



ASCO'S  
SERVICE TAX COUNSELLOR  
(AN INHOUSE NEWSLETTER ON INDIRECT TAXES)  
(FOR PRIVATE CIRCULATION)

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## The Editor's Desk



Dear Readers,

As we approach the end of yet another calendar year, 2017, we find that there may not be much in store on Service Tax front. 2017 has been a land mark year for Service Tax as it even made Service Tax a history and India turned to goods and service tax which is undoubtedly a hall mark tax reform. Despite its initial hick-ups, GST shall gain momentum and people will get used to it. Also, while Service Tax will continue to be administered for few more years for pending adjudications and appellate matters, in cases of suppression and tax evasion too, some action may be warranted. It is high time that the Government gear up its tax administration and expedite the disposal of pendency. However, such disposal ought to be logical, just and equitable so that it does not add to more burden at appellate level.

In the 22nd monthly GST Council meeting, Finance Minister had declared that the e-way bill be introduced across India in a staggered manner from January 1, 2018 and the document will be made compulsory by April 1 next year. The GST Council seems all set to rollout the electronic-way bill under the Goods and Services Tax (GST) regime from 1<sup>st</sup> February, 2018 as decided today by GST Council.

We wish one and all a merry Christmas.



Date: 16.12.2017

DR. SANJIV AGARWAL



# GST CORNER

## Lower GST on Real Estate



### Clarification about applicability of GST on Under Construction and Ready-To-Move-In Property

As per GST law, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier, is a supply of service and liable to GST.

- Sale of building is an activity or consideration which is neither a supply of goods nor a supply of services (Para 5 of schedule III of the CGST Act, 2017).
- It flows from the above facts that, **sale of ready-to-move-in or completed property does not attract GST.** GST is payable only on under construction property as discussed below.

Property for which completion certificate has been issued	Under Construction Property	
	Entire consideration has been paid to the builder before 1 <sup>st</sup> July, 2017	Part consideration has been paid to the builder before 1 <sup>st</sup> July, 2017
No GST is applicable on ready-to-move-in or completed property as per para 5(b) of Schedule II of CGST Act, 2017.	There is no GST payable on such property even if the construction is completed after 1 <sup>st</sup> July, 2017. This transaction will attract Service Tax at the rate of 4.5% because as for the Point of Taxation Rules, 2011 applicable to Service Tax, where the invoice was raised or payment made prior to the appointed date under GST, the point of taxation arose before the appointed day and thus such transaction attracts Service Tax and not GST.	4.5% of Service Tax is applicable on the invoices raised or consideration paid before the 1 <sup>st</sup> July, 2017. However, payment, made by the buyer to the builder on or after 1 <sup>st</sup> July, 2017 against invoices issued on or after 1 <sup>st</sup> July, 2017 shall attract GST @12%.

**RATE OF GST**

Effective rate of GST payable on purchase of under construction residence or commercial properties from a builder involving transfer of interest in land or individual share of land to the buyer, is 12% with full Input Tax Credit (ITC). [GST payable @ 18% on 2/3rd of the amount for the property; 1/3rd of the amount having been deemed as value of land or undivided share of land supplied to the buyer.]

Consideration which doesn't constitute transfer in land or undivided share of land as part of consideration, such as construction services provided by a sub-contractor to the builder, attracts GST at the standard rate of 18% with full ITC.

# SERVICE TAX

## MAJOR RELIEF FOR IT FIRMS: GOVT SETS ASIDE RS 10K-CR SERVICE TAX DEMAND

In a relief to IT companies, a Rs 10,000 crore service tax demand notices on dozens of IT companies has been set aside, the government said today. The tax department had slapped service tax demand notices on about 200 information technology and IT-enabled services companies in the country. It had asked them return export benefits claimed between 2012 and 2016 on softwares provided to clients outside India. A day after IT companies raised the issue of tax demand with Finance Minister Arun Jaitley in the customary pre-budget consultations, the finance ministry issued a statement to state that the Commissioner (Appeals) set aside the orders of the lower adjudicating authority.

The statement referred to reports of tax officials raising tax demand in respect of export of IT/IT enabled services provided to clients abroad. The notices, it said, had been reportedly sent on the basis of place of supply rules in respect of these services which were apparently provided in India and therefore were liable to be taxed. In a subsequent development, the Commissioner (Appeals) set aside the orders of the lower adjudicating authority where refund was disallowed and has also upheld the orders where refund had been granted. As a result, apprehensions about the negative effects on the software industry are without basis.

IT industry association Nasscom had yesterday said that it has got an assurance from the government that the service tax notices served to several IT companies has been corrected and the issue has been resolved.



The tax notices, reports had stated, were based on the premise that supplying software to clients outside India does not tantamount to exports for IT and ITES companies because the client sends specifications through email. In view of the tax department, the email containing specifications is nothing but goods made available to the Indian firm to provide IT/ITES services to the foreign buyer and so it is a service.

(SOURCE: BUSINESS STANDARD DATED 12.12.2017)

### BANKS, INSURANCE COMPANIES UNDER LENS FOR INFLATED TAX CREDITS

The government is keeping a watch on some banks, insurance companies and technology and telecom firms after it announced that errors in tax credit claims should be rectified, according to two people aware of the matter. There are instances where the transitional credit has jumped by more than 50% from the period before GST (goods and services tax). The government want these companies to return transitional credit either erroneously claimed or inflated," one of the persons said, requesting not to be named. A few companies in FMCG and consumer durables sectors are also under the scanner, the person said.

Tax credit is the amount that can be set off against a taxpayer's liability. When India moved to GST, many companies faced a situation where they had paid tax on old stock and availed credit but had to now set it off against the GST liability. Transitional credits are tax credits accumulated before July 1 on pre-GST stock. According to the GST law, the credit can be set off against GST liability.

However, some tax experts pointed out that in several cases the jump in transitional credit could be genuine. "Several businesses are evaluating the transition credits taken and whether there is any need to revise the credits in either direction. Many businesses have rightfully availed large credits, as permitted by the legislation, and it is necessary for them to provide adequate documentation and linkages in order justify that it is appropriate.

Under current rules, banks, insurance, telecom and technology companies can now seek tax credit even on capital expenditure there was no such concept earlier for services — and use that to offset their GST liability.

Many banks and companies had put their expansion plans on hold until GST was rolled out July 1 to benefit from input credit," said one of the persons quoted earlier. This has resulted in a huge surge in credits claimed by such banks and companies. In many cases — mainly for telecom companies — some machines, technology was already bought before GST was rolled out, but not shipped to India. "Such goods were brought on the balance sheet only after GST, to claim credits.

Legal experts ET spoke with said several companies would want to avoid changing the transitional credit data as it could put them in a tight spot. "If a company revises the transitional credit number, it could be construed as admission of guilt, so most companies may not revise the credit details unless there is a blatant error. The government could issue show-cause notices to companies which may have taken high transitional credit and can levy penalty and interest and seek reversal of transitional credit," said Abhishek A Rastogi, partner, Khaitan & Co. According to some officials, who did not wish to be identified, the government is looking to issue show-cause notices by January next year to companies if transitional credit numbers are not revised.



The government has already started raising queries on transitional credits on specific companies. On September 21, ET had reported that the tax department has started questioning some manufacturing companies, banks, insurance and other financial institutions on transitional credit. The tax department had also issued information summons to these companies a month later.

The government views transitional credit as leakage of tax. The worry in the government is that in the coming months, credits on excise, service tax and VAT would also be given to companies," said a person close to the matter. "The bigger worry is, if states have a shortfall (in their tax collections), the Centre is required to compensate it. All this would happen just before the budget.

(SOURCE: ECONOMIC TIMES DATED 14.12.2017)

#### RETURN EXPORT BENEFITS AND PAY SERVICE TAX OF RS 10,000 CR, SAYS TAX DEPT TO IT FIRMS

In a blow to the IT sector, the Income Tax Department is seeking Rs 10,000 crore as service tax and has also asked to return export benefits enjoyed by these firms in the last five years, reports Economic Times. Around 200 IT and ITeS companies have been served notices to give back export incentives they had received on providing software services to clients outside India. In addition to this, these firms also have to pay 15 percent service tax along with fines, according to sources privy to the information.

The tax department argues that IT and ITeS companies go into details with their clients for the export of a software. This makes the software no longer a good but a service. And since export benefits are claimed on goods, IT companies have been asked to return them to the I-T department as they have been selling their services. As clients send out emails mentioning specifications for what they want in a software, these details are classified as goods. Hence, the software then becomes a service provided by IT/ITeS companies to the foreign buyer.

Since it's a service they are providing, IT and ITeS firms are now liable to pay 15 percent service tax along with claims they demanded under export benefits. According to the report, Indian subsidiary of a multinational had raised Rs 50 crore as tax demand.

This comes at a time when the industry is already reeling under the pressure of tighter US immigration laws and automation threat. Exporters can challenge this decision but even for that they will have to pay 10 percent of the tax demand confirmed. The bone of contention in this case could be the place of supply especially post the rollout of Goods and Services Tax (GST). The tax department's move is based on the place of supply as service tax is charged where the service has been provided. According to those tracking this space, the tax department may serve several more notices to IT/ITeS companies in the coming months.

(SOURCE: MONEY CONTROL DATED 23.11.2017)

#### PAYMENT MADE IN REVENUE SHARING DEAL EXEMPT FROM SERVICE TAX

The indirect tax appellate tribunal has ruled that there is no service tax liability on payments based on revenue sharing arrangements. In a recent order, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has held that service tax can not be imposed on the amount paid by theatre owner PVS Multiplex India to film distributor Mukta Movie.



The judgment, issued by an Allahabad HC Bench, will have ramifications on all revenue sharing arrangements, say experts. Though the case relates to the period between 2009-10 and 2012-13, it will have a bearing on similar arrangements in the GST regime, they say. The case involved payments of Rs 72,44,110 by PVS Multiplex to Mukta Movie during 2009-10 to 2012-13. The income tax officer in Meerut allowed Rs 4,72,646 as deduction towards repair and maintenance of air conditioners and asked PVS Multiplex to pay tax on the remaining Rs 65,26,216.

The company filed an appeal in the CESTAT against this. It contended that no service tax could be charged on the payment to the distributor as the screening of films had been undertaken by the appellant on a revenue sharing basis. In terms of the arrangement between the film distributor and the theatre owner, after temporary transfer of copyrights, the movies were exhibited by the appellant, it argued. PVS Multiplex also argued that service tax, if any, was payable by the distributor of the film. CESTAT said since there was no dispute over the fact that the appellant had been screening films in its multiplex on a revenue sharing basis, it was not liable to pay service tax for payments to distributors.

The issue does not relate to entertainment tax on tickets but payments made to distributors by the theatre owner. The judgment will provide clarity on any venture where two players come together to provide services, contributing different aspects of the services, and sharing revenue in a pre-determined ratio.

For instance, taxi services where one player provides the car and the other his driving services and fuel cost, will also get relief from this judgment. While tax will be paid on the fare charged from the customer, it will not be charged on payments by the driver to the owner of the taxi after deducting his dues. As such, the matter is relevant to the GST regime as well, even though the issue is not addressed in the GST laws or rules.

*(SOURCE: BUSINESS STANDARD DATED 02.12.2017)*

### BUDGET 2018: INFORMATION TECHNOLOGY, ELECTRONICS INDUSTRY SEEK TAX RATIONALISATION

Software industry, under the aegis of Nasscom, on Monday sought a resolution of the issues related to service tax refunds and GST during the pre-budget meeting with Finance Minister Arun Jaitley. We discussed issues related to Place of Effective Management (POEM), service tax, and tax refunds, Nasscom President R Chandrashekhar told reporters after the meeting.

The software industry, along with other IT associations like ELCINA (Electronic Industries Association of India), MAIT (Manufacturers' Association for Information Technology) and TEMA (Telecom Equipment Manufacturers Association of India) also met the ministry as part of the discussions. IT and electronics components industry sought imposition of duty on those technology and telecom products which fall outside the purview of IT Agreement signed by India. Such a move would boost domestic IT and Telecom manufacturing in the country, industry officials said. Jaitley is gearing up to present the Union Budget 2018-19, possibly on 1 February.

*(SOURCE: FIRST POST DATED 11.12.2017)*



## 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 1<sup>ST</sup>, 11<sup>TH</sup> AND 21<sup>ST</sup> OF EVERY MONTH"

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For more updates on GST, log on to [www.gstcounsellor.com](http://www.gstcounsellor.com)



## CASE STUDIES

### Charge of Levy of Tax

- In *Shreenath Mhaskoba Sakhar Karkhana Ltd. v. Commissioner of Central Excise, Pune-III (2017) 77 taxmann.com 216; 59 GST 407 (Cestat, Mumbai)*, where assessee, a sugar factory, paid charges for transportation of sugarcane from fields to its factory and deducted same from sale bills of farmers, it was not liable to pay service tax on amount of transportation charges.
- In *G.B. Engineering Enterprises Pvt. Ltd. v. CCE, Tiruchirappalli (2017) 52 STR 313 (Cestat, Chennai)*, it was held that there should be incidence of levy that arises when there is provision of taxable service. That situation not having reached, there shall not be liability of Service Tax on the advance received. Adjustment is crucial point of time that may give rise to levy of Service Tax in the event adjusted extent of advance resulted in provision of taxable service.



## 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  
(Inter-bench transfer of appeals)

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.

(Mofiinder Singh)  
Deputy Registrar (Judicial)



## OBLIGATIONS UNDER SERVICE TAX

Assesseees should make payment of Service Tax collected after 1<sup>st</sup> 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:

How does the Goods & Services Tax (GST) and pre-GST system of Value Added Tax (VAT) compare?

### REPLY:

In principle, there is no difference between tax structure under VAT and GST as far as the tax on goods is concerned because GST is also a form of VAT on both, goods and services. Earlier, the sales tax (or value added tax), with an exception of Central Sales Tax (CST), was a VAT system. Further, Cenvat credit mechanism was also available in Service Tax. Hence both, sales tax and service tax followed the value added principles. The goods and services were taxed separately but in GST, this difference will not be there. The overall system of GST is very much similar to the VAT, which can be considered as first step towards GST. One of the major differences between earlier indirect taxes and GST is that in contrast to CST, GST is destination/consumption tax to be levied on a transaction (rather than an activity).

All the states had their own VAT laws comprising VAT Acts and VAT Rules and these Acts and Rules were formulated on the basis of "White Paper on VAT" issued by the Empowered Committee of States' Finance Ministers on VAT. The same Empowered Committee had been working on GST since inception up till the Constitution of GST Council. Due to the fact that the taxpayers were already using the VATable sales tax and service tax system, GST is going to be a matter of settlement between the Centre and the states and like VAT, the possibility of any resistance from the tax payers may not be there.

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](mailto:asandco@gmail.com).



## LITERATURE

- Recent pronouncements on GST (Part II) – Dr. Sanjiv Agarwal, [www.taxguru.co.in](http://www.taxguru.co.in), dated 05.12.2017.
- Courts on GST (Part-III) – Dr. Sanjiv Agarwal, Business Advisor, dated 10.12.2017.
- Operation of Anti-profiteering clause in GST - Dr. Sanjiv Agarwal, [www.taxmanagementindia.com](http://www.taxmanagementindia.com), dated 13.12.2017.



PROGRAMME : National Conference on Capacity Building – Measures of Practitioners  
 DATE : 23th & 24th December, 2017  
 TOPICS : Filing & Assessment in GST regime etc.  
 VENUE : Ghaziabad  
 ORGANISED BY : ICAI (www.icai.org)

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!



*Attention is the rarest and purest form of generosity.*

- Simone Weil

Humor



*Friend 1-What is this TRAN-1?*

*Friend 2- It is a special form to transfer- “Purani Bhuli Bisri Service Tax Yaade” to “GST wali Zindigi”*

*Hurry up! You have only 12 lucky days to do so.*



KNOWLEDGE HUB



HAPPY BIRTHDAY SMS!!

The humble text message is now 25 years old, say- Happy Birthday SMS.

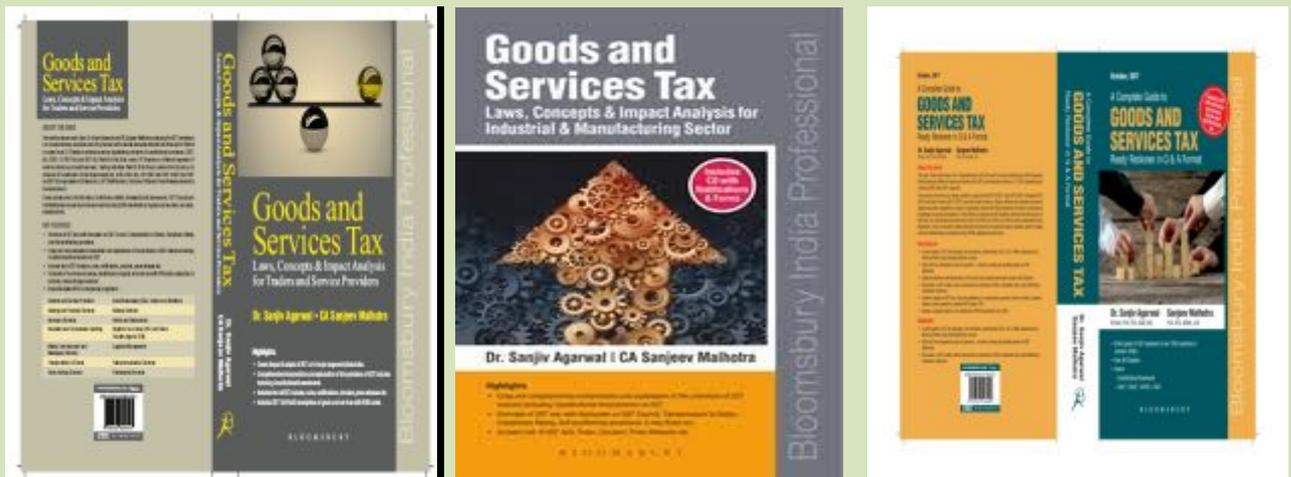
- Today is a special day. It marks the birth of one the most popular forms of mobile communication i.e. the SMS text message.
- In 1992, Neil Papworth, a 22-year-old software programmer, sent the world's first ever SMS to his colleague Richard Jarvis at Vodafone.
- That very first text message, sent on the 3rd December 1992, simply said " MERRY CHRISTMAS "
- At the time, mobile phones were not capable of sending texts, so Papworth typed the message on a computer and sent it to an Orbitel 901.
- A year after the first text message ever sent, the first commercial SMS service was established in Finland, with Nokia becoming the first company to release mobile phones that can send text messages.

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](mailto:asandco@gmail.com)  
[ascogst@gmail.com](mailto:ascogst@gmail.com)

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