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# TAX CONNECT

**Knowledge Partner:**

**The Bengal Chamber of Commerce & Industry**

INCOME TAX


CUSTOMS


## TAX CONNECT

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# EDITORIAL

Friends,

In the last bulletin, we discussed some of the important FAQs released by The Indirect Taxes Committee of The ICAI on Form GSTR 9 – Annual Return.

**Recently, The ICAI has shared another set of 49 FAQs on important issues relating to filing of GST Audit Report in Form GSTR-9C (i.e. Reconciliation Statement and Certification as required under Sections 35(5) and 44(2) of the CGST Act, 2017, read with Rule 80.** Let's look at some of them in a summarized manner:

- As per section 35(5) of CGST Act, every registered person <u>**whose turnover during a financial year exceeds the prescribed limit (Rs. 2 cr.) shall get his accounts**</u> audited by a chartered accountant or a cost accountant and submit a copy of the audited annual accounts, the reconciliation statement (GSTR-9C) u/s 44(2) and such other prescribed documents. <u>**Form GSTR 9C has to be filed along with Form GSTR 9 in cases where aggregate turnover exceeds Rs. 2 crores.**</u>

- **Inclusions in "Turnover".**

• **Section 35(5) uses the word "turnover", however, Rule 80 uses the words "aggregate turnover".** It is clarified that it is reasonable to interpret that the word turnover used in section 35(5) ought to be understood as aggregate turnover (PAN level).

• For aggregate turnover, **please consider the taxable value u/s15 and not the amount as per books of accounts**. For eg. do not ignore taxable value of stock transfers while examining this threshold limit.

• Since aggregate turnover includes exempt turnover, value of alcoholic liquor for human consumption is to be included while computing threshold limit of Rs. 2 crores.

• A Registered Person who is exclusively having exempted supplies of goods or services exceeding Rs. 2 crores is also required to file Form GSTR 9C since 'aggregate turnover' includes even exempted supplies

• **Section 2(6) of CGST/ SGST Act defines aggregate turnover to include 'inter-state supplies of person having same PAN. Hence, Stock transfers/ cross charges of services provided from a branch located in one state to a branch located in another state will be included in the aggregate turnover of the branch supplying the goods/ services. Stock transfers effected within the same State having single GSTIN shall not be included in the threshold limit**

- The 2017-18 GST period comprises of 9 months whereas section 35(5) uses the expression financial year. In the absence of clarification from Government, it is reasonable to interpret Rs. 2 crores turnover for the whole of the financial year which includes the first quarter of the financial year 2017-18.

- **A person having registration in more than one state is required to file GSTR 9C registration wise, in each and every state.**

- **Failure in submitting the annual return and not getting the accounts audited:** On a combined reading of Section 47(2) and Section 44 (2) of the CGST Act and State / Union Territory GST Act a late fee of Rs.200/day (Rs. 100 under CGST law + Rs. 100 under State / Union Territory GST law) can be levied which would be capped to a maximum amount of half percent (0.25% under the CGST Law + 0.25% under the SGST / UTGST Law) of turnover in the State or Union Territory.

- There is no provision enabling a dealer to file revised Form GSTR 9C. However, there is a view that since there

# EDITORIAL

are no specific bar/ restrictions also under the GST law to file a revised audit report/certificate, a revised audit report/certificate can be issued/ filed.. Caution is advised in taking such a position.

- Audit is applicable on Non-Filers but not on unregistered Persons liable to take registration

- **Methodology to extract turnover from April 2017 to June 2017 -** the criteria for reducing turnover for the period April 2017 to June 2017 from the total turnover would be based on taxability under the erstwhile laws as per point of taxation under the said laws but not when the revenue was recognised as per relevant accounting standards.

- Supply of exempt, zero-rated and non-GST outward supply of goods and / or services are not liable to GST, hence, the related credit notes issued for claiming reduction in the taxable value shall be recorded in the audited annual financial statements. Such credit notes should be declared against Pt. II Sl. No. 5J of Form GSTR 9C

- **Financial credit notes would not adjust the amount of GST involved in the original tax invoice issued at the time of supply of goods and / or services. Accordingly, the transaction value shall stand reduced although tax paid thereon remains the same resulting in higher amount of GST being paid. Hence, it is required to be adjusted in 5J of Form GSTR 9C.**

- Incentives / rebate received from the supplier can amount to a taxable supply under the GST, hence, if the incentive / rebate received has been reduced from the cost of purchase in the books of accounts, the said amount will be added under Sl. No. 5O to reconcile with Form GSTR 9.

- Part I certification is to be certified wherein the audit of books of accounts, financial statements and reconciliation statement in Form GSTR 9C are certified by the same Chartered Accountant / firm of Chartered Accountant. Part II certification is to be certified if the audit of books of accounts, financial statements and reconciliation statement in Form GSTR 9C are certified by some other Chartered Accountant / firm of Chartered Accountant.

- **An internal Auditor cannot certify Form GSTR 9C as per the instructions issued by ICAI.**

- There is no restriction under the CGST Act or under the ICAI regulation in relation to certification of Form GSTR-9C by different Chartered Accountant for another distinct person of the same entity

- **It will be the responsibility of the registered person to submit Form GSTR-9C. Auditor's responsibility will be to provide the certified copies of Form GSTR-9C to the registered person or upload the same on the website.** However, the submission of the same must be made by the registered person.

  **For details one may refer the detailed text released by the ICAI.**

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

**Truly Yours**

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# EDITORIAL

**Honorable Achievement……….Our Senior Partners Meeting With Commerce Minister Suresh Prabhu**

# SYNOPSIS

# TAX CALENDAR

| Due date | Form | Description |
|---|---|---|
| 20th December, 2018 | GSTR-5 | Return for Non-resident taxable person for the month of November, 2018. |
| 20th December, 2018 | GSTR-3B | Summary Return of outward and inward supplies For the month of November, 2018. |
| 20th December, 2018 | GSTR-5A | Details of supplies for the month of November, 2018 of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India. |

NOTIFICATIONS/CIRCULARS

**SHRI SUKHBIR ROHILLA AND DIRECTOR GENERAL ANTI-PROFITEERING, INDIRECT TAXES AND CUSTOMS, NEW DELHI VERSUS M/S PYRAMID INFRATECH PVT. LTD. [NATIONAL ANTI-PROFITEERING AUTHORITY]**

**Brief: The builder is liable to pass on the benefit of ITC to which he has become entitled by virtue of the grant of ITC on the Construction Service by the Government.**

**OUR COMMENTS**: In the above case, the Applicants had booked flats with the Respondent under the Haryana Affordable Housing Policy 2013, notified by the State of Haryana vide Notification No. PF-27/48921 dated 19.08.2013.

**Before GST regime w.e.f. 01.07.2017, Excise Duty and VAT were being collected from them and Service Tax was exempted. However, after the implementation of the CGST Act, 12% GST was levied on the construction service in place of Excise Duty and VAT w.e.f. 01.07.2017, which was further reduced to 8% w.e.f. 25.01.2018.**

The applicants have alleged that the benefit of Input Tax Credit (ITC) which was available to the Respondent and which was much more than the output tax liability of the Respondent had not been passed on to them and therefore the Applicants should not have been burdened with the entire GST of 12% or 8%.

.

Further, Respondent was charging 12% and 8% GST and was simultaneously also enjoying the benefit of ITC and was not giving the benefit of the ITC contravening the provisions of Section 171 of the CGST Act, 2017.

**Observations:**

Section 171 deals with two situations:

1)passing on the benefit of reduction in the rate of tax and

2) pertaining to the passing on the benefit of the ITC –

**In the instant case though rationalization of tax had not resulted in the reduction in the tax rate, the benefit of ITC had been extended to all the goods and services which were utilized by any builder which was not available in the pre-GST era. This fact has not been denied by the Respondent**

It is also apparent from the returns that when compared to the pre- GST period where 86% of the tax liability was paid in cash after availing ITC, in the post GST period the entire amount of tax liability had been paid through ITC, which shows that the entire 12% GST liability was paid through ITC while 12% GST was being collected by him from the Applicants. Respondent has not placed any concrete facts or reasons on record to dispute the same.

Here, the Respondent is not being asked to extend this benefit out of his own account and he is only liable to pass on the benefit of ITC to which he has become entitled by virtue of the grant of ITC on the Construction Service by the Government.

It was held that the Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the price to be realized from the buyers of the flats in commensurate with the benefit of ITC received by him as has been detailed above.

## Case Laws

### COMMISSIONER OF INCOME TAX-EXEMPTION, JAIPUR, JAIPUR VERSUS MATA PADMAWATI SHYAMDAYA CHARITABLE TRUST [HIGH COURT]

**Brief: An assessee can neither be expected to spend a charitable amount higher than its income nor can it be expected to elongate its feet beyond its blanket for the purpose of Sec 80G(5).**

**OUR COMMENTS**: The assessee is a trust, which applied for requisite approval under Section 80G(5)(vi).

However, the application was rejected by the competent authority on the grounds that it has not carried out any significant charitable activities, hence grant of exemption at that stage was not in the fitness of things.

**Observations:**

- The Tribunal observed that the assessee has earned bank interest to the tune of ₹ 17,028/-, ₹ 36,865/- and ₹ 98,868/- respectively for last three years and out of which, the Trust has given a donation of ₹ 41,000/- to Apna Ghar Aashram Samiti, (a Trust having exemption under Section 80G of the Act of 1961), the same cannot be said to be insignificant.

- Also when the assessee did not have the requisite funds, it cannot be expected to carry out charitable activities beyond the availability of the funds.

- Scheme of Section 80G and Rule 11AA, more particularly sub-rule (4) clearly suggests that an application of the Trust for grant of **approval** under Section 80G(5)(vi) of the Act **can be turned down only if the trust fails to carry out its objects and/or violates the conditions encapsulated in Clause (i) to (v) of Section 80G(5) of the Act of 1961.**

- There is no recording of any breach of the conditions enumerated in clause (i) to (v) of Section 80G(5) of the Act; which is a precursor for refusal of the approval u/s 80G.

- Appellant has neither pointed out any statutory provision nor has he cited any precedent, which provides or rules that in case the amount spent by a trust is insignificant, its request for approval under Section 80G of the Act deserves to be rejected.

Hence, It was absolutely erroneous on the part of the Department to infer that the Trust has failed to carry out its objects.

**Decided in favour of assessee.**

# CUSTOMS

## NOTIFICATIONS/CIRCULARS

**AMENDMENT TO NOTIFICATION NO. 52/2003-CUSTOMS DATED 31.03.2003**

**OUR COMMENTS**: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 79/2018-Customs dated 05.12.2018** has made amendments in **Notification no. 52/2003-Customs dated 31.03.2003 (Exemption to specified goods imported on procured by EOU's, STP Units, EHTP units etc. for specified purposes).** For further information kindly refer the above mentioned notification.

**PORT MEADOW U/S 7(A) OF CUSTOMS ACT, 1962 FOR UNLOADING OF IMPORTED GOODS AND LOADING OF EXPORT GOODS OR ANY CLASS OF GOODS**

**OUR COMMENTS:** The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 97/2018-CUSTOMS (N.T.) dated 7th December, 2018 has** notified Port Meadow u/s 7(a) of Customs Act, 1962 for unloading of imported goods and loading of export goods or any class of goods. For further information kindly refer the above mentioned notification.

**REVISION OF ALL INDUSTRY RATES (AIRS) OF DUTY DRAWBACK**

**OUR COMMENTS:** The Central Government notified revised All Industry Rates (AIRs) of Duty Drawback vide Notification No. 95/2018-Customs (N.T.) dated 6.12.2018 which will come into force on 19.12.2018.

Now, the Government vide **Circular No. 52/2018-Customs dated 12.12.18 has** specified the salient features of the revised AIRs as follows:

- For claiming the revised AIRs, the relevant tariff item have to be suffixed with suffix ‘B’ e.g. for export of goods covered under tariff item (TI) 640609, the drawback serial no. should be declared as 640609B;

- For claiming the alternative AIRs on garments exports made against the Special Advance Authorization (para 4.04A of Foreign Trade Policy 2015-20) in discharge of export obligations in terms of Notification No. 45/2016-Customs dated 13.08.2016, the relevant tariff item has to be suffixed with suffix ‘D’.

-The AIR of Duty Drawback for items of marine products and seafood (Chapter 3, 15, 16, 23) including live fish (TI 0301), chemicals (Chapter 29), essential oils (Chapter 33) including synthetic perfumery compounds (TI 330201) etc. **(refer the circular for details)** have been increased on account of various factors such as change in duty structure, change in prices (CIF) of imported inputs and FOB of export goods, change in import intensity of inputs, etc.;

- Rationalization of rates for some items **(refer the circular for details)** have been done on account of various reasons viz. decrease in C. Ex. Duty rate on diesel, change in prices (CIF) of imported inputs and FOB of export goods and change in import intensity of inputs etc.;

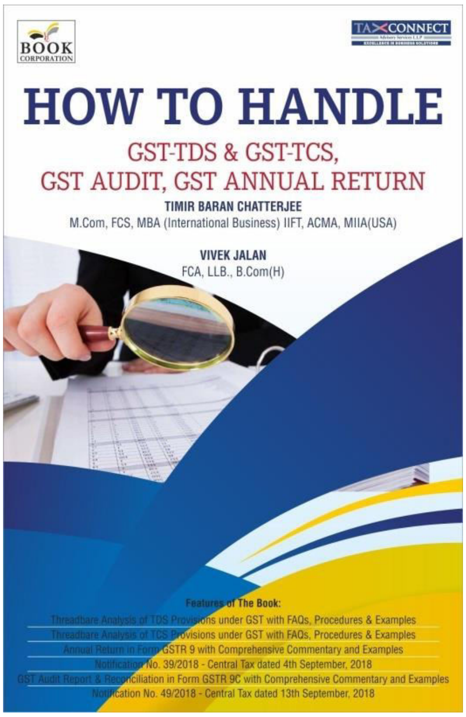
- 24 new tariff items in various sectors have been introduced in the Schedule

- Appropriate caps have been provided wherever felt necessary to prescribe upper limit of Duty drawback.

Please refer the circular for details.

# STOP PRESS

**HOW TO HANDLE GST-TDS & GST-TCS, GST AUDIT, GST ANNUAL RETURN**




**ABOUT THE BOOK: This book provides an insight into the following:**

1. **Threadbare Analysis of TDS Provisions under GST with FAQs, Procedures & Examples**
2. **Threadbare Analysis of TCS Provisions under GST with FAQs, Procedures & Examples**
3. **Annual Return in Form GSTR 9 with Comprehensive Commentary and Examples**
4. **Notification No. 39/2018 – Central Tax dated 4th September, 2018**
5. **GST Audit Report & reconciliation in Form GSTR 9C with Comprehensive Commentary and Examples**
6. **Notification No. 49/2018 – Central Tax dated 13th September, 2018**

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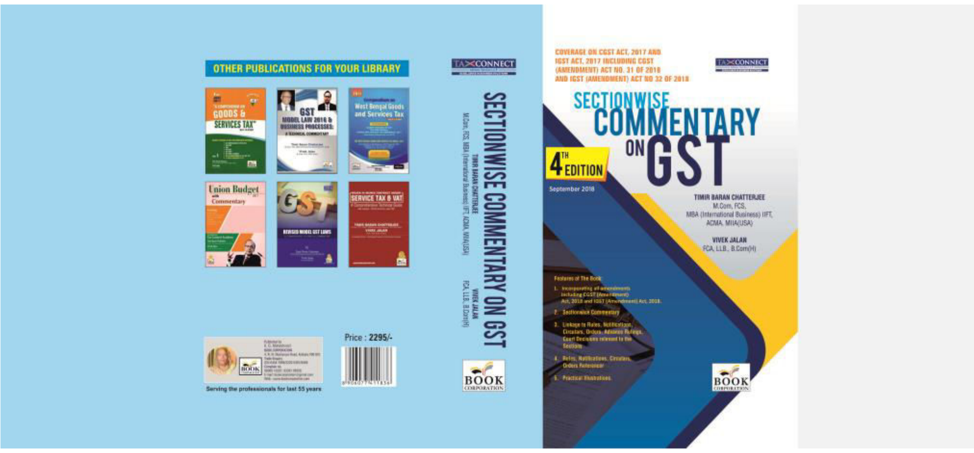
# IN STANDS

**SECTION WISE COMMENTARY ON GST UPDATED TILL DATE**




**ABOUT THE BOOK: This book provides an insight into the following:**

1. **Incorporating all amendments**
2. **Section wise commentary**
3. **Linkages to Rules, Notifications, Circulars, Orders, Advance Rulings, Court Decisions relevant to the Sections**
4. **Rules, Notifications, Circulars, Orders Referencer**
5. **Practical Illustrations**

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