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**April 2018** 

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# Central Goods and Service Tax Act, 2017 (CGST), Maharashtra State Goods and Service Tax Act, 2017 (Maharashtra SGST), Integrated Goods and Service Tax Act, 2017 (IGST)

#### **Notifications- CGST**

 Composition rate for Manufacturers Reduced <u>Notification No. 1/2018- Central Tax dated 1st January 2018</u>

The rate for manufacturers under Composition Scheme has been reduced to 0.5%(CGST)+0.5%(S/UTGST) from 1%(CGST) + 1%(S/UTGST). Further, in case of Traders, turnover for supply of **taxable goods** shall only be considered for the tax liability excluding the value of exempt turnover.

Certain amendments in Rules related with cancellation of registration, value of exempt supplies, E-way Bill requirements, etc.:
 Notification No. 3/2018 – Central Tax dated 23rd January 2018

#### Omission in Rule 20:

Voluntarily Registered person can apply for cancellation even before the expiry of 1 year from registration on account of omission of the proviso of the above Rule.

#### **Substitution in Rule 43:**

Explanation to Rule 43 has been substituted to clarify that the aggregate value of exempt supplies shall exclude:

- Value of Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.
- Value of services by way of accepting deposits, extending loans, or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution.
- The value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

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# Insertion of Rule 55 A in Rule 55: 55A. Tax Invoice or bill of supply to accompany transport of goods.

The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of Rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

#### Reduction in Late Fees

Notification no. 4/2018 dated 23<sup>rd</sup> January 2018

Notification no. 5/2018 dated 23<sup>rd</sup> January 2018

Notification no. 7/2018 dated 23<sup>rd</sup> January 2018

The late fee payable by any registered person for failure to furnish the following Forms has been reduced to Rs.50 / Rs.20 (CGST+SGST) based on the type of Return filed by assessee.

Sr. no.	Form	Nil return Filers	Others
1.	FORM GSTR 1 (supply details)	Rs. 20 per day	Rs. 50 per day
2.	FORM GSTR-5 (Non-resident taxable person)	Rs. 20 per day	Rs. 50 per day
3.	FORM GSTR-5A (OIDAR)	Rs. 20 per day	Rs. 50 per day
4.	FORM GSTR-6(ISD)	Rs. 50 per day	Rs. 50 per day

#### Electronic Portal for furnishing of returns and E- way bill.

Notification No. 9/2018 - Central Tax dated 23rd January 2018

<u>www.gst.gov.in</u> is the common GST Electronic Portal for facilitating registration, payment of tax, furnishing of returns and computation and settlement of integrated tax and <u>www.ewaybillgstgovt.in</u> is the common GST Electronic Portal for furnishing electronic way bill.

This notification shall be deemed to have come into force with effect from 16<sup>th</sup> January 2018

## Modifications in E-way Rules.

Notification No. 12/2018 dated 7th March 2018 and Notification No.03/2018 dated 23<sup>rd</sup> January, 2018.

• Where the goods are supplied through E-Commerce operator or courier agency, E-way Bill has to be generated by such ecommerce operators or courier agency.

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- The consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.
- Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, before delivery of goods
- E-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).
- The unique number generated under sub-rule (1) shall be valid for a period of 15 days for updation of Part B of FORM GST EWB-01.
- Further, clauses (e) to (n) have been inserted to provide various situations where no e-way bill is required to be generated for e.g. where goods being transported are specified in the Schedule appended to Notification No. 2/2017- Central tax (Rate) dated the 28th June 2017 i.e. Exempted goods except de-oiled cakes, where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel; goods being transported is treated as no supply under Schedule III of the Act etc.
- Where the goods are transferred from one conveyance to another, the consignor or the recipient or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the E-way bill. Earlier only transporter was allowed to update the same.
- Proviso to sub rule (3) of Rule 138 provides that that where the goods are transported for a distance of up to 50 kms within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, or from the place of the transporter to the place of business of the consignee, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01
- The validity of E-way Bill has been modified as:

Distance	Validity period
Up to 100 km	1 day in cases other than Over Dimensional Cargo (ODC)
For every 100 km. or part thereof	1 additional day in cases other than <b>(ODC)</b>
thereafter	
Up to 20 km	1 day in case of <b>(ODC)</b>
For every 20 km. or part thereof	1 additional day in case of <b>(ODC)</b>
thereafter	

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# Extension of the present system of filing of GSTR 3B:

Notification No. 16 / 2018 – Central Tax dated 23<sup>rd</sup> March 2018

The present system of filing of GSTR 3B has been extended for another 3 months i.e., April to June 2018 and the return is required to be filed on or before the last date as specified below-

Month	Last date for filing of return in FORM GSTR-3B
April 2018	20 <sup>th</sup> May 2018
May 2018	20 <sup>th</sup> June 2018
June 2018	20 <sup>th</sup> July 2018

## Return Filing

Notification No. 17/2018 – Central Tax dated 28th March 2018; Notification No. 18/2018 – Central Tax dated 28th March 2018; Notification No. 19/2018 – Central Tax dated 28th March 2018

Time limits within which the taxpayers shall furnish the Forms as specified in Column (2) of the table below:

Sr. No.	Form	For the Month/Quarter	Last date for filing of return in FORM GSTR-1
1.	GSTR 1 by the taxpayers with annual aggregate	April 2018	31 <sup>st</sup> May 2018
	turnover of more than Rs. 1.5	May 2018	10 <sup>th</sup> June 2018
	crore	June 2018	10 <sup>th</sup> July 2018
2.	GSTR 1 by the taxpayers	April 2018 –June	31 <sup>st</sup> July 2018
	with annual aggregate	2018	
	turnover up to 1.5 crore		
3.	GSTR-6 by an Input Service	July 2017 to April	31 <sup>st</sup> May 2018
	Distributor	2018	

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# **Notifications- CGST (rates)**

• Amendment to Notification no. 11/2017 Central Tax dated 28<sup>th</sup> June 2017.
Notification no. 1/2018-Central Tax (Rate) dated 25th January 2018

Following amendments have been made in the notification:

▲ Substitution in certain items identified by their clause number in 11/2017-Central Tax (Rate) dated 28 June, 2017 as amended to date: Through this substitution GST rates has been notified for the following description of services:

(3)	Existing Rate	Revised Rate	(5)	Reasons
	0/0	0/0		
"(ix) Composite supply of works contract provided by a subcontractor to the main contractor providing services to the CG,SG, Union territory, a local authority, a Governmental Authority or a Government Entity.  (iii) services by way of construction, installation of historical monuments, archaeological site, canal dams, water pipeline etc. or	9	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the CG,SG, Union territory or local authority, as the case may be	To align the rate on services of subcontractor to main contractor.
(x) Composite supply of works contract provided by a sub-contractor to the main contractor to the CG,SG, Union territory, a local authority, a	9	2.5	Provided that where the services are supplied to a Government Entity, they should have	Apart from alignment of rate applicable to sub- contractor with main-contractor, it is to be noted that supply does not

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(3)	Existing Rate	Revised Rate	(5)	Reasons
Governmental Authority			been procured	involve transfer of
or a Government Entity			by the said	land or share in land
(vii) services involving predominantly earth work (that is constituting more than 75% of the value of the works contract)			relation to a	under this clause, it is a case of pure construction activity by sub-contractor

#### ▲ In Serial no. 23:

<u>Insertion in item (i)</u>: in condition 1 in column (5), after the words "supplying the service", the words and brackets ", other than the input tax credit of input service in the same line of business (i.e. tour operator service procured from another tour operator)" shall be inserted

Comment: This is a welcome change and now ITC of input services in the same line of business can be availed.

#### ▲ In serial no. 24

<u>Insertion of clause (h) in item (i):</u> "(h) services by way of fumigation in a warehouse of agricultural produce with Nil rate.

#### ▲ In serial no. 34

<u>Substitution in item (iii):</u> Through this substitution GST rates has been notified for the following description of services:

(3)	Existing	Revised	(5)	Remarks
	Rate	Rate		
(iii) Services by way of	14	9	-	Note: In case of any similar
admission to				venue, other than specified in
amusement parks				(iii),it can be construed to fall
including theme parks,				under (iiia)

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(3)	Existing Rate	Revised Rate	(5)	Remarks
water parks, joy rides, merry-go rounds, go- carting and ballet.				
(iiia) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, casinos, race club, any sporting event such as Indian Premier League and the like.	14	14	-	Those events/ venues that do not fall within (iii) will fall here.

Note: Notification no. 01/2018 – Integrated Tax (Rate) dated 25th January, 2018 is issued on same lines)

Amended Notification no. 12/2017 Central Tax dated 28th June, 2017

Notification no. 2/2018-Central Tax (Rate) date25th January,2018

Following insertions / amendments have been made in the notification:

▲ Substitution in serial no. 16: For the words "one year", the words "three years" shall be substituted.

Therefore, services provided under regional connectivity scheme will remain exempt up to a period of 3 years from the date of commencement of operations of Regional Connectivity Scheme.

▲ Insertion of serial no. 19A & 19B: Following entries shall be inserted:

(1)	(2)	(3)	(4)	(5)	Remarks
19A	Heading 9965	Services b	y Nil	Nothing	Limited
		way o	f	contained	duration
		transportation	n	in this	exemption
		of goods b	y	serial	that has a
		an aircraf	ŧ	number	pre-fixed
		from custom	S	shall apply	expiration

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(1)	(2)	(3)	(4)	(5)	Remarks
		station of clearance in India to a place outside India.		after the 30th day of September, 2018.	date
19B	Heading 9965	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India	Nil	Nothing contained in this serial number shall apply after the 30th day of September, 2018.	Limited duration exemption that has a pre-fixed expiration date

#### ▲ Insertion of clause (c) in in serial no. 22:

This insertion provides exemption from tax leviable on service provided by way of giving on hire of motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

Comment: this exemption is corresponding to clause (b)(i) in serial no. 66. It would be interesting to see the implications of non-issuance of similar amendments on forward charge covered by clause b(ii) and (iii) in serial no. 66.

#### ▲ Insertion of serial no. 29A:

This insertion provides exemption from tax leviable on Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.

Comment: note the corresponding amendment made retrospectively in respect of Service tax also in Finance Bill, 2018.

#### ▲ Substitution in clause (c) of serial no. 36 :

For the words "fifty thousand", the words "two lakhs" shall be substituted. Therefore no GST will be leviable on service of life insurance provided under life insurance micro

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product having maximum amount of cover of two lakhs. Earlier, service provided under life insurance micro product having cover up to Rs.50 lakh was exempt.

Comment: welcome enhancement of limit to a meaningful threshold.

#### ▲ Insertion in Serial no. 39:

By an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

## Payment of Tax under RCM on renting of immovable property by Govt to registered person

Notification no. 3/2018-Central Tax (Rate) dated 25th January,2018

In the said notification, in the Table, after serial number 5 and the entries relating thereto, the following serial number and the entries relating thereto shall be inserted, namely: –

SR. No	Category of Supply of Services	Supplier of Service		Receipient of Service
5A	Services supplied by the	CG,SG,	Union	Any person registered
	CG.SG Union territory or local	territory	or	under the CGST Act,
	authority by way of renting of	local authority		2017.
	immovable property to a person			
	registered under the Central			
	Goods and Services Tax Act,			
	2017 (12 of 2017).			

# ■ Amendment in Rate of CGST on Motor Vehicle w.e.f 25.01.2018

Notification no. 8/2018-Central Tax (Rate) dated 25th January 2018

Sr. No.	HSN	Description of goods	Rate %
1	8703	Old and used, petrol Liquefied petroleum gases	9
		(LPG) or compressed natural gas (CNG) driven	
		motor vehicles of engine capacity of 1200 cc or	
		more and of length of 4000 mm or more.	
		Explanation For the purposes of this entry,	
		the specification of the motor vehicle shall be	
		determined as per the Motor Vehicles Act,	
		1988 (59 of 1988) and the rules made there	

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Sr. No.	HSN	Description of goods	Rate %
		under	
2	8703	Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm	9
		Explanation For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under	
3	8703	Old and used motor vehicles of engine capacity are exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles.  Explanation For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above	9
4	87	All Old and used Vehicles other than those mentioned from S. No. 1 to S.No.3	6

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# Service Tax / Maharashtra Value Added Tax (MVAT) Act, 2002 and MVAT Rules, 2005/GST

# **Recent Judicial Decisions**

Where the assessee had sent goods to 3 parties for quality appraisal on job work basis against series delivery challans, detention of goods for reasons that they were not accompanied by document provided for in Rule 138(2) of the GST Rules and they were intended to be supplied to an unregistered person was illegal.

Age Industries (P.) Ltd. vs. Assistant State Tax Officer- high Court of Kerala dated 18<sup>th</sup> January 2018. [W.P. (C) No. 1680]

#### Facts:

The assessee engaged in the manufacture & sale of surgical gloves had sent goods to 3 parties for quality appraisal on job work basis against series of delivery challans. The adjudicating Authority detained the above consignment for reasons that 1) the goods were being transported on delivery challan whereas in the light of the provision contained in sub-rule (3) Rule 55, the assessee should have uploaded a declaration in accordance with Rule 138(2) before transporting the goods and 2) the goods transported by the assessee were intended to be supplied to an unregistered person and therefore, tax evasion was suspected.

#### Held:

The Kerala High Court held that the power of detention contemplated in Section 129 can be exercised only in respect of goods liable to be confiscated under Section 130. There is no taxable supply when goods are transported on delivery challans so long as the authenticity of the delivery challans is not doubted. Therefore such goods cannot be detained merely for infraction of Rule 138 (2). Therefore, the first reason for detention of such goods is unsustainable.

The Court further held that the specific case of the assessee is that the consignment was intended to be supplied to 3 parties for quality appraisal on job work basis. Such transactions are not prohibited. Such goods in terms of the provisions contained in the CGST and SGST Act are to be transported on delivery challans. The question whether the person to whom such goods are supplied has registration is irrelevant in the context of the statutes.

In view of the aforesaid, the impugned detention was illegal.

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• Where the assessee being the petitioner was not able to access its online profile on the GSTN for no fault or negligence on part of the assessee, late fees paid by the petitioner are required to be credited to the cash ledger.

Abicor and Binzel Technoweld Pvt. Ltd. vs. The Union of India & anr.- High Court of Bombay (Writ Petition (L) No. 2230 of 2018) and

#### Facts:

The petitioner is a company engaged in manufacturing of robotic and automation equipment. The purpose of filing this petition was because, the petitioner having been granted a provisional registration number under the CGST Act, 2017 and the Maharashtra SGST Act, 2017, was not able to access its online profile on the GST Network. Such lack of access to the online profile also inhibited the petitioner from securing the final registration number and thereby a failure to comply with the statute. The assessee was exposed to interest liability and would have to face even penal consequences. Importantly, the assessee and also its customers were unable to avail input tax credit mechanism. The assessee claimed that after filing of this petition, it was allowed access to the portal but such access was not complete The petitioner was granted the final registration number and the profile was made operational, but the petitioner could not file the necessary return, and particularly the Return GSTR3B and the payment of tax was not possible without this return. This return was not being accepted without payment of late fee for the period from October 2017 onwards.

#### Held:

It was held that the petitioner may file their GSTR-3B returns with the late fees first. If that is paid and proof of such payment is produced, that will also be auto-credited/refunded in their cash ledger by the GSTN within a period of 1 week from the date the payment is made.

Where the assessee allowed quarterly discount to its dealers on the basis of sales turnover generated in every quarter of the financial year and gave it to dealers in sales invoices raised in subsequent quarter, in computing taxable turnover, assessee would be entitled to deduction of trade discount. M/s Maya Appliances (P) Ltd vs. Addl. Commissioner of Commercial Taxes & Ors – Supreme Court [Civil Appeal Nos.357-367 OF 2018]

#### Facts:

The appellant manufactures home appliances such as mixer grinders, wet grinders and gas stoves. Based on a regular trade practice, the appellant allowed quarterly discounts to its dealers on the basis of the sales turnover generated by a dealer in every quarter of the financial year. These discounts were given in the sales invoices raised in the subsequent quarter. The appellant claimed the discount as a deduction from the total turnover while arriving at the taxable turnover. The assessing authority disallowed the quarterly discount accorded by the appellant to

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its distributors on the ground that the discount was not relatable to the sales effected by the relevant tax invoices. The assessing authority held that the quantity discount offered by the appellant could not be allowed under Rule 3(2)(c) of the Karnataka Value Added Tax Rules 2005.

The First Appellate Authority set aside the order of the assessing authority, holding that the quarterly scheme discount given by the appellant was an allowable deduction since the appellant had realized the consideration from the purchaser towards the sale of goods after deducting the amount of discount and, VAT was charged only on the net amount shown in the tax invoice after allowing the benefit of discount.

The Additional Commissioner reversed the order of the First Appellate Authority on the ground that the quarterly discount given was in respect of performance of previous quarter and not in respect of sales offered under the same invoices.

On dismissal of the appeal by the High Court, an appeal was made to the Supreme Court.

#### Held:

The Supreme Court held that the liability to pay tax is on the taxable turnover. Taxable turnover is arrived at after making permissible deductions from the total turnover. Among them are "all amounts allowed as discounts." Such a discount must, however, be in accord with the regular trade practice of the dealer or the contract or agreement entered into in a particular case. The assessee must establish from its accounts that the discount relates specifically to the sales with reference to which it is allowed. In the first part of the proviso, Rule 3(2)(c) recognizes trade practice or, as the case may be, the contact or agreement of the dealer. The latter part which provides a methodology for ascertainment does not override the earlier part. Both must be construed together. Above all, it must be remembered that taxable turnover is turnover net of deductions. All trade discounts are allowable as permissible deductions.

The Supreme Court accordingly allowed the appeal and set aside the judgment of the High Court and directed that in computing the taxable turnover for the relevant years, the appellant would be entitled to a deduction of the trade discount.

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Where tax was paid on basis of amount charged for cylinders sold and thereafter the rates were revised after reviewing prices by the Ministry of Petroleum and Natural Gas (MOP&NG) to a rate lower than the rate at which the invoices were raised, the tax on such discount or rebate would be eligible for a refund.

M/s. Universal Cylinders Limited vs. The Commercial Taxes Officer, Supreme Court. [CIVIL APPEAL NO(S). 2431 OF 2018 (@SLP (C) NO(S).23659 OF 2015)]

#### Facts:

The assessee in the instant case is engaged in the business of manufacturing cylinders for storage of Liquefied Petroleum Gas (LPG). The Assessee Company supplied these cylinders to Government-owned companies such as Indian Oil Corporation (IOC), M/s Bharat Petroleum Corporation Ltd and M/s Hindustan Petroleum Corporation Ltd.

During the year the Assessee Company received an order for supply of 73,380 numbers of 14.2 kg cylinders to IOC and the Assessee supplied the cylinders and charged the amount of Rs.682 per cylinder and also charged sale tax on the same amount. Thereafter, IOC informed the Assessee by letter that after reviewing of the prices by the MOP&NG, the price of 14.2 Kg cylinders had been provisionally revised to Rs.645 and the IOC deducted the excess payment of Rs.37 and proportionate sales tax thereon from the payments due to the Assessee.

Thereafter, the Assessee approached the Assessing Authority for the refund of the sales tax paid on the excess sale amount at Rs.37. The authority rejected the claim of the Assessee by holding that there is no provision under the Act for refunding the amount of tax once it has been paid and also observed that the arrangement of the Assessee with the oil company was in the nature of a private agreement, hence the claim of the Assessee on refund cannot be sustained. The HC of Rajasthan upheld the decision. Further appeal was then filed with the Supreme Court.

#### Held:

The Supreme Court held that Section 2(39) of the Rajasthan Sales Tax Act, which defines "sales price", clearly indicates that it is the price which is either paid or payable to a dealer as consideration for the sale. The definition itself makes it clear that any sum by way of any discount or rebate according to the practice normally prevailing in the trade shall be deducted and shall not be included in the sale price. The Supreme Court further observed that "the Assessee may have received Rs.682 per cylinder; it was under a legal obligation only to receive that price which was fixed by the MOP&NG. This price could have been higher than Rs.682 per cylinder, in which event the Assessee would have to collect and deposit with the Rajasthan Sales Tax on the excess amount. However, since the price of the cylinder has been reduced, the Assessee cannot charge more than the price fixed and is bound to refund the excess amount

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collected. Therefore the Supreme Court held that the assessee is legally entitled to get the refund of the tax paid on the excess amount.

Where the assessee provided 'commercial or industrial construction services', value of material supplied free of cost by the service recipient to the assessee was not to be included in the gross amount charged by the assessee for valuation of taxable service.

Commissioner of Service Tax vs Bhayana Builders (P.) Ltd.- Supreme Court [Civil Appeal No's 1335-1358 (2015) and others]

#### Facts:

The assessee was engaged in the business of construction and provided 'commercial and industrial construction services'. For undertaking construction projects, the assessee not only rendered services, but a lot of materials and goods were also used in the construction of building or civil structure, etc. Some of the goods/ materials were supplied or provided by the service recipient to the assessee free of cost. The assessee availed benefits under relevant notifications and paid service tax @ 33% of the gross amount which it had charged from the service recipient. The Adjudicating Authority included the value of the goods/materials supplied free of cost by the service recipient in the gross amount charged for valuation purpose.

The Tribunal held that value of such goods could not be added for the purpose of valuation. The Revenue then filed appeal with the Supreme Court.

#### Held:

The Supreme Court held that the language of the notification itself demolishes the argument of the revenue as it says 33% of the gross amount "charged" from any person for providing the said taxable service. It further held that according to the relevant notification, service tax is to be calculated on a value which is 33% of the gross amount that is charged. Obviously where no amount is charged by the service provider in respect of goods provided by the recipient, the same cannot form part of the gross value. Therefore, the decision taken by the Tribunal was upheld and the Court held that value of goods provided free of cost by the service recipient would not be included in gross amount charged by the assessee for valuation purpose.

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