



**The Malad
Chamber of
Tax
Consultants**

MNW/I75/2018-20

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MCTC Bulletin

"Never Stop Learning, Never Stop Growing"

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October, 2018

President's Communiqué



Dear Members,

Wishing everybody a very Happy Dussehra.

Also wishing all our Members a Happy Diwali and New Year in Advance.

Progress in Life, Profession, Business or any Project comes through taking initiatives and continuing to press on with new strategies, concepts and plans. The original momentum isn't enough to keep you moving forward. Your progress will grind to a halt unless you refill your engine of inspiration with the fuel of fresh ideas.

With right representation & timely respite received in the form of extension of the reporting of Tax Audit Report and filing of the related and other Income Tax Returns to 31st October, 2018, Members must be busy in completion of the remaining Tax Audit Report and Income Tax Return filing work. Still a long way to go and we have before us the mammoth task of GST Annual Return, GST Audit and Vat Audit work. These are to be completed in the ensuing months of December and January respectively.

In order to assist our Members to have a better understanding of the GST Annual Returns and GST Audit, we are planning to undertake a Seminar on the said topic on 04th November, 2018. Enrolment forms will be available with our Office Bearers and circulated by mail. Members are requested to participate in this programme and send the application forms in advance as seats are limited.

We are also planning to organise the 13th Saraswati Sanman Samarambh and Diwali Get together on 18th November, 2018. All Members are requested to send details of marks of the current year of their children in SSC, HSC, Graduation and other Professional Courses.

Details of the above programmes are published in the Forthcoming Events section of this bulletin.

On 13th October, 2018, the Chamber alongwith the Goregaon Sports Club carried out the 'Outreach Programme' of the Income Tax Department and the 'Professional Tax Awareness Week' by the Professional Tax Department at the Goregaon Sports Club. This programme was well attended by Members of the MCTC, GSC and Trade Associations. Besides bringing awareness and initiatives taken by the respective department to become Tax Payer friendly, many issues and queries were discussed and resolved.

With Sincere Wishes

CA Vaibhav D. Seth
President

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

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Vaibhav D. Seth	President	9619721743	sethvaibhav@hotmail.com
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Life Membership Fees ₹ 2,500 • Ordinary Membership Fees ₹ 1,000 p.a.

FORTHCOMING EVENTS

Half day Seminar on GST Annual Returns and GST Audit

Day & Date	Sunday, 04th November, 2018
Time	9.30 a.m. to 1.30 p.m.
Topic	Issues in GST Annual Returns and GST Audit
Speaker	Eminent Faculty
Fees	For Members ₹ 500 & Non-Members ₹ 600
Venue	SNDT College, Liberty Garden, Malad West, Mumbai-400 064.

Saraswati Sanman & Diwali Get-Together

Venue	SNDT College, Liberty Garden, Malad West, Mumbai-400 064.
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Day & Date	Time
Sunday 18th November, 2018	5:30 p.m. Onwards

We will award 13th Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC member for outstanding performance in passing exams of SSC/HSC with 75% marks & above , to the students who have cleared graduation and post graduation professional exams like CA., C.S., C.W.A., MBBS, MBA, Engineers.

All members are requested to send attached form along with the certified marks sheets to Brijesh M. Cholera at Following address along with following details OR Scan copy of marks sheet & form mail to maladchamber@gmail.com on or before 4th November, 2018.

Form for 13th Dr. Bharat D. Vasani Saraswati Sanman Trophies

Member's Name:-.....
 Email ID:-

Mob. No.:-.....

Details of Student

FIRST NAME	MIDDLE NAME	SURNAME
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Male/Female:-.....

Age:-.....

Name of Exam Cleared:-.....

Year of Exam:-.....

Percentage:-.....

Name of School/College/Institution:-.....

Send it to Following address or else you can mail to maladchamber@gmail.com with scan copy of marksheet On or Before 4th November, 2018

Brijesh M. Cholera, Shop No. 4, 2nd Floor, The Mall, Station Road, Malad West, Mumbai 400064, Mumbai 400064, Tel: 022-28895161, Mobile: 7039006655

NOTE:- Application should be complete in all respect and the Form with the marksheet should reach us before the due date.

DIRECT TAXES – LAW UPDATE

Compiled by CA Haresh P. Kenia

1. Income Tax Return-Extension of Due Date of filling Income Tax Return for A. Y. 2018-19 (256 Taxman (st) 23)

The Central Board of Direct Taxes vide order no. 225/242/2018-ITA.II] dated:- 26-07-2018 extends the due date of filling Income Tax Return as prescribed in sec. 139(1) of the Act from 31-07-2018 To 31-08-2018.

2. Speculative Transactions u/s. 43(5) of the Income Tax Act – Notified Recognised Stock Exchange Sec. 43(5) – Explanation 1 proviso (d) of the Income Tax Act. (257 Taxman (st) 1)

The Central Government vide notification no. 35/2018 [F. No. 225/111/2018-ITA-11] dated 31-07-2018 notifies India International Exchange (IFSC) Limited, Gandhinagar, Gujarat (PAN: AAGCB8819B) as a recognised Stock Exchange for the purpose of 43(5) Explanation 1 Proviso (d) w.e.f. the date of publication of this notification subject to fulfilment of certain conditions in respect of trading in derivatives. Please refer to the above notification for conditions specified.

3. Speculative Transactions u/s. 43(5) of the Income Tax Act – Notified Recognised Stock Exchange Sec. 43(5) – Explanation 1 proviso (d) of the Income Tax Act. (257 Taxman (st) 2)

The Central Government vide notification no. 35/2018 [F. No. 225/111/2018-ITA-11] dated 31-07-2018 notifies NSE IFSC Limited, Gandhinagar, Gujarat (PAN:AAFNC4161P) as a recognised Stock Exchange for the purpose of 43(5) Explanation 1 Proviso (d) w.e.f. the date of publication of this notification subject to fulfilment of certain conditions in respect of trading in derivatives. Please refer to the above notification for conditions specified.

4. Tax Audit – sec. 44AB – Deferment of Clauses 30C (GAAR) and 44 (GST) of Form 3CD (257 taxman (st) 3)

The Board has clarified that Section 44AB of the Income Tax Act, 1961 read with rule 6G of the Income Tax rules, 1962 requires prescribed persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended vide notification No. GSR 666(E), dated 20th July, 2018 with effect from 20th August, 2018.

The matter has been examined and it has been decided by the Board vide circular no. 6/2018 [F. No. 370142/9/2018-TPL] dated 17-08-2018 that reporting under the proposed clause 30C and proposed clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2019. Therefore, for Tax Audit Reports to be furnished on or after 20th August, 2018 but before 1st April, 2019, the tax auditors will not be required to furnish details called for under the said clause 30C and clause 44 of the Tax Audit Report.

5. Section 270AA, read with section 271(1) (c), of the Income-tax Act, 1961-Under-reporting and Mis-reporting-penalty for – Clarification on immunity provided under section 270AA (257 taxman (st) 3)

Section 270AA of the Income-tax Act, 1961 (the Act) inter alia provides that w.e.f. 1st April, 2017, the Assessing Officer, on an application made by an assessee, may grant immunity from imposition of penalty under section 270A (not being penalty for misreporting) and initiation of proceedings under section 276C or section 276CC, subject to the conditions specified therein.

It has been clarified by CBDT vide circular no 5/2018 [F. No. 370149/155/2018-TPL] dated 16-08-2018 that where an assessee makes an application seeking immunity under section 270AA of the Act, it shall not preclude such assessee from contesting the same issue in any earlier assessment year.

This clarification is issued on the apprehensions that where an assessee makes the application have seeking immunity under section 270AA of the Act, and in the earlier year(s) penalty under section 271(1)(c) of the Act has been initiated on the same issue, the Income-tax Authority may contend that the assessee has acquiesced on the issue in such earlier year(s), by seeking immunity under section 270AA of the Act and therefore, take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act.

Further, the CBDT has clarified that Income Tax Authority shall not taken an adverse view in the proceedings for penalty under section 271(1)(c) of the Act in earlier assessment years merely on the ground that the assessee has acquiesced on the issue in any later assessment year by preferring an immunity on such issue under section 270AA of the Act.

6. Section 10A of the Income-tax Act, 1961 – Free Trade Zone – Computation of admissible deduction under section 10A (257 taxman (st) 4)

The CBDT vide circular No. 4/2018 [F. No. 279/MISC./140/2015/ITJ], dated 14-08-2018 clarifies as under:-

- It is clarified that freight, telecommunication charges & Insurance expenses are to be excluded from “Export Turnover” & “Total Turnover” while working out deduction admissible u/s. 10A of the Act to the extent their attributable to the deliver of the articles or things or computer software outside India.
- It is further clarified that expenses incurred in foreign exchange for providing technical services outside India are to be excluded from both “Export Turnover” & “Total Turnover” while computing deduction admissible u/s. 10A of the Act. Therefore, all charges/expenses specified in 10A explanation 2(IV) of the Income Tax Act are liable to be excluded from total turnover also for the purpose of computation of deduction u/s. 10A of the Act.

- It is further directed that no further appeals may be filled by the department on the above settled issue & those already filled may be withdrawn/not pressed upon.

The CBDT sought to issue clarification on the issue whether freight, telecommunication charges and insurance expenses are to be excluded from both "Export turnover" and "total turnover" while working out deduction admissible under section 10A of the Act on the ground that they are attributable to delivery of articles or things or computer software outside India has been highly contentious. Similarly, the issue whether charges for providing technical services outside India are to be excluded both from "Export Turnover" and "Total Turnover" while computing deduction admissible under section 10A of the Act on the ground that such charges are relatable towards expenses incurred in convertible foreign exchange in providing technical services outside India has also been highly contentious.

The controversy has been finally settled by the Hon'ble Supreme Court vide its judgment dated 24-04-2018 in the case of CIT, central-III v. M/s. HCL Technologies Ltd. [2018] 93 taxmann.com 33(SC). Please refer to the above citation for the extract of the judgement held.

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GST - VALUATION OF LAND IN CASE OF SALE OF FLAT

Compiled by CA Bhavin Mehta

Notification No. 11/2017 Central Tax (Rate) dated 28-06-2017 as amended prescribes rate of tax on services. Rate of tax on sale of under construction flat is 18% prescribed at serial No. 3. The said notification also stipulates one third deduction from the total value of flat where it involves transfer of land or undivided interest in land. Value of such transfer of land or undivided interest in land is deemed to be one third of the total amount charged for the flat.

Issues:

1. On sale of under construction flat with underlying land rights rate of GST (SGST + CGST) is prescribed @18% with 1/3rd deduction from the value of flat. In other words on such supply, tax is levied on 2/3rd value of flat. Does it imply tax is imposed on two third value of flat which consists of goods, services and land (interest in land)? If yes, then whether in case of leasehold land builder/developer can claim input tax credit of tax paid on lease charges [including tax paid on one time premium amount (as determined by Bombay High Court in the case of Builders Association of Navi Mumbai)]?

Comments: Sale of land is excluded from GST under Schedule III of the CGST Act, 2018. The subject notification provides levy of tax on sale of under construction flat @ 18% with lumpsum 1/3rd deduction from the value. The relevant provision of the Notification No. 11/2017 Central Tax (Rate) dated 28-06-2017 is reproduced below:

"2. In case of supply of service specified in column (3), in item (i); sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. – For the purposes of this paragraph, "total amount" means the sum total of,- (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease."

{emphasis supplied}

A statute is to be construed according to the intent of them that make it and the duty of judicature is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the legislature. It is therefore important to derive the conclusions, respecting subjects that lie beyond the direct expression of the text of the said notification.

In the present facts, the subject notification states the value of land shall be deemed to be one third of the total amount charged for sale of flat. Sale of land is excluded from the levy of GST. The true intention appears to be one third deduction provided in the notification is towards land. In other words tax is not leviable on land or interest in land in terms of subject notification.

Once it determined one third deduction is granted for land which includes even the leasehold land corresponding input tax credit on lease charges of land cannot be claimed.

2. Whether the 1/3rd deduction is the only option for assessee to discharge tax on two third value of flat. In other words whether it is mandatory to discharge tax @18% on two third value of flat?

Comments: One third deduction towards land is presumptive. A presumptive deduction can never be classified as mandatory or else it would be ultra vires the provision of the law. Therefore, it can be concluded that forcing appellant to a particular adhoc value would be violative of the provisions of the GST Act, 2017.

In *Wipro Ltd. vs. AC 2015 (319) ELT 177 (S.C.)*, the appellant presented a Bill of Entry No. 15020 dated 15-04-1993. The chargeable weight of the consignment was 315 kgs and the actual loading, unloading and handling charges amounted to ₹ 65.40 paisa as per the tariff of the International Airport Authority of India, Madras (now Chennai). However, the Customs Authorities, on the

basis of the notification added a sum of ₹ 15,214.69 paisa to the value of the goods as handling charges as the provision entitles the authorities to add 1% of the F.O.B. value of goods on account of loading, unloading and handling charges. The actual duty charged, as a consequence of addition of the notional handling charges, amounted to ₹ 16,209.20 paisa instead of ₹ 69.98 paisa. The Hon'ble Supreme Court struck down ad hoc values adopted by the rules when the section itself talks of transaction value and held as under:

"We are also of the opinion that when the actual charges paid are available and ascertainable, introducing a fiction for arriving at the purported cost of loading, unloading and handling charges is clearly arbitrary with no nexus with the objectives sought to be achieved. On the contrary, it goes against the objective behind Section 14 namely to accept the actual cost paid or payable and even in the absence thereof to arrive at the cost which is most proximate to the actual cost. Addition of 1% of free on board value is thus, in the circumstance, clearly arbitrary and irrational and would be violative of Article 14 of the Constitution.

We find that the High Court, instead of examining the matter from the aforesaid angle, has simply gone by the powers of the rule making authority to make Rules. No doubt, rule making authority has the power to make Rules but such power has to be exercised by making the rules which are consistent with the scheme of the Act and not repugnant to the main provisions of the statute itself. Such a provision would be valid and 1% F.O.B. value in determining handling charges etc. could be justified only in those cases where actual cost is not ascertainable."

The option remains with the assessee as to whether they want to claim actual deduction or opt for presumptive deduction specified under subject notification. The method of collection or the manner of collection may be prescribed either under the Act or under the rules. One third deduction provided under notification is for those assessee who are unable to compute the actual value of construction. This does not however mean it would have blanket application to all assessee including those who want to avail deduction on actual basis. The machinery provision provided in notification for determining value of supply, taking into consideration the administrative convenience cannot be considered to preclude the right of the assessee to claim deduction at actual.

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SYNOPSIS OF GST NOTIFICATION AND CIRCULARS

Compiled by CA Brijesh M. Cholera

NOTIFICATION

39/2018-CENTRAL TAX DT. 4-9-2018

Notified amendments in GST rules, Amendments done in Rule 22(4) cancellation of registration, Rule 36(2) Documentary requirements and conditions for claiming input tax credit, Rule 55(5) Transportation of Goods without issue of Invoice, Rule 89(4) Application for refund of tax, interest, penalty, fees or any other amount, Rule 138A(1) Documents and devices to be carried by a person-in-charge of a conveyance, Rule 96(10) Refund of IGST on goods exported out of India. Form No. GST REG-20 & Form No GST ITC-04 substituted, FORM GSTR-9 (Annual return) and Form GSTR-9A (Annual Return for composition Tax Payer) notified.

40/2018-CENTRAL TAX DT. 4-9-2018

The Commissioner hereby extends the time limit for making the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker, during the period from July, 2017 to June, 2018 till the 30th day of September, 2018.

41/2018-CENTRAL TAX DT. 4-9-2018

The Central Government hereby waives the late fee paid by

- (i) Registered person whose return in Form GSTR-3B for the month of October 2017 was submitted but not filed on common portal after generation of ARN.
- (ii) Registered person who have filed the return in Form GSTR-4 for the period October to December, 2017 by the due date but late fees erroneously levied on the common portal;
- (iii) the Input Service Distributors who have paid the late fee for filing or submission of the return in FORM GSTR-6 for any tax period between the 1st day of January, 2018 and the 23rd day of January, 2018.

42/2018-CENTRAL TAX DT. 4-9-2018

The Commissioner hereby extend the time limit for making the declaration for claim of Input Tax Credit u/Sec 18(1) in Form GST ITC-01 by the registered person who have filed the application for withdrawal from composition Levy in form GST CMP-04 between 2-3-2018 to 31-3-2018 for 30 days from the date of publication of this notification in Official Gazette.

43/2018- CENTRAL TAX DT. 10-9-2018

The Commissioner hereby extends the due date for furnishing the quarterly return in Form GSTR-1 for the quarters from July-2017 to September-2018 is 31-10-2018, for Oct to Dec-2018 due date is 31-1-2019 and for January-2019 to March-2019 due date is 30-4-2019.

For registered persons in the State of Kerala, registered persons whose principal place of business is in Kodagu district in the State of Karnataka; and registered persons whose principal place of business is in Mahe in the

Union territory of Puducherry shall furnish Form GSTR-1 for the quarter July-2018 to September-2018 on or before 15-11-2018.

For Tax payer who have obtained GSTIN (migrated taxpayers who received provisional IDs but could not complete the migration process) as per Notification 31/2018 due date for GSTR-1 for the quarters from July-2017 to September-2018 is 31-12-2018.

44/2018- CENTRAL TAX DT. 10-9-2018

The Commissioner hereby extends the due date for furnishing the monthly return for the month from July, 2017 to September-2018 is 31-10-2018 and for the month from Oct-2018 to March-2019 is 11th day of succeeding month.

For Tax payer who have obtained GSTIN (migrated taxpayers who received provisional IDs but could not complete the migration process) as per Notification 31/2018 due date for GSTR-1 for the months from July-2017 to November-2018 is 31-12-2018.

45/2018, 46/2018 & 47/2018- CENTRAL TAX DT. 10-9-2018

The commissioner hereby amends the notification No. 21/2017 dated 8-8-2017, 56/2017 dated 15-11-2017, 35/2017 dated 15-9-2017, 16/2018 dated 23-3-2018 and 34/2018 dated 10-8-2018 there by extend the due date for Tax payer who have obtained GSTIN (migrated taxpayers who received provisional IDs but could not complete the migration process) as per Notification 31/2018 for GSTR-3B for the months from July-2017 to November-2018 is 31-12-2018.

48/2018- CENTRAL TAX DT. 10-9-2018

The Central Government hereby amend the rule 117 by inserting sub rule 1A thereby giving power to commissioner to extend the due date for submitting declaration in Form GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.

Consequently amend the condition to satisfy to avail the credit proviso inserted that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by 30th April, 2019.

Rule 142 sub rule 5 amended there by summery order passed as per Section 125 any person, who contravenes any of the provisions of this Act or any rules made there under for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

49/2018-CENTRAL TAX DT. 13-9-2018

The Central Government hereby amends the rule and thereby notifies form No. GSTR-9C Reconciliation Statement require to file by every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal.

50/2018- CENTRAL TAX DT. 13-9-2018

The Central Government hereby appoints the 1st day of October, 2018, as the date on which the provisions of section 51 (Tax Deduction at Source) shall come into force with respect to persons specified under clauses (a), (b) and (c) of section 51(1) and the persons specified below under clause (d) of sec 51(1), namely:-

- (a) an authority or a board or any other body,
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government,

With fifty-one per cent. or more participation by way of equity or control, to carry out any function;

- (b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- (c) Public sector undertakings.

51/2018-CENTRAL TAX DT. 13-9-2018

The Central Government appoints the 1st October, 2018 is the day for Section 52 thereby every electronic commerce operator, not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

52/2018-CENTRAL TAX DT. 20-9-2018,12/2018 & 13/2018-UNION TERRITORY TAX DT. 28-9-2018 AND 2/2018-INTEGRATED TAX DT. 20-9-2018.

The Central Government hereby notifies that w.e.f. 1-10-2018 every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of half per cent. of the net value of intra-State or intra Union Territory (without legislature) taxable supplies and One percent for Interstate or Inter Union Territory (without legislature) taxable supply made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator.



23/2018-Central Tax (Rate), 24/2018-Integrated Tax (Rate), 23/2018- Union Territory Tax (Rate) dt. 20-9-2018

Explanation inserted in the notification regarding the exemptions on supply of services, thereby exemption was granted to one time premium /salami charged by state government Industrial Corporation or undertaking for leasing of industrial plots .Explanation clarify that the Central Government, State Government or Union territory shall have 50 per cent. Or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory

CIRCULAR

Circular No. 57/31/2018-GST dt. 4-9-2018

Clarification given regarding certain issues for scope of Principal-agent relationship in the context of Schedule I of the CGST Act.

Circular No. 58/32/2018-GST dt. 4-9-2018

Specified the process of recovery of arrears of wrongly availed CENVAT credit under the existing law and CENVAT credit wrongly carried forward as transitional credit in the GST regime.

Circular No. 59/33/2018-GST dt. 4-9-2018

Clarification given on refund related issues.

Circular No. 60/34/2018-GST dt. 4-9-2018

Specifies the manner and procedure for filing and processing of such refund claims by Canteen Store Department (CSD).

Circular No. 61/35/2018-GST dt. 4-9-2018

Clarification issued regarding E way bill in case of storing of goods in godown of transporter.

Circular No. 62/36/2018-GST dt. 12-9-2018

Clarified the mechanism for discharge of tax liability on trading of Priority Sector Lending certificate (PSLC) for the period 1-7-2017 to 27-5-2018 that GST on PSLCs for the period 1-7-2017 to 27-05-2018 will be paid by the seller bank on forward charge basis and GST rate of 12% will be applicable on the supply.

Circular No. 63/37/2018-GST dt. 14-9-2018

Clarification issued regarding the detailed procedure for filing and processing of refund applications by UIN entities (Embassy/ Mission/Consulate/United Nations Organizations/Specified International Organizations)

Circular No. 64/38/2018-GST dt. 14-9-2018

Imposition of penalty in case of minor discrepancies in the details mentioned in the e-way bill although there are no major lapses in the invoices accompanying the goods in movement, in order to clarify such issues modification given in the procedure for interception of conveyances for inspection of goods in movement, and detention release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST dated 13-04-2018 and 49/23/2018-GST dated 21-06-2018

Circular No. 65/39/2018-GST dt. 14-9-2018 & 67/41/2018-GST dt. 28-9-2018

Guidelines issued for deductions and deposit of TDS by the DDO under GST.

Circular No. 66/40/2018-GST dt. 26-9-2018

Clarification issued regarding applicability of GST on residential programmes or camps meant for advancement of religion, spirituality or yoga where the fee charged includes the cost of boarding and lodging.



JUDICIAL JUDGMENTS

Compiled by CA Rupal Shah

Pr. CIT vs. Tops Securities Limited, Bombay High Court, [2018] 97 taxmann.com 525 (Bombay), 10 September 2018

Service tax liability cannot be disallowed u/s. 43B where the assessee has not received the amount on which service tax was payable.

Facts of the case:

The assessee is engaged in the business of providing detection and security services to its clients. The assessee disclosed certain service tax liability in its balance sheet of which only a part was disallowed in the income tax return.

The assessee stated that the gross receipts include the service tax amount. However, it is paid only when the amount is realised from the client. The liability against which receipts are not received from the clients are shown in balance sheet on liability side.

AO added the entire service tax liability to the income under the provisions of Section 43B.

On further appeal, CIT(A) and ITAT held in favour of the assessee.

The Hon'ble High Court observed that:

This matter is already dealt with in CIT v. Ovara Logistics (P) Ltd. [2015] 58 taxmann.com 206/232 Taxman 240/377 ITR 129 (Bom.)

Section 43B does not contemplate liability to pay service tax before actual receipt of the funds in the account of the assessee. Hence the liability to pay service tax into the Treasury will arise only upon the assessee receiving the funds and not otherwise. The consideration has to be actually received and thereupon the liability will arise.

Hence, the appeals were dismissed, and lower bench Judgement upheld.

Devarsh Pravinbhai Patel vs. ACIT, Gujarat High Court, Civil Appeal No. 12965 of 2018 and 12966 of 2018, 24 September, 2018

If the deductor has deducted TDS and issued Form 16A, the deductee should be given credit even if the deductor has not deposited the TDS with the Government revenue

Facts of the case:

The Assessee was a pilot of King Fisher Airlines. He had filed return for the AY 2012-13 with total TDS on Salary of ₹ 2,68,498/.

The employer has deducted tax at source while paying Salary to the assessee but the same was not deposited in to Government Treasury. As a result, the AO disallowed the claim of TDS and imposed an equal demand with applicable interest.

Hon'ble High Court observed that:

The assessee had already suffered the deduction of tax, the mere fact that the deductee did not deposit such tax with the Government Revenue could not permit the Income-tax Department to recover such amount from the assessee.

The court referred to the decisions in case of *Sumit Devendra Rajani vs. ACIT*, (2014) 49 taxmann.com 31, *Gujarat High Court and ACIT vs. Om Prakash Gattani*, (2000) 242 ITR 638 Bombay High Court.

Thus, after referring to the above two judgements and Section 205, the court held that, credit of the tax deducted at source for which form no. 16 A have been produced by the assessee cannot be denied by the Department.

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