindly refer the above mentioned notification.

FIXATION OF TARIFF VALUE

OUR COMMENTS:The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 47/2018-CUSTOMS (N.T.) dated 30th May, 2018** hereby makes amendment in the **Notification No. 36/2001-Customs (N.T.), dated 3rd August, 2001**, regarding Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.

Description of goods	Tariff value(US \$Per Metric Tonne)
Crude Palm Oil	658
RBD Palm Oil	681
Others – Palm Oil	670
Crude Palmolein	687
RBD Palmolein	690
Others – Palmolein	689
Crude Soya bean Oil	769
Brass Scrap (all grades)	3819
Poppy seeds	2531

Description of goods	Tariff value(US \$)
Gold, in any form, in respect of which the benefit of entries at serial number 356 and 358 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	419 per 10 grams
Silver, in any form, in respect of which the benefit of entries at serial number 357 and 359 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	528 per kilogram

Description of goods	Tariff value(US \$ Per Metric Tonne)
Areca nuts	3946

AVAILABLE IN STANDS

A COMPENDIUM ON GOODS & SERVICES TAX (Including ALL Notifications till 09th July, 2017)



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. Section-wise Compilation of IT Changes under GST
2. The GST Rates as finalised by The GST Council along with the HSN Code Referencer.
3. FAQs on GST
4. CGST, IGST, UTGST and The GST Compensation to States Acts
5. The Rules related to GST available in public Domain as on 17th June 2017.
6. The Forms and formats related to GST available in public Domain as on 17th June 2017.

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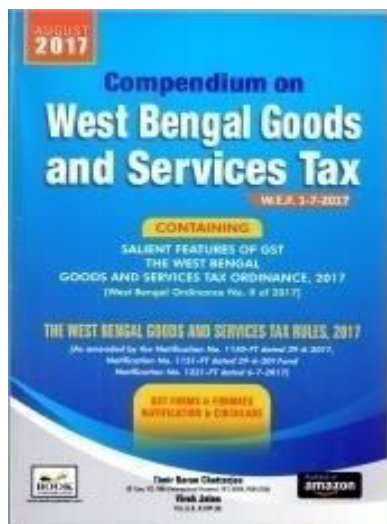
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AVAILABLE IN STANDS**A COMPENDIUM ON WEST BENGAL GOODS & SERVICES TAX**
(Including ALL Notifications till date)

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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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