



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

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The Editor's Desk



Dear Readers,

Union Budget 2018-19 has been passed by the Lok Sabha yesterday, *albeit*, without any discussion on it, amidst uproar. Since it is a Money Bill, Rajya Sabha's approval is not required but it will be sent to it. The provisions are likely to be made in force from April 1, 2018.

The three Service Tax related amendments providing for retrospective exemptions, from Service Tax in relation to insurance services provided by Naval Group insurance fund to personnel of Coast Guard, services provided to GST Network (GSTN) and service tax on Government's share of profit petroleum, have also been passed in the Finance Bill.

A Major tax payer favouring judgment came from the Apex Court in relation to non-taxability of reimbursement of expenses upholding the Delhi High Court judgment in inter-continental case. We also analyse one judgment on lease license.

The current March month is the last month of financial year 2017-18 with just 15 days left. This is also the transitional year for GST. The closure of books of accounts and preparation of financial statements ought to be carefully done.

Date: 15.03.2018

DR. SANJIV AGARWAL



GST CORNER

RECOMMENDATIONS OF 26TH GST COUNCIL MEETING

GST Council in its last meeting held on 10.03.2018 has made the following recommendations:

- ❖ Return Filing
Filing of GSTR 3B and GSTR 1 has been extended for another three months i.e. April 2018 to June, 2018 till new return system is finalized.
- ❖ Deferment of sections
 - Section 9(4) of CGST Act (relevant section in other GST Acts) providing payment of tax under reverse charge for the supplies received from unregistered person has been further extended till 30.06.2018.
 - The provisions for deduction of tax at source (TDS) under section 51 of the CGST Act and collection of tax at source (TCS) under section 52 of the CGST Act shall remain suspended till 30.06.2018.
- ❖ GST implementation Committee (GIC) has been tasked with the work of redressing the grievances caused to the taxpayers arising out of IT glitches.
- ❖ Council recommended the introduction of e-way bill for inter-State movement of goods across the country from 01st April 2018. For intra-State movement of goods, e-way bill system will be introduced w.e.f. a date to be announced in a phased manner but not later than 01st June, 2018.
- ❖ The Council was also unanimous that there should be no disruption that may affect the exports. Accordingly, the Council agreed to:
 - Defer the implementation of the e-Wallet scheme by 6 months i.e., up to 01.10.2018; and
 - Extend the present dispensation in terms of exemptions etc. which is available up to 31.03.2018, for a further 6 months i.e., up to 01.10.2018.



NEWS UPDATES SERVICE TAX

KHANNA CRANE FIRM CAUGHT EVADING RS 2.36 CRORE SERVICE TAX

The GST commissionerate preventive wing raided Khanna-based M/S Chandi Cranes Private Limited early on Tuesday and detected service tax evasion of more than Rs 2.36 crore. The raid, conducted by teams led by deputy commissioner (preventive) Lakshay Thakur, continued till Tuesday evening. The firm owner's residence was also searched. After the operation, the firm owner admitted to the lapse and deposited Rs 25 lakh with the department. A press statement issued by the department stated, Service tax evasion of Rs 2.36 crore was detected after raid on M/S Chandi Cranes, GT Road, Khanna. The company was engaged in supplying heavy cranes and forklifts on rental basis for road construction projects all over India. It was not paying service tax on supply of tangible services under the garb of exempted services. Admitting his tax liability, the company director, Ajay Kumar Garg, has deposited an initial amount of Rs 25 lakh. Further investigations are on. This is the fourth case of tax evasion detected by headquarters team of GST Commissionerate, Ludhiana, in 14 days. While warning the tax evaders After enough hand-holding of taxpayers under GST, the central GST officers are now on anti-evasion drive. More tax evading companies will be targeted in coming months.



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

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We also release a daily **GST Capsule** on any topical subject which also available on our facebook account [gstcounsellor](https://www.facebook.com/gstcounsellor) as well as on our website.



CASE STUDIES

No Service Tax on Reimbursement of Expenses

In *Intercontinental Consultants and Technocrats Pvt. Ltd. v. Union of India* (2012) 12 TMI 150; (2013) 38 STT 75; (2013) 29 STR 9; (2012) TIOL 966-ST (Delhi), it was held that what is to be taxed is the gross amount charged by the service provider 'for such service'. The words 'such service' are important for taxation. It is only the value of 'such service' which can be taxed and nothing else. The value of service, to be taxed, can, therefore, never exceed the gross amount charged by the service provider for such service provided. It further held that -

- a) Value of taxable service for levy of Service Tax has to be in consonance with the charging section.
- b) Service Tax can be levied on the taxable service and nothing more or nothing less.
- c) It is only the taxable service which needs to be evaluated for the purpose of valuation u/s 67 as it talks of 'such service'.
- d) Thus, value of taxable service shall be the gross amount charged by the service provider 'for such service'. It has to be essentially for 'such service' and nothing else.
- e) The charging section (erstwhile section 66) and valuation provisions (section 67) of the Finance Act, 1994 have to be read together and harmoniously.
- f) If read in consonance, only the consideration paid as quid pro quo for the taxable service can be brought to charge of Service Tax.
- g) The common thread running through the provisions of section 66, 67 and 94 of the Finance Act, 1994 is manifest and leads to only conclusion that 'only the services actually provided by the service provider can be valued and assessed to Service Tax'.
- h) What can be taxed as Service Tax is only the consideration which is further qualified by 'for the taxable service'.

Supreme Court vide order dated 07.03.2018 has dismissed the Revenue appeal against Delhi High Court order and ruled in favour of Assessee. The Apex Court has upheld the Delhi High Court judgment by striking down levy of Service Tax on reimbursement of expenses and confirming Rule 5(1) of valuation rules to be *ultra vires*. An important issue finally settled



Service Tax on License Lease

In *Konkan Agro Marine Industries Pvt. Ltd. v. CCE, Customs & Service Tax, Aurangabad (2018) 9 GSTL 296 (Cestat, Mumbai)*, where both were leased, i.e. factory premises as well as license of potable liquor and rectified spirits, revenue department wanted that factory leasing and license leasing should not be delinked and sought to tax both as renting of immovable property service, the tribunal (Cestat, Mumbai) ruled in favour of the assessee and against the department.

The appellants were engaged in the business of manufacturing and bottling of alcoholic beverages. The appellants held Potable Liquor License (PLL) and Rectified Sprit License (RSII). The appellants entered into an agreement under which the appellants leased their licenses. The appellants thereafter entered into an agreement for bottling at their plant and recovered bottling charges for the same.

Revenue's argument was that there cannot be a license without the premises in the provisions of Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966. The licenses lease along with the factory as license by itself is not value. Potable Liquor License (PLL) is a license to manufacture and sell the noted varieties of liquor and the license gives permission only manufacture at the specified premises and nowhere else. The license is worthless without the factory which has been licensed.

It was held that 'manufactory' means that portion of a distillery premises which is set apart for the manufacture of potable liquor and includes a liquor room and every place therein from which such liquor is issued. Severe restrictions had been put on the factory, which had been licensed and no charges in the license premises could be made by the licensor without the permission.

It was further held that though license is granted in respect of manufactory but the same is granted to the person. The license given to a person in respect of a manufactory can be transferred to another manufactory on another site in the name of same person. License can be granted even before the manufactory comes into existence. From the Rules it was apparent that license by itself is not a immovable property and therefore leasing of license could not be treated as renting of immovable property service.

It thus concluded that license by itself is not immovable property and therefore, leasing of license can not be treated as renting of immovable property service.



GOVERNMENT'S INK

CESTAT — 5 Technical Members appointed

The Appointments Committee of the Cabinet has approved the appointment of the following officers as Member (Technical) in Customs, Central Excise & Service Tax Appellate Tribunal (CESTAT) in the scale of pay and as per terms and conditions prescribed in Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017, for a period of 03 years from the date of assumption of charge of the post, or until the age of 62 years, or until further orders, whichever is the earliest:

Sl. No.	Name	Place of Posting
1.	Shri Sanjiv Srivastava, IRS (IC&CE : 1990)	Mumbai
2.	Shri P. Anjani Kumar, IRS (IC&CE : 1991)	Mumbai
3.	Shri P. Venkata Subba Rao, IRS (IC&CE : 1991)	Hyderabad
4.	Shri Bijay Kumar, IRS (IC&CE : 1986)	Delhi
5.	Shri C.L. Mahar, IRS (IC&CE : 1987)	Delhi

[Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training, New Delhi, File No. 18/5/2018-EO(SM.II), dated 16-2-2018].



OBLIGATIONS UNDER SERVICE TAX

Assessee 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:

Whether upfront lease premium is taxable under service tax?

REPLY:

In *Greater Noida Industrial Development Authority v. CCE & ST, Noida (2015) 38 STR 1062 (CESTAT, New Delhi)*, it was held that upfront lease premium or salami paid by the lessee to the lessor for transfer of interest in the property from the lessor to the lessee cannot be taxed in terms of Section 65(105) (zzzz) of the Finance Act, 1994

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

- Absence of allegations – N. Prabhakaran, GSTL, Vol. 10 : Part 2, dated 08.03.2018.
- Presumption as to documents in GST law - Dr. Sanjiv Agarwal, www.taxmanagementindia.com, dated 10.03.2018.
- Taxability of lease premium – Dr. Sanjiv Agarwal, Business Advisor, dated 10.03.2018.
- Banking to be next on economic reforms agenda – Dr. Sanjiv Agarwal, www.taxguru.co.in, dated 13.03.2018.

QUOTE TO FOLLOW!



Every phase of our life is bound to teach us something valuable. But it depends on us whether we analyze the lessons or just turn the pages.

Humour



New mandatory Aadhar Links in offing –

- Passports
- Bank borrower's accounts
- Bank NPAs
- Transferring credit of Service Tax to GST
- E-way bills
- Certificate of practice of CA's
- Tax refund cases

KNOWLEDGE HUB



ICE WATER-IS IT HEALTHY?

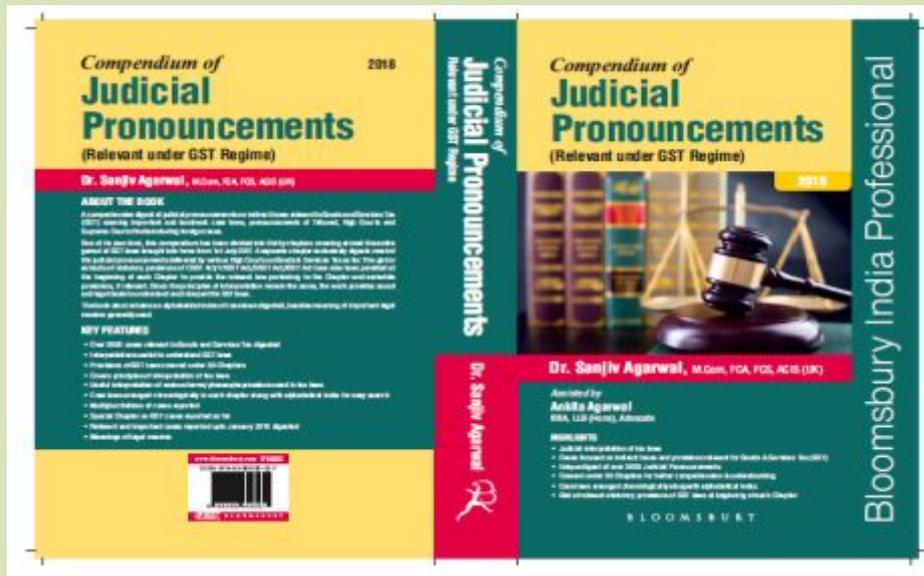
- There's nothing quite like a glass of ice water to cool down with on a summer's day, but after reading the following information, you might want to think twice before reaching for the ice tray.
- The following 8 hidden dangers of drinking ice water aren't very well-known:
 - ✓ *It can Lead to Extra Fat:* This is because cold temperatures in the body cause fats to harden and congeal, making them harder for the body to digest.
 - ✓ *Constipation:* Although drinking water that's at room temperature helps the digestive process, drinking ice water has the potential to cause constipation.
 - ✓ *Hinders Hydration:* Drinking ice water actually slows down body's rehydration process, rather than speeding it up.
 - ✓ *Saps Energy:* While drinking ice water can make you feel refreshed and stimulate you in the short term, it actually serves to drain your energy in the long run. This is because your body has to use extra energy to warm up the water and bring it up to its average temperature.
 - ✓ *Upsets Digestion:* Drinking ice water can lead to stomach upsets, abdominal pain, gurgling and nausea. This is because cold temperatures are anti-inflammatory, therefore blood vessels retract.
 - ✓ *Slows Heart Rate:* Drinking ice water can cause your heart rate to drop. This is because the vagus nerve, which runs down the back of your neck, is affected by a sudden ingestion of cold water.
 - ✓ *Irritates Throat:* Just as a cold winter's day can give you a runny nose and block up your sinuses, ice water creates the same bodily response.
 - ✓ *Headaches:* Ice water chills many sensitive nerves in the spine, and they immediately relay messages to your brain, which in turn causes headaches.

ANNOUNCEMENTS

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



NEW TITLE ON GST
 by
 Dr. Sanjiv Agarwal



Title	Compendium of Judicial Pronouncements (Relevant under GST Regime)
Author	Dr. Sanjiv Agarwal
Publication	February, 2018
Publishers	Bloomsbury Publishing India Pvt. Ltd.
Price	Rs. 1995/-
Pages	1150 +



Highlights

- Judicial interpretation of tax laws
- Cases focused on indirect taxes and provisions relevant for Goods & Services Tax (GST)
- Unique digest of over 3600 Judicial Pronouncements relevant for GST
- Covered under 30 Chapters for better comprehension & understanding
- Case laws arranged chronologically alongwith alphabetical index
- Gist of relevant statutory provisions of GST laws at beginning of each Chapter

About the Book

A comprehensive digest of judicial pronouncements on indirect taxes relevant to Goods and Services Tax (GST) covering important and landmark case laws, pronouncements of Tribunal, High Courts and Supreme Court of India including foreign cases.

One its own kind, this digest has been divided into thirty chapters covering almost entire gamut of GST laws brought into force from 1st July, 2017. A separate chapter exclusively digests most of the judicial pronouncements delivered by various High Courts on Goods & Service Tax so far. The gist or extracts of statutory provisions of CGST Act / UTGST Act/ SGST / IGST Act have also been provided at the beginning of each Chapter to provide the relevant law pertaining to the Chapter and erstwhile provisions, if relevant. Since the principles of interpretation remain the same, the work provides sound and legal basis to understand and interpret the GST laws.

The book also contains alphabetical index of case laws digested, besides meaning of important legal maxims generally used.



Key Features

- Interpretations useful to understand GST laws
- Covers principles of interpretation of tax laws
- Useful interpretation of various terms / phrases / expressions used in tax laws
- Multiple citations of cases reported
- *Special chapter on GST cases reported so far*
- Relevant and important cases reported upto January, 2018 digested
- Meanings of legal maxims

It is hoped that the Book shall be found useful by professionals, tax payers, industry bodies and all other stakeholders in GST.

For any GST related interpretation / queries, please send a mail to asandco@gmail.com

ANNOUNCEMENTS
FOR EXCLUSIVE AND IN HOUSE
SEMINAR / WORK SHOP
ON
GOODS AND SERVICE TAX (GST)
CONDUCTED BY
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