



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

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A S C O

STC Service Tax Counsellor

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## The Editor's Desk



Dear Readers,

As we enter into sixth month of GST in operation, we are gradually becoming used to it and getting away from and forgetting Service Tax. As it is, Service Tax adjudication and appellate proceedings are on fast track and audits have taken a back seat. However, quality of adjudication has taken a hit and in many instances, is just a formality and nothing substantial happens.

Recently, to reduce litigation, CBEC has issued instructions on appeals at a higher fora after department has lost in two previous appellate levels, based on TPRU suggestions. Accordingly, it has been decided by the Board that the proposal of TPRU can be accepted subject to critical examination by the Commissionerate on a case to case basis. Wherever the concerned Commissioner feels that the matter is fit for filing further appeal in a higher fora as there are strong reasons justifying the further expense of monetary and energy resources, he would submit complete justification for appealing against a case for the third subsequent time to the Zonal Chief Commissioner. The Zonal Chief Commissioner would satisfy himself that the Department has a strong case in the issue and would record his certificate accordingly.

It is pertinent to note that Service Tax liabilities of earlier period payable under receipt basis should be discharged as per the old law even today, though there is no column for this payment in GST returns.

Please be informed that come January, 2018 we will have Service Tax Counsellor as a monthly newsletter and GST Counsellor as a weekly newsletter.

Date: 30.11.2017

DR. SANJIV AGARWAL



## GST CORNER

GST Obligations for the month of December, 2017

Forms>Returns	Description	Due date
GSTR 5	Return for non-resident taxable person	11.12.2017
GSTR-5A	Return by a person supplying online information and database access or retrieval services from a place outside India to a non taxable online recipient	15.12.2017
GSTR 3B	For the month of November, 2017	20.12.2017
GSTR 4	Return for registered person opting for composition scheme	24.12.2017
TRAN 1	Details of transitional credit( <i>Submission</i> )	27.12.2017
	Details of transitional credit( <i>Revision</i> )	
GSTR-1	Person having Aggregate turnover < 1.5 crores ( <i>for quarter- July, 17-Sept, 17</i> )	31.12.2017
	Person having Aggregate turnover > 1.5 crores ( <i>for the months July, 17-Oct, 17</i> )	
GSTR 6	Return for ISD	31.12.2017
Form ITC 04	Details of goods/capital goods sent to job worker and received back by manufacturer)	31.12.2017

## SERVICE TAX

### IT, ITES COMPANIES JITTERY OVER RS 10,000 CRORE TAX DEMAND

The tax department has raised service tax demand of about Rs 10,000 crore from information technology and IT-enabled services companies in the country, sending a shockwave through an industry already reeling under tighter US immigration laws and increasing automation. In its notices sent to about 200 companies so far, the service tax department has told them to return export benefits claimed in the last five years (2012-2016) on software provided to clients outside India, and has additionally sought 15% service tax along with fines, according to people in the know.

Its contention: supplying software to clients outside India does not tantamount to exports for IT and ITES companies. Why? Because the client sends specific details of what it wants in the exported software to Indian IT firms through an email. Now, according to the department, the email containing specifications is nothing but goods made available to the Indian firm to provide IT/ITES service to the foreign buyer. Therefore, it is a service. Hence, all IT/ITES exporters are liable to return the export benefits claimed for the last five years and pay service tax (15%) with interest and penalty on last five years export turnover, the department has said in its notices. ET reviewed a copy of such a notice



where a tax demand of about Rs 50 crore was raised from Indian subsidiary of a multinational.

Industry trackers said the tax demand is a double blow for companies. "Even if the exporters want to appeal the case in the (tax appellate) tribunal they will have to deposit 10% of the tax demand confirmed and not to mention the provisions they have to make in their balance sheets," said Sachin Menon, national head, indirect tax, at KPMG India. The development has clearly shaken the sector, with some companies already talking about moving out of the country. "We work on wafer thin margins, and (when) something like this comes out of nowhere, it's a huge problem for us," said India head of a multinational that has received a tax notice to pay Rs 175 crore. "We are exploring to move our base to the Philippines and this can happen within the next six months," the person said. The Mumbai-based company had claimed tax exemptions on a software provided to a foreign bank based in the US.

The client had sent an email with specifications on the software that would monitor its debtors and raise red flags when payments are not made within a month. Now, the tax department is seeking that the export exemptions be reversed, and service tax be paid on such transactions along with applicable fine. The question is, can emails with specifications to the Indian exporter be treated as supply of goods? And can the revenue officer change status of the supply from export to local supply, deny export benefits, and demand tax on exports. The tax department has made its demand based on 'place of supply'. Under taxation laws, tax is paid at the place where the supply is made. While this is easy to determine in the case of goods, with services this is tough, experts said. For example, if a Mumbai-based architecture firm designs a building in Dubai, the place of supply is Dubai, and the revenue is exempted from service tax.

Experts fear that the service tax notices could be tip of the iceberg, as the place of supply issue could continue under GST regime that has replaces most indirect taxes including service tax. Since the place of supply rules in such cases are the same in GST regime, many IT/ITES companies may see the demands continue in GST regime as well. No Indian IT/ITES company will be competitive in the international market, if they have to pay 18% GST on exports.

Industry trackers now expect the tax department to serve several more notices to IT/ITES companies in the coming months, and it would lead to a long-drawn battle between companies and the department. The place of supply rules to be applied to a given situation depends on specific facts, and clarity on specific matters can only come from the tribunal.

Depending on the bench, these matters could take a couple of years to be adjudicated in the absence of a specific time period within which pending service tax matters are to be disposed. The concept gets complicated while dealing with intangibles like software and other services. In the case of IT/ITES, the tax department is arguing that Indian companies "receive instructions, confidential information including ideas, concepts, (and) creations, in graphic, written, electronic or machine readable form of any media (basically information on emails).

(SOURCE: ECONOMIC TIMES DATED 23.11.2017)

#### 15TH FINANCE COMMISSION GETS APPROVAL

The Union Cabinet has cleared the setting up of the 15th Finance Commission that will prescribe the formula for devolution of taxes between the Centre and States for the five years commencing on April 1, 2020.



The next step is to appoint the personnel of the Commission and finalising its terms of reference... It will be done very soon," Finance Minister Arun Jaitley said at a media briefing after the Cabinet meeting here on Wednesday.

The Finance Commission, a statutory body under Article 280(1) of the Constitution, is set up every five years to decide on how the net proceeds of taxes would be shared between the Centre and States. It also decides the principles for grants-in-aid of the revenues of the States out of the Consolidated Fund of India.

This time round, the panel will have a more unusual task with the roll out of the Goods and Services Tax. "There have been many changes. The expenditure pattern of the Centre and States should be maintained and the impact of the new tax on the finances of both...the pattern has changed with the GST.

When asked whether the 15th Finance Commission will also allocate more resources to States, he said: "Let us not pre-judge the situation. India is a Union of States; the Union also has to survive." In the Union Budget 2017-18, the Finance Ministry had been allotted Rs.10 crore for setting up the 15th Finance Commission.

(SOURCE: BUSINESS LINE DATED 23.11.2017)

#### CBEC IDENTIFIES LABORATORIES FOR TESTING OF GOODS IMPORTED

The Central Board of Excise and Customs (CBEC) has said its revenue laboratories are being upgraded and it has been decided that field formations may forward samples of goods imported or exported to laboratories functioning under other ministries or departments. The CBEC in this regard has come out with a list of facilities for testing samples of some specific goods being imported or exported.

This has been done as part of trade facilitation, the CBEC said in a circular. It has come to the notice of the board that due to lack of testing facilities of certain goods in revenue laboratories, there is a delay in clearance of the consignments of these goods due to avoidable movement of samples between customs field formations and revenue laboratories.

The Central Revenues Control Laboratory (CRCL) has identified the items whose samples cannot be tested in their laboratories at present. CRCL has also identified the laboratories functioning under the other ministries, departments and organisations where the samples could be tested.

The circular further said the revenue laboratories are, presently, in the process of upgradation. However, until revenue laboratories are upgraded, as a measure of trade facilitation, the board has decided that field formations may directly forward samples of goods" to suggested laboratories.

In cases of live consignments which cannot be cleared without getting the test reports due to its hazardous nature or for any other reason, "the samples shall be forwarded to the concerned laboratory at the earliest". Testing fee, if any, has to be paid by the importer or the exporter.

(SOURCE: TIMES OF INDIA DATED 26.11.2017)



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

For subscription, send a request at [ascogst@gmail.com](mailto:ascogst@gmail.com)

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



## CASE STUDIES

### Evidence in Adjudication

In *Magma Sharchi Finance Ltd. v. CST, Kolkata (2017) 6 GSTL 23; (2017) 355 ELT 171 (Calcutta)*, Tribunal simply directed the adjudicating authority to take additional evidence on remand and did not consider any material disclosed before it being necessary to be produced as additional evidence before the adjudicating authority. Directions by Tribunal to take additional evidence was made without reason where investigation and inquiry unable to bring to light material which could be the basis for directions to take additional evidence. It was held that adjudicating authority cannot be directed to fish out evidence but to adjudicate on demand in show cause notice based on allegation made therein.



## GOVERNMENT'S INK

F. No. 390/Misc/69/2017-JC dated 09.11.2017  
Government of India  
Ministry of Finance  
Department of Revenue Central Board of Excise & Customs

Subject: Procedure regarding appeal at a higher fora after Department has lost in two previous stages- reg.

TPRU has suggested that the Department should not contest a case further if the issue has been lost in two previous stages of appeals. This suggestion was considered in detail by the Board at the meeting dated 18.09.2017.

2. The Board observed that this cannot be made a rigid rule as department may be genuinely aggrieved by the decision of the various judicial forum at lower levels. However, such a principle may be applied on a case to case basis so as to ensure that critical issues such as classification, valuation/ refunds etc, that have a snowball effect, are taken care of.

3. It has been decided by the Board that the proposal of TPRU can be accepted subject to critical examination by the Commissionerate on a case to case basis. Wherever the concerned Commissioner feels that the matter is fit for filing further appeal in a higher fora as there are strong reasons justifying the further expense of monetary and energy resources, he would submit complete justification for appealing against a case for the third subsequent time to the Zonal Chief Commissioner.



4. The Zonal Chief Commissioner would satisfy himself that the Department has a strong case in the issue and would record his certificate accordingly. The form of the certificate would be as under:

"I have carefully gone through the entire case records in the case of M/s..... and though the case has been lost by the Department at two levels, it is still felt that the Department has a strong case in its favour on merit. The reasons for this is as under... "

5. The reasons should not exceed twenty sentences. It is only after this certification that such SLP/CA proposals are to be sent to the Board or appeal to be filed at a higher fora.

This issues with the approval of Chairman (CBEC).

(Ranjana Jha)  
JS (Review)

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NOTIFICATION No. 27/ 2017 - Central Excise (N.T.) dated 23.11.2017

G.S.R. 1442 (E). - In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules to amend the Central Excise (Appeals) Rules, 2001, namely:-

- (1) These rules may be called the Central Excise (Appeals) Amendment Rules, 2017.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Excise (Appeals) Rules, 2001 for rule 10, the following shall be substituted, namely:-  
" 10 (1) The revision application shall be filed in form E.A.-8 before the jurisdictional Principal Commissioner (Revisionary Authority) as per the jurisdiction specified in column (3) of the table below:-  
Table

S.No. (1)	Office (2)	Jurisdiction to hear Revision Applications against Commissioner (Appeals) Order (State-wise and Union-Territory wise) (3)
1	Principal Commissioner (RA) and ex-officio Additional Secretary to the Government of India- Delhi	Jammu & Kashmir, Himachal Pradesh, Punjab, Chandigarh, Uttar Pradesh, Delhi, Haryana, Uttarakhand, Bihar, Jharkhand, West Bengal, Andaman & Nicobar Islands, Sikkim, Odisha, Rajasthan, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura.
2	Principal Commissioner (RA) and ex-officio Additional Secretary to the Government of India -Mumbai	Andhra Pradesh, Telangana, Karnataka, Kerala, Lakshadweep, Puducherry, Tamil Nadu, Gujarat, Dadra and Nagar Haveli, Daman and Diu, Maharashtra, Goa, Madhya Pradesh, Chhattisgarh.

2. The Board shall pass an order specifying therein an address, phone numbers and other details relating to the Revisionary Authority.

3. The revision application shall be deemed to have been submitted to the said Principal Commissioner (Revisionary Authority) on the date on which it is received in the office of Revisionary Authority."

F. No. 116/33/2017-CX 3  
(Shankar Prasad Sarma)  
Under Secretary to the Government of India

Note:- The principal notification No. 32/2001-Central Excise (N.T.), dated the 21st June, 2001 was published vide G.S.R. 446 (E), dated the 21st June, 2001 and was last amended vide notification No. 23/2014-Central Excise (NT) dated 6th August, 2014 G.S.R. 566 (E), dated the 6th August, 2014.



## 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.



## SERVICE TAX MATTERS

### QUERY:

Taxes can be direct or indirect. What is meant by direct and indirect taxes ?

### REPLY:

'Direct tax' is a tax which is deposited directly by an individual / organization to the imposing entity. The individual or organization upon which the tax is levied is responsible for the fulfillment of the tax payment. A taxpayer pays a tax directly to tax collectors i.e., to Government for different purposes, including income tax or taxes on assets, real property tax, personal property tax etc. A direct tax cannot be shifted to another individual or entity. Examples of direct taxes are income tax, wealth tax, dividend distribution tax etc.

'Indirect tax' generally refers to taxes levied on the basis of production, sale or purchase of goods such as import and export duties, excise and sales tax. Indirect taxes include taxes levied on production of goods, rendering of services, entertainment taxes, electricity duties, tax on passenger fares and freights etc. They are called indirect taxes and can be passed on to someone else (e.g. customers/consumers) whereas direct taxes are supposed to be borne by those on whom they are levied. For the Central Government, Central Excise, Customs and Service Tax are the three main components of indirect taxes. For State Governments, Value Added Tax (VAT) is the major indirect tax.

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

- Documents, accounts and records in GST (Part-I)- Dr. Sanjiv Agarwal, [www.taxmanagementindia.com](http://www.taxmanagementindia.com), dated 23.11.2017.
- Anti-profiteering law in GST to benefit consumers – Dr. Sanjiv Agarwal, Business Advisor, dated 25.11.2017.
- Delegation of powers to subordinate officers – S.K. Mathur, ELT, Vol. 355: Part 4, dated 27.11.2017.



PROGRAMME : National Conference on Capacity Building Measures of Practitioners with special focus on Direct and Indirect Taxes  
DATE : 5<sup>th</sup> & 6<sup>th</sup> December, 2017  
VENUE : Sanghaniketan, Pratpnagar, Gandhinagar, Mangalore  
ORGANISED BY : Mangalore Branch of SIRC of ICAI

### 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!



*Books are no more threatened by kindle than stairs by elevators.*

*-Stephen Fry*

### Humor



#### Insurance in GST

- Policy holder* - I want a new insurance policy against GST disruption.
- Insurance company* - We don't have any such policy yet.
- Policy holder* - But you gave me one under Service Tax. So what's the problem in GST
- Insurance company* - We ourselves are not able to understand GST and it appears a risky business proposition

## KNOWLEDGE HUB

### SAY NO TO POLLUTION, YES TO CONSERVATION OF ENVIRONMENT

- Nowadays, Pollution is the biggest concern of the country as it is leading to many diseases like asthma, lung infection and even cancer.
- Saving environment is our responsibility and must include from common person to bureaucrats, politicians, industries etc. The cumulative effect taken by everyone will make the difference.
- We can say a BIG NO to the pollution-by saying BIG YES to conservation-
  - ✓ Whenever possible use public transport instead of your vehicle
  - ✓ Go by foot to nearby places rather than on bike or car
  - ✓ To keep the air clean plant trees or bushes close to your home
  - ✓ Use eco friendly cleaning products at home for laundry as well as dishwashing.
  - ✓ While brushing teeth, or doing cleaning work, open the tap only when required
  - ✓ Do not litter here and there
  - ✓ Switch off all the lights and electric appliances when not in use
  - ✓ Replace you incandescent light bulbs with CFLs as these consume less energy
  - ✓ Buy green products which have energy Stars on them.
  - ✓ Limit the use of air conditioner, LCD, microwave oven, geyser.
  - ✓ Use solar cookers to cook food as India gets enough sunshine even during winters
  - ✓ Also instead of geyser, solar panels can be installed at roof of a home to get hot water.

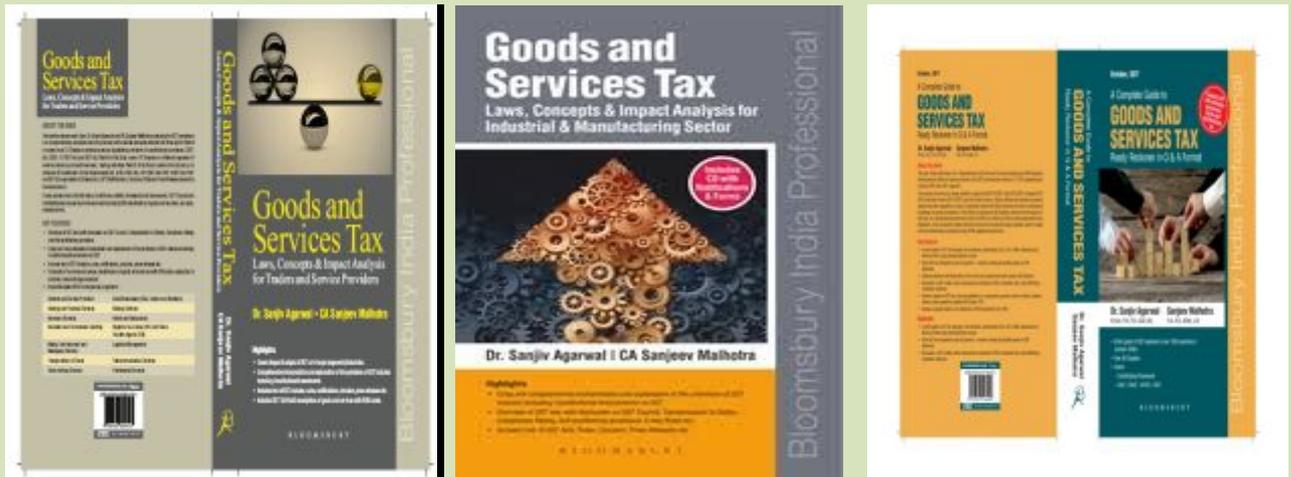


ANNOUNCEMENTS

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:  
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