A S C O

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SERVICE TAX COUNSELLOR

(AN INHOUSE NEWSLETTER ON INDIRECT TAXES)

(FOR PRIVATE CIRCULATION)

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EDITORIAL BOARD

The Editor's Desk

Dear Readers,

Service Tax is today relevant to the extent of pending adjudication proceedings, audit paras and litigation before different forums. In many cases of search and investigation, show cause notices are yet to be issued.

Though the speed of disposal of cases has picked up, the quality of orders and the manner in which these are being disposed off is a challenge. The fear is that with the same pace, litigation will mount. If the assessee does not get relief, he will certainly approach the appellate authorities. Today in Service Tax, in general, adjudication is a mere formality and SCN's are being decided without really going into the merit in the manner desired. Many refund claims are also rejected without any logical or sustainable basis. CBEC should immediately issue specific directions to officers to follow precedence, not to ignore factual matrix and be reasonable in deciding adjudication matters.

The next Union Budget is round the corner and nothing much is expected on Service Tax front. However, it would be welcome if an easy amnesty scheme is introduced for a short period to get rid or pending back log wherein a balanced approach may be adopted to reduce disputes and settle demands.

There is no reporting of Service Tax dues paid after 30.06.2017 by taxpayers in present GST regime. A small and simple reporting / declaration may be asked to be filed failing which Government will have no track of tax not collected and so forgone.

1st February, 2018 is going to be crucial for one more reason besides Union Budget – e-way Bills which will be introduced across country. This issue of Service Tax Counsellor is commended to readers as an updater, even though it may not be leviable now. We intend to enhance contents of legal updates in times to come.

Date: 15.01.2018 DR. SANJIV AGARWAL

GST CORNER

GST LAWS NEED TO UNDERGO CHANGE

Union Budget 2018-19 is just a fortnight away from now and there is one school of thought which say that Budget will not contain GST proposals.

My understanding is that it will contain GST proposals too, if needed. There is no legal or constitutional bar which prevents Union Government to not have GST proposals in Budget. If Budget (Finance Bill) can have proposals for amendment to Customs, Excise, Service Tax, CST or Income Tax provisions, GST is no different.

Any change to GST laws (CGST / UTGST / IGST Acts) and Sate Compensation law has to be passed by the Parliament which alone is empowered to legislate. The only pre-requisite for GST is that GST Council has to recommend such changes. It is important that next week's meeting of GST Council on 18 January, 2018 is going to be crucial which may recommend certain changes to GST laws.

If grapevine is to be believed, there could be proposals on inclusion of real estate, natural gas etc in GST, making compliances and returns related provisions simpler, streamlining of input tax credit etc. Certain definition for supply, input services etc may undergo a change. Charging section may also be tinkered with for reverse charge provisions and e-commerce transactions.

So far as GST rates are concerned, the case is ripe for a three-tier tax rates by merging the two rates of 12% or 18%. It could be 12% or 18% or both rates could be converged into a common tax rate of, say, 15 percent. While a rate of 15% may be welcomed by service providers in general which would imply going back to Service Tax times as far as tax rate in concerned but a well planned balancing act would be needed in case of goods.

However, Government and the GST Council should also decide not to tweak tax rates off and on but may fix a fixed date (may be once in a quarter) when any such tax rate change be attempted to in future. This would only add to efficient compliances. Compensation cess also needs to be rationalized for motor vehicles and used goods / vehicles in particular.

We should not forget that GST law is going to enjoy status of work-in-progress for few years. All eyes are now on 18th January when country looks keenly to GST Council meeting which may be a trailer before main Budget. Elections or no elections, it is hoped that collective wisdom would look at country's economic interests and also balance the ease of doing business. It's not time to play politics for now. We had it enough.

SERVICE TAX

SINGLE GST FORM LIKELY FOR SERVICE PROVIDERS

Service providers such as telcos, banks, insurers and airlines may need to file just one centralised form in respect of the goods and services tax (GST), which will substantially ease the compliance burden on service providers with a multi-state footprint. The GST Council is expected to consider on January 18 significant relaxation in the law and procedures, including a centralised registration facility to make compliance easier. It will also consider changes to input tax credit regime to allow credit for tax paid on rent a cab services, benefiting IT and ITES companies such as Infosys, Wipro and Genpact.

Council has a heavy duty agenda lined up.... A number of issues dealing with compliances are likely to be taken up," said a government official privy to the deliberations. A panel set up by the GST Council has suggested modifications in the provisions of the law and relaxations in some procedures to ensure ease in compliance.

It has recommended centralised registration and centralised form for service providers who have registration in 10 states or more with an annual turnover of Rs 500 crore. At present, service providers have to register in each state and file separate returns, a major grouse of the industry that only had to deal with Centre earlier.

Centralised registration is needed to reduce the compliance requirement of industry, given that mechanisms can be worked out to safeguard the revenue of individual states using the IGST mechanism. Sapra said in case there is no agreement on centralised registration, then a Large Taxpayer Unit type structure could be considered for centralised processing of returns for assessment and audit.

India had rolled out GST, replacing multiple state and central taxes, from July 1. Subsequently, a number of changes were made in the framework including cut in tax rates on key household items and restaurants and simpler compliances for small businesses especially under the composition scheme.

The GST Council had also set up a panel - the law review committee - to look at the feedback from industry following complaints of burdensome compliance. A separate panel comprising industry representatives was also set up to relook at procedures and rules and suggest a way forward. Recommendations of this group were taken up by the law review committee.

The law review committee has also suggested changes to the input tax credit framework to ensure that some of the inputs are allowed as a credit. Some of these include expenses incurred on employees such as rent a cab service used extensively by the IT and IT services sector. In an ideal GST system, input credit should be available with respect to all business expense. Therefore, liberalising the credit regime is step in the right direction.

This will particularly provide relief to IT/ITES sector who typically have large work force working in multiple shifts. Jain said the GST Council should also consider allowing input credit on all other employee-related expenses such as insurance and canteen.

(SOURCE: ECONOMIC TIMES DATED 16.01.2018)

THE CASE FOR A SPECIAL UK HEALTH SERVICE TAX

In the end, British prime ministers embrace foreign affairs as an escape from the pettifogging chore of domestic politics. The glamour and decorum offers relief from their rough treatment at home. Theresa May's premiership inverts the rule. It is foreign affairs, in the shape of Brexit, that constitute the stress. Domestic politics supplies the escapism. She might be the one person in the land who can find solace in the opening news stories of 2018: the old reliables of rail ticket inflation and strains in the National Health Service. The year could be 2004 or 1995 or 1988.

The trouble is that familiarity has not bred progress. Even as NHS crises come around like comets, the ritual is the same each time. Producer interests want more money. Ministers want structural reform. The difference is split and the NHS creaks arthritically on. (The third option, of rationing some services, namely the expensive treatment of people with not long to live, is too dark to entertain.)

If anything feels different this time, it is the momentum behind the idea of a dedicated NHS tax. Mrs May was asked about it in a television interview. She was doubtful but some Conservatives, such as the former cabinet member, like the idea. Other admirers include the LSE professor Richard Layard, who sits as a Labour peer in the House of Lords, and Nicholas Macpherson, once permanent secretary of the sceptical Treasury.

None of them pretend that hypothecation is a technical solution. It does not retard the ageing of the population or the constant manufacture of brilliant but costly treatments. These realities test healthcare systems throughout the rich world, including America, where health expenditure nears a fifth of gross domestic product.

What a separate tax might change is the politics. At the moment, words are cheap. Voters can tell surveys that more should be spent on healthcare, but hope the money comes from general government expenditure or borrowing. The NHS itself can nod along to the idea of reform, knowing the public will not apply much pressure. A tax would force voters to decide exactly how much they are willing to pay. By confronting them with the cost of a service they now pretend is "free", it might also encourage them to insist on value and reform.

Producers and reformers are both right. The NHS is under-funded by rich-world standards. It also contains inefficiencies that would be quaint if the cost was not human life. A dedicated tax would advance both causes. It would also force candour on politicians. At campaign time, those who pledge more money for the NHS would be pledging a tax rise. Those who wanted a freeze, cut or slower rise in the tax would have to explain how the NHS would withstand the shortfall.

And both would have to reckon with the views of different voting blocs. The British sometimes think of the NHS like the Nato security umbrella, as something that benefits all citizens equally. A dedicated tax would bring out the distributional vagaries that exist in practice. A young single person can go years without any interaction with a doctor. Others the old, parents of young children — are in and out of hospitals all the time.

If this sounds like the politicisation of the NHS, that is not a fatal argument. It is the absence of politics that allows us to mysticise the NHS as a benevolent spirit, rather than as a system with inputs, outputs, trade-offs, relative winners, relative losers and, above all, a huge bill. There is nothing like putting a number on it to encourage hard-headed thought.

The Treasury is generally right to mistrust hypothecation for its inelegance and its denial of ministerial discretion. Its spread to other areas would paralyse Government. Even the advocates disagree on whether a specific tax should fund the whole service or be supplemented by general government revenue. The only consensus is on a five-year funding cycle. All the same, curiosity about the idea has grown since the previous winter crisis. Healthcare is a unique case. Voters consistently rate it above other issues, give or take immigration. It becomes more expensive all the time in a way that education, say, does not. There is also a recent precedent for hypothecation: in 2002, the then Labour Government levied an extra penny on national insurance to fund the NHS.

Even with a special NHS tax, a winter crisis will happen again. But in place of generalized angst, the debate would have shape: how much more should we pay over the next five years, in return for what kind of change. Like adults, we would make our choices and live with them.

(*SOURCE: FINANCIAL TIMES DATED 08.01.2018*)

TELECOM SERVICES COST MAY RISE BY 10% IN ABSENCE OF TAX RELIEF

Telecom body TAIPA expects 50,000 mobile tower installations in coming fiscal with considerable tax implications and in absence of concessions from the Government, cost of mobile services may become dearer by 10 per cent. The passive infrastructure industry is expecting to install around 50,000 towers during coming fiscal year and the taxes paid on each tower is around Rs 1-1.5 lakh. This could result in increase in cost of providing the telecom service by approximately 10 per cent, TAIPA Director General said in a letter to Central Board of Excise and Customs Chairperson.

The Tower and Infrastructure Providers Association (TAIPA) has sought extension of some tax benefits that are granted to some non-telecom infrastructure firms and amendments in Goods and Services Tax. The industry body sought inclusion of telecom tower in the definition of plant and machinery for the purpose of input tax credit, extension of deduction allowed under under Section 35AD of the Income Tax Act to telecom infrastructure firms for investment made on procuring equipments manufactured in India, levying of GST on transaction value of scrap such as battery banks, air-conditioners, diesel generators etc.

Telecom infrastructure body, whose members include Bharti Infratel, Indus Towers, ATC etc has asked the government to apply same interest rate as paid on delay of tax refund by the Government and charge by it for delay of tax payment made by the assessee. The mobile tower companies have invested over Rs 2.5 lakh crore to set-up over 4.5 lakh towers in the country and makes a direct contribution of more than Rs 5,000 crore annually in corporate income tax and service tax.

Further, our industry invests more than Rs 10,000 crore annually in equipments manufactured in India like towers, shelters, batteries, air-conditioners, DG sets, power management systems etc. TAIPA has sought Krishi Kalyan Cess (KCC), Education Cess(EC), and Secondary and higher education Cess (SHEC) to be used as any other credit of excise or service tax under the GST regime, as the law provides carry forward of Cenvat Credit. In the previous indirect tax regime, EC, SHEC and KKC were covered under the definition of Cenvat credit, the letter said. The mobile tower body has sought clarity on rate applicable for debit and credit notes pertaining to invoices raised during the pre-GST period, and demanded that the applicable tax rates should be at the same rate at which invoice was raised to avoid undue tax benefit.

(*SOURCE: ECONOMIC TIMES DATED 09.01.2017*)

LANDLORD TO PAY SERVICE TAX

The Supreme Court ruled last week that service tax should be paid by the lessor of an immovable property who let it out to the lessee and not the latter. The Calcutta High Court had taken the opposite view in the case, Union of India *vs.* Bengal Shrachi Housing Development Ltd. The Government was paying the firm ~16 lakh a month for an accommodation for the Indian Coast Guard. When it came to payment of service tax, there was a dispute on who would pay it. The Calcutta High Court held that the liability to bear service tax being that of the recipient of the service, the government would be liable to pay the said tax. The government appealed to the Supreme Court. It noted the provisions of the Finance Act 1994 which introduced service tax and agreed with the government that the lessor has the liability. But the Government's victory was hollow because, meanwhile, it had written to the chief of the Coast Guard that it would pay service tax and other duties. Thus the government won on law but lost on the basis of the letter.

(*SOURCE: BUSINESS STANDARD DATED 13.11.2017*)

GOODS AND SERVICE TAX UPDATE

"OUR EXCLUSIVE NEWS LETTER ON GOODS AND SERVICE TAX, *'GST COUNSELLOR'* WHICH WAS LAUNCHED IN JULY 2015 IS NOW RELEASED ON 1ST, 11th AND 21st OF EVERY MONTH"

For subscription, send a request at ascogst@gmail.com

For more updates on GST, log on to www.gstcounsellor.com

CASE STUDIES

CHARGE OF LEVY OF TAX

- In *Coimbatore Corporation Contractors Welfare Association v. State of Tamil Nadu and others (2017) 10 TMI 783 (Madras)*, where the assessee was engaged in works contract and it pleaded for the agreements which were executed prior to 01.07.2017 that GST cannot be imposed and only 2% VAT is applicable, Court directed to the Commissioner of Commercial taxes to consider the representation given by the assessee and pass orders within a period of four weeks from the date of receipt of a copy of the High Court. The writ petition was allowed by way of remand.

- In *Jindal Dyechem Industries (P) Ltd. v. Union of India & Others (2017) 10 TMI 693 (Delhi),* where the assessee imported gold bars, it was held that in view of the CBEC press release dated 6th October 2017, which *prima facie* makes no distinction as regards the Advance Authorizations (AA) issued prior to or after 1st July 2017, the assessee shall not be required to pay IGST in respect of the imported gold bars by it, in terms of the AAs issued to it. Such interim relief was granted subject to the assessee furnishing to the Respondent authorities a letter of undertaking that the clearance of the imported goods in terms of the AA will be subject to the final result of the present petition.

GOVERNMENT'S INK

F. No. 01 (04)/Regional Bench/CESTAT/2015 CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL West Block No. 2, R.K. Puram, New Delhi-110066

PUBLIC NOTICE No. 1/2017 dated 17.11.2017

In order to implement Notification No. 1/2017 dated 10.10.2017, it is clarified that the procedure shall be as under:

(1) The applicant with the reasons will move an application before the Senior Member Incharge of the Bench, but after obtaining No Objection Certificate/ endorsement to this effect, from the opposite party or its authorised representative.

(2) After receiving the application, the Senior Member Incharge will forward the same with his comments to the Hon'ble President for administrative approval.

(3) After the approval, the Registry will transfer the record and list the matter in due course before the Principal Bench for appropriate order.

This issues with the approval of the Hon'ble President, CESTAT

(Mohinder Singh)
Deputy Registrar (Judicial)

OBLIGATIONS UNDER SERVICE TAX

Assessees should make payment of Service Tax collected after 1st July, 2017 in the GST regime where tax was being paid on collection basis earlier. However, presently there is no stipulation on filing of return of service tax for such payments. Non-payment would attract interest as well as penal provisions.

SERVICE TAX MATTERS

QUERY:
What receipts were included in director's services for levy of Service Tax ?

REPLY:
So far as payment to directors towards their services is concerned, value of services shall include:

- director's fee, by whatever name called
- commission based on profits or otherwise
- bonus
- value of service for company car provided
- share in profit
- benefit in form of ESOPs etc.
- travel reimbursements.

However, reimbursement of expenses in terms of contractual obligations may not be taxable if they fall within the scope of 'reimbursements' and 'pure agents' as per Service Tax (Determination of Value) Rules, 2006.

The following amounts received by the directors from the company will not attract Service Tax as such amounts does not represent service provided by directors:

(i) interest on loan by director to company
(ii) dividend on shares
(iii) other professional charges on account of services not rendered as a director (in professional capacity)

Do you have any doubt or query on Service Tax? Why not seek an expert reply from STC. Email your query to asandco@gmail.com.

LITERATURE

- GST –Anti-profiteering measures – Composition and scope of National Anti-Profiteering Authority – Ramesh Chandra Jena, GSTL, Vol. 6 : Issue 5, dated 30.11.2017.
- GST –Valuation of taxable supply – Debashis Mishra, GSTL, Vol. 6 : Issue 5, dated 30.11.2017.
- 'Privity of Contract' and classification of 'Goods Transport Agency' under GST : Drawing lessons from recent ECJ decision – Tarun Jain, GSTL, Vol. 7, Issue 3, dated 21.12.2017.
- Goods Transport Agency (GTA) in GST regime an overview – Ramesh Chandra Jena, GSTL, Vol. 7, Issue 3, dated 21.12.2017.
- Special Audit under GST - Dr. Sanjiv Agarwal, www.taxmanagementindia.com, dated 07.01.2018.
- Understanding basics of E-way Bills – Dr. Sanjiv Agarwal, Business Advisor, dated 10.01.2018.
- GST laws need to undergo change – Dr. Sanjiv Agarwal, www.taxguru.co.in, dated 12.01.2018.

PROGRAMME	:	Workshop on GST Law
DATE	:	17/01/2018
TIME	:	2.00 p.m. to 6.00 p.m.
TOPICS	:	Issues in Transitional Provisions
VENUE	:	GSTPAM, Mazgaon Library, 1st Floor, 104, Vikrikar Bhavan, Mazgaon, Mumbai
ORGANISED BY	:	The Institute of Chartered Accountants of India (WIRC)

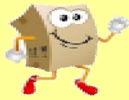
SERVICE TAX COMPLIANCE TIP!

Continue to pay your old Service Tax billed / due as and when received now as that liability does not extinguish in GST regime.

QUOTE TO FOLLOW!

If you have a garden and a library, you have everything you need.

\- *Cicero*



Humor

Adjudication

Chief	:	Your revenue targets are not met. What are you doing ?
Adjudicating officer	:	Sir! What to do !! Assessee's take adjournments and I am not able to complete assessments
Chief	:	But the other officer has no such issue. How does he do
Adjudicating officer	:	Very simple, he passes all orders *ex-partie* which are appealed
Chief	:	He is a good officer ! We at least get mandatory pre-deposit, ... and disposal also goes up.

KNOWLEDGE HUB

VASANT PANCHAMI IS ON 22 JANUARY, 2018

- *Vasant Panchami,* also spelled Basant Panchami, is a Hindu spring festival. It is observed on the fifth day of the Indian traditional calendar month of Magha, which typically falls in the Gregorian months of January or February.

- The festival is celebrated in various ways depending on the region. Many revere goddess Saraswati, the Hindu deity of learning, arts and music. She is celebrated with visits to her temples, by playing music, as well as the day when parents sit down with their children, initiate them into writing letters of alphabet or study together.

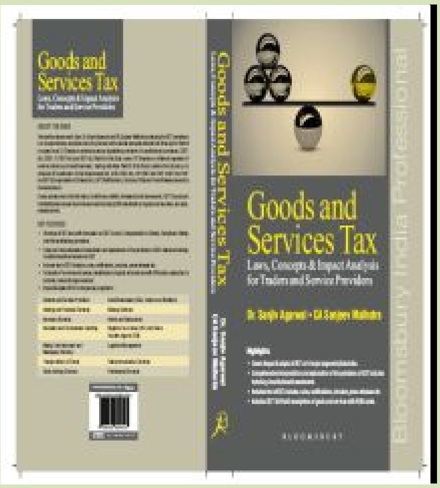
- Others mark it as the festival of god Kama, the Hindu deity of love, by remembering the loved one particularly one's spouse or special friend, celebrating it with spring flowers. Its link with the god of love and its traditions have led some scholars to call it "a Hindu form of Valentine's Day". Others wear yellow clothes and eat yellow rice to emulate the yellow mustard (sarson) flower fields, or play by flying kites.

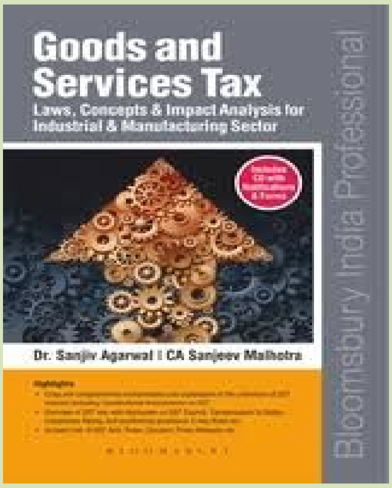
- The Vasant Panchami also marks the start of preparation for Holika bonfire and Holi, which occurs forty days later.

ANNOUNCEMENTS

SNOW WHITE ANNOUNCES!
UPDATED BOOK ON SERVICE TAX (Upto 31.03.2017)

NEW BOOKS ON GST FROM BLOOMSBURY





ANNOUNCEMENTS
FOR EXCLUSIVE AND IN HOUSE
SEMINAR / WORK SHOP
ON
GOODS AND SERVICE TAX (GST)
CONDUCTED BY
DR. SANJIV AGARWAL (FCA, FCS)
PLEASE CONTACT AT:
asandco@gmail.com
ascogst@gmail.com

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