C N K Knowledge Tracker

.....Be a Step Ahead

July 2018

C N K & Associates LLP

www.cnkindia.com

Contents

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

- **Notification seeks to make amendments (Fourth Amendment) to the CGST Rules, 2017.**

  Notification No.21/2018 Central Tax, dated 18th April 2018

  - Refund on account of inverted duty structure

    Refund of input tax credit – Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services.

  - Consumer welfare fund will have credits based on this notification.

- **Seeks to waive the late fee for Form GSTR-3B**

  Notification No. 22/2018-Central Tax, dated 14th May 2018

  The late fee payable when Form GSTR-3B is not filed within the due date for the months from October 2017 to April 2018 and Form GST TRAN-1 was submitted but not filed on the common portal by 27th December 2017, the late fee will be waived off. However, the declaration in Form GST TRAN-1 should have been filled by the 5th October 2018. Form GSTR-3B for these months should be filled by 31st May 2018.

- **GSTR-6 due date Extended.**

  Notification No. 25/2018-Central Tax dated 31st May 2018

  Filing for the months July 2017 to June 2018 has been extended to 31st July 2018.

Return to Contents

Notifications- CGST (rates)

- ### GST on Priority Sector Lending Certificate under Reverse Charge Mechanism

Notification No. 11/2018-Central Tax (Rate) dated 28th May 2018

CBEC notifies levy of GST on Priority Sector Lending Certificate (PSLC) under Reverse Charge Mechanism (RCM) vide Notification No. 11/2018-Central Tax (Rate) dated 28th May 2018 by amending notification No. 04/2017- Central Tax (Rate) dated 28th June 2017

In the said notification, after Sr. No. 6 and the entries relating thereto, the following serial number and the entries have been inserted, namely: -

Sr. No.	Tariff item, sub-heading, heading or Chapter	Description of Goods	Supplier of goods	Recipient of supply
7.	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person

Note: Notification no. 12/ 2018 –Integrated Tax (Rate) dated 28th May 2018 is issued on same lines

- ### Seeks to exempt payment of tax under Section 9(4) of the CGST Act, 2017 till 30th September 2018.

Notification No. 12/2018-Central Tax (Rate) dated 29th June 2018

Reverse Charge Mechanism (in case of supplies made by unregistered persons to registered persons), TDS and TCS provisions under GST to be applicable from **1st October 2018.** Previously, these provisions were applicable from **1st July 2018**.

Note: Notification no. 13/ 2018 –Integrated Tax (Rate) dated 29th June 2018 is issued on same lines

Return to Contents

Circulars

▪ Setting up of an IT Grievance Redressal Mechanism to address the grievances of taxpayers due to technical glitches on GST Portal.

Circular No. 39/2018-GST dated 3rd April 2018

- Taxpayers who have faced IT related issues while filing returns on the GST portal are supposed to make an application with evidences to the field officers or the nodal officers.
- When the taxpayer makes a genuine attempt to file any returns and cannot complete the filing due to an IT related problem, IT Grievance Redressal Committee has now got the right to approve and recommend the GSTN the steps to be taken to redress the problem and state the procedures to be followed.
- For issues such as non-availability of internet connectivity or failure of power supply, this mechanism will not be available.
- If due to the non-filing of returns because of the IT problem, fees and penalty arise, the GST Council with recommendation of the IT-Grievance Redressal Committee may waive it off.
- Taxpayers, who couldn't file their TRAN-1 on or before 27th December 2017 due to IT-glitch, can now complete TRAN-1 filing by 30th April 2018. (The time limit in general for non-effected taxpayers is not extended.) The amount of credit cannot be modified now.
- For the above taxpayers, GSTR 3B has to be filled by 31st May 2018.

▪ Clarification on issues related to furnishing of Bond/Letter of Undertaking (LUT) for exports.

Circular No. 40/2018-GST dated 6th April 2018

- Form GST RFD-11 (form for LUT) has to be filled by the registered person (exporters).
- LUT should be said to have been accepted as soon as an acknowledgement for the same is received.
- The acknowledgement should show the Application Reference Number (ARN). This is generated automatically online.

- **Clarifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.**

Circular No. 41/2018-GST dated 13th April 2018

The government has notified the following forms with regard to Inspection, Verification and Detention of goods in transit.

Sr. No.	Form Name	Purpose
1	GST MOV-01	Statement of owner, driver or person in charge of the vehicle
2	GST MOV-02	Order for physical verification and inspection of goods, conveyance or documents
3	GST MOV-03	Order for extension of time beyond 3 days for inspection
4	GST MOV-04	Physical verification report
5	GST MOV-05	Release order
7	GST MOV-06	Order of detention
8	GST MOV-07	Notice specifying tax and penalty amount
9	GST MOV-08	Bond for provisional release of goods/ conveyance
10	GST MOV-09	Order of demand of tax and penalty
11	GST MOV-10	Notice for the confiscation of goods
12	GST MOV-11	Order of confiscation of goods and conveyance and demand of tax, fine and penalty

- **Clarifying the procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit**

Circular No. 42/2018-GST dated 13th April 2018

- If CENVAT credit is claimed wrongly or carried forward wrongly and no recovery is done so far under the existing law, the same will be recovered as arrear of tax under the CGST Act.
- Any dues in form of tax, interest, penalty, output duty or any amounts arising due to revision of returns that are receivable, if not recovered under the existing law will be recovered as arrear of tax under the CGST Act.
- Wrong transitional credit and interest, penalty, late fee connected to this will be recovered from the balance in the electronic credit ledger or electronic cash ledger of the registered person.
- From 1st April 2018, the return filing will continue on www.aces.gov.in but the payment will be made shall be made through the ICEGATE portal.
- When arrears have to be recovered from persons who are not registered under the CGST act, this will be recovered in cash.

Clarifying the issues arising in refund to UIN.

Circular No. 43/2018-GST dated 13th April 2018

- Filing of refund by UIN agencies on a quarterly basis will be in Form RFD-10 along with a statement of inward invoices in Form GSTR-11. This will have to be manually filled in the printable version unless notified otherwise.
- Recording of UIN on the invoice is a necessary condition
- One time waiver and related guidelines in cases where UIN has not been recorded on the invoices pertaining to refund claim for the quarters of July – September 2017, October – December 2017 and January – March 2018.

Issue related to taxability of 'tenancy rights' under GST- Regarding.

Circular No. 44/2018-GST dated 2nd May 2018

- Transfer of 'tenancy rights will be considered as supply under GST and consideration for this will be taxable.
- Renting of residential dwelling will still be exempt.
- Services by outgoing tenant, by way of surrendering the tenancy rights against consideration in form of tenancy premium is liable to GST.

Clarification on refund related issues

Circular No. 45/2018-GST dated 30th May 2018

- In case of a claim for refund of balance in the electronic cash ledger filed by an Input Service Distributor **(ISD)** or a composition taxpayer; and the claim for refund of balance in the electronic cash and/or credit ledger by a non-resident taxable person, the filing of the details in Form GSTR-1 and the return in Form GSTR-3B is not mandatory. The return in Form GSTR-4 filed by a composition taxpayer, the details in Form GSTR-6 filed by an ISD and the return in Form GSTR-5 filed by a non-resident taxable person will be sufficient for claiming the said refund.
- In cases of export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit, commencing from 1st July 2017 to 31st March 2018, such registered persons will be allowed to file the refund application in Form GST RFD-01A. This is subject to the condition that the amount of refund of integrated tax/cess claimed will not be more than the aggregate amount of integrated tax/cess mentioned in FORM GSTR-3B.
- Credit of input tax may be availed for making zero rated supplies.
- If capital goods are imported by availing the benefit of Notification No. 78/2017-Customs dated 13th October 2017 or 79/2017-Customs dated 13th October 2017 and the goods are manufactured and supplied to an Exporter, the restriction of not availing benefit of the notifications does not apply to such inward supplies of an exporter.

Return to Contents

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

Recent Judicial Decisions

- **Where Assessee challenged the constitutional validity of Section 140(3)(iv) which restricted the transfer of credit availed under erstwhile law to 12 months, it was held that CENVAT credit is conditional and there is no absolute right to claim it under erstwhile law or in transitional arrangements set out or in substantive provisions permitting availing of input tax credit and thus conditions laid down for GST Transitional Credit under Section 140(3)(iv) are constitutionally valid.**

JCB India Ltd. vs. Union of India- High Court of Bombay dated 20th March 2018 [W.P. No. 3142]

Facts:

The Assessee was engaged in the manufacture of machines falling under Chapter Heading 8429 of Excise tariff. Some of the machines manufactured were used as demo machines which were cleared on payment of excise duty on self-invoicing basis. These machines were typically sold when they were aged for about 2-3 years.

The Assessee had in its stock, machines as on 30th June 2018 which were older than 12 months and duty paid documents were available with respect to the same. It was submitted that the nature of business of the Assessee was such that the cycle for supply of demo goods was 2-3 years and denying the credit to the Assessee on the ground that the duty paid documents were older than 12 months, was grossly arbitrary and bad in law and this would lead to double taxation.

It was under these circumstances that the Assessee filed the instant petition to declare clause (iv) of sub-section (3) of Section 140, as unconstitutional and unenforceable.

Held:

It was held that CENVAT credit is a mere concession and it cannot be claimed as a matter of right. The CENVAT credit rules themselves stipulated and provided for conditions for availment of credit and right thereunder which was not absolute but a restricted or conditional one and hence, it could not be said that such rights could have been enjoyed/availed irrespective of period/time provided therein.

It is clear that if right to availment of CENVAT credit itself is conditional and restricted and not absolute, then, the right to pass on that credit cannot be claimed in absolute terms. Accordingly, Section 140(3)(iv) is valid in law.

- **Payment of one-time lease premium to acquire a leasehold land from City Industrial and Development Corporation of Maharashtra Limited (CIDCO) attracts liability to pay tax in terms of GST Act as lease/letting out of a building for business is supply of goods/services.**

Builders Association of Navi Mumbai vs. Union of India- High Court of Bombay dated 28th March 2018 [W.P. No. 12194]

Facts:

The Assessee was a registered public charitable trust and the members of the Assessee were reputed Builders and Developers of Navi Mumbai and areas surrounding it. The members of the Assessee won the bid for securing lease of land from CIDCO for a period of 60 years on payment of one-time lease premium and were also required to pay separate lease rental annually for the period of lease. The members of Assessee were asked to pay GST separately on one-time lease premium at the time when allotment letter was issued.

The Assessee contended that GST could not be levied, assessed and recovered on payment of one time lease premium. A long-term lease of 60 years tantamounts to the sale of the immovable property since the lessor is deprived of, by the allotment of the right to use, enjoying and possessing the property. In these circumstances, a grievance was raised by approaching the GST Commissionerate as to how the GST can be collected on the above amount. There was correspondence initiated and finally, when the authorities did not respond, a writ petition was filed in the Honourable High Court of Bombay.

Held:

The expression 'supply' includes all forms of supply of goods and/or services made or agreed to be made for a consideration by a person in course or furtherance of business, and activities enlisted under Schedule II either as supply of goods or services would also be included therein. It was held that CIDCO is a 'person' and has disposed land in the course or furtherance of its business by leasing them out for a consideration styled as 'one-time premium'.

Once this law, in terms of the substantive provisions and the Schedule, treats the activity of leasing as supply of services, particularly in relation to land and building then, the consideration received in respect thereof as a premium/one-time premium is a measure on which the tax can be levied, assessed and recovered. Therefore, the demand for payment of GST was in accordance with law. The said demand cannot be said to be vitiated by any error of law apparent on the face of the record. In these circumstances, there is no merit in the writ petition. It was accordingly dismissed.

- **Where department forcibly collected cheques from Assessee's premises even before its tax liability under CGST Act was ascertained, department was directed to return said cheques. Also, where department failed to demonstrate as to why bank accounts of Assessee were attached, provisional attachment of Assessee's accounts was asked to be removed.**

Remark Flour Mills (P.) Ltd. vs. State of Gujarat- High Court of Gujarat dated 19th April 2018 [Special Civil Application No. 4835]

Facts:

The Assessee was engaged in supply of wheat flour, meslin flour, cereal flour etc. which attracted SGST and CGST at prescribed rates. The Departmental Authorities noticed that the Assessee was not paying any tax either on supply of branded or unbranded wheat flour, meslin flour, cereal flour etc. According to the Assessee, under threat and coercion, the Departmental Authorities collected 3 cheques even before the Assessee tax liability was ascertained.

Further the Department issued a show-cause notice under Section 74(1) and simultaneously, on the same date, the Department wrote to the Assessee's banks, provisionally attaching the Assessee's said bank accounts.

The adjudicating authority also issued show cause notice under the purported exercise of powers under Section 74(3) of the CGST Act. This 2nd show-cause notice, the Assessee challenged on the ground of lack of jurisdiction.

The Assessee challenged all 3 actions of the Departmental Authorities in the instant petition.

Held:

With respect to the collection of 3 cheques, it has been held by the Court and other High Courts of the country that the practice of collecting post-dated cheques under coercion during raid is not permissible means of collection of revenue particularly, when no tax demand has been confirmed or crystallized and directed the department to return the said cheques.

The adjudicating authority was wholly incorrect in issuing a fresh show-cause notice for the same period under Section 74(3) for which notice was already issued under sub-section (1) of Section 74 and the impugned notice therefore, was quashed.

Since nothing was demonstrated by department either in orders of attachment or in affidavit filed as to why exercise of such drastic power of attachment of bank accounts was necessary, provisional attachment of Assessee's bank accounts was asked to be removed.

- **Where goods of Assessee and vehicle had been detained for evasion of GST, Competent Authority was directed to release goods and vehicle on Assessee furnishing bank guarantee or depositing amount demanded.**

  State Tax Officer vs. Kerala Gujarat Cargo Express- High Court of Kerala dated 15th May 2018 [W.P. (C) NO. 15489]

  Facts:

  Competent authority had detained goods of Assessee along with vehicle for evasion of GST u/s Section 68 of CGST Act, 2017 read with Rule 140 of CGST Rules, 2017. On a writ petition filed by the Assessee in the Honorable High Court of Kerala, an interim order was passed by the Single Bench ordering release of vehicle along with goods on executing a simple bond.

  The State preferred an appeal on the order passed by the Single Bench.

  Held:

  On reading of Rule 140(1), it was held that the impugned order has to be modified. In the absence of any challenge against the rules, the goods and vehicle can be released only in accordance with Rule 140(1). Rule 140(1) states that seized goods may be released on provisional basis upon execution of a bond and furnishing of a security in the form of a Bank Guarantee. Therefore, the interim order was modified, directing to release the goods and vehicle either on furnishing the bank guarantee or depositing the amount demanded.

- **Where Assessee had engaged several transporters for transport of mined coal from coal face to coal stockyards and no consignment notes were generated by transporters and payments were made only on the basis of particulars generated during weighment, said service received by Assessee would not fall under the category of 'goods transport agency service'**

  Northern Coal Field Ltd. vs. Commissioner of Central Excise, Allahabad- CESTAT, Allahabad Bench dated 3rd October 2017 [Order Nos. ST/A/71251-71252/2017-CU(DB)]

  Facts:

  The Assessee had engaged several transporters for transport of mined coal from coal face to coal stockyards. For transporting mined coal from coal face to coal stockyards no consignment notes were generated by the transporters and payments were made only on the basis of particulars generated during weighment.

  The Adjudicating Authority held that the said services received by the Assessee would fall under the category of 'goods transport agency services'.

  An appeal was filed to the Tribunal on the stand taken by the adjudicating authority.

Held:

The Tribunal held that the definition of 'goods transport agency' in Section 65(50b) clearly specifies that goods transport agency means any person who provides services in relation to transport of goods by road and issues 'consignment note' by whatever name called. The Explanation under Rule 4B of the Service Tax Rules, 1994 clarifies that 'consignment note' is a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods in a goods carriage and contains other specified details.

Clearly as no consignment notes were issued by the transporters to the Assessee, the classification by the impugned order that Assessee received transportation of goods by road service is unsustainable.

- **The fiction created u/s. 66A to consider the branch of an Assessee as separate establishment is not to tax a service rendered to its head office**

SNC Lavalin Inc vs. Commissioner of Service Tax, Delhi dated 20th February 2018 [2018-TIOL-1582-CESTAT-DEL]

Facts:

Assessee is a project office in India of a foreign company and it entered into an agreement with the foreign company for provision of design and other consultancy services for project in India by the foreign company. The dispute relates to service tax liability on the debit entries made in Assessee's books of accounts with reference to deployment of officers by the foreign company. The Department contended that service tax is payable on reverse charge under the category of manpower recruitment or supply agency service considering the project office as an independent entity in terms of proviso to Section 66A(2). It was submitted that primarily the gross amount for the whole project has suffered service tax, which is paid by the project office registered in India. The expenditure incurred on salaries and travelling is for the purpose of execution of the project and cannot be taxed independently under reverse charge. The matter was referred to the Tribunal.

Held:

The Tribunal relying on various decisions including Torrent Pharmaceutical Ltd-2014-TIOL-2647-CESTAT-AHM held that the fiction created u/s. 66A to consider the branch of an Assessee as a separate establishment is not to tax a service rendered to its head office. On the same ratio, it was held that service if any received by the branch office cannot be subjected to tax. Further, it was noted that the debit entries are to maintain complete financial transaction on behalf of the foreign company and is not attributable to any service of manpower recruitment or supply agency service provided by the foreign company. Accordingly, the Appeal was allowed.

- **Where Assessee returned goods purchased from vendor and the composition of such goods was changed in the process of manufacturing, it should be regarded as a different sale transaction and not as Sales Return.**

Reliance Industries Ltd. vs. State of Maharashtra- High Court of Bombay dated 22nd March 2018 [W.P. No. 2217]

Facts:

Reliance Industries Ltd. **(RIL)** purchased kerosene from BPCL, which was rich in N-Paraffin, as a raw material for the manufacture of Linear Alkyl Benzenes (LAB). RIL would consume a suitable quantity of kerosene by taking out N-Paraffin required by it and send the balance quantity of kerosene back to BPCL. The said return was considered as Sales Return by RIL and was accounted accordingly. The agreement between RIL and BPCL mandatorily required RIL to return the quantity of kerosene after extracting N-Paraffin from it to BPCL.

According to RIL, this agreement thus provided for supply of kerosene solely for the purposes of consuming the requisite quantity of kerosene for extraction of N-Paraffin and returning the balance the Kerosene to be considered as Sales Return.

Held:

The Court opined that the product supplied by BPCL to RIL was rich in N-Paraffin while the product supplied/return by RIL to BPCL was not and thus essentially it is to be considered as different product. The process of extraction carried out by RIL is a manufacture activity within the meaning of the expression as defined in the Bombay Sales Tax Act 1959 and the kerosene is therefore not returned to BPCL in the same form.

This would clearly go to establish that the Kerosene supplied by BPCL to RIL in the first leg of the transaction and the product returned by RIL to BPCL in the second leg of the transaction, at least for the purposes of sales tax are two different products in character and use.

Thus, Hon. High Court held that if the goods sold and returned are not the same goods but different goods, then there is no scope for claim of sales return.

- **Where Assessee on non-repayment of loan, sold the vehicle financed by it, then it was liable to pay tax on the sale proceeds of the said vehicle even though it had not taken ownership of the vehicle and transferred the vehicle in its name.**

HDFC Bank Ltd. vs. State of Kerala- High Court of Kerala dated 4th July 2018 [OT. Rev. No. 97]

Facts:

Centurion Bank of Punjab Ltd which was taken over by HDFC Bank Ltd had financed purchase of a vehicle on hypothecation of the said vehicle. Further, original owner had also executed the

sale letter so as to enable the Assessee to re-possess the vehicle and transfer the same in the name of the bank on default of payment by the original owner.

Accordingly, on default by the original owner, Assessee as per the terms of loan agreement re-possessed the vehicle and effected transfer and delivery of the same through sale letter executed by original owner.

Assessee contended that sale of such hypothecated vehicle whose ownership remained with original owner cannot be considered as turnover of the Assessee to be exigible to KVAT. Assessee contended that it is not a dealer for the purpose of KVAT and is merely facilitating such sale and adjusting the proceeds against liability of original owner.
An appeal was filed by the Assessee in the Honorable Court of Kerala against the order of Appellate Tribunal.

Held:

Kerala HC affirmed the decision of appellate authorities on inclusion of sale consideration for KVAT purpose and held the following:

Right of financier bank to re-possess the hypothecated vehicle and effecting the transfer through sale letter is recognized under the Motor Vehicles Act and the Bank becomes the owner of such vehicle during the sale. Bank, acting as financier and selling hypothecated goods would come within the definition of 'dealer'.

Financier not exercising the option of first transferring the ownership and registration of the vehicle in its name and selling subsequently but choosing to directly sell the vehicle through sale letter executed by original owner does not absolve the financier bank from including sale consideration as part of turnover liable for KVAT.

The division bench also held that no penalty can be charged where the matter is debatable and intention of the Assessee was bonafide in nature.

Return to Contents

DISCLAIMER AND STATUTORY NOTICE

This e-publication is published by C N K & Associates, LLP Chartered Accountants, India, solely for the purposes of providing necessary information to employees, clients and other business associates. This publication summarises the important statutory and regulatory developments. Whilst every care has been taken in the preparation of this publication, it may contain inadvertent errors for which we shall not be held responsible. The information given in this publication provides a bird's eye view on the recent important select developments and should not be relied solely for the purpose of economic or financial decision. Each such decision would call for specific reference of the relevant statutes and consultation of an expert.

This publication is not intended for advertisement and/or for solicitation of work

Our Offices

Mumbai
Mistry Bhavan, 3rd Floor,
Dinshaw Vachha Road, Churchgate
Mumbai 400 020
Tel No. +91 22 6623 0600

Mumbai (Suburban Office)
501/502, Narain Chambers,
M.G. Road, Vile Parle (East)
Mumbai 400 057
Tel No +91 22 6250 7600

Ahmedabad
'Hrishikesh',
2nd Floor, Vasantbaug Society,
Opp Water Tank, Gulbai Tekra
Ahmedabad 380 006
Tel. No. +91 79 2630 6530

Bengaluru
96, 7th Cross,
Domlur,
Bengaluru 560 071
Tel. No.+91 80 2535 1353

Chennai
Kochu Bhavan
Ground Floor, Old No 62/1, New No 57,
McNichols Road, Chetpet
Chennai 600 031
Tel No. +91 44 4384 9695

New Delhi
Suite 1101,
KLJ Towers,NSP
New Delhi 110 034
Tel No.+91 11 2735 7350

Pune
4, Kumar Panorama, 1st Floor
45/18 Shankerseth Road
Pune 411 037
Tel No. + 91 20 2645 7251/52

Vadodara
C-201/202, Shree Siddhi Vinayak Complex,
Faramji Road, Alkapuri,
Vadodara 390 005
Tel. No. +91 265 234 3483

Our Overseas Office

Dubai
Suite#17.06 Dubai World Trade Centre
Shaikh Zayed Road, Dubai, P.O.Box.454442
Tel. No. +971 04 355 9533