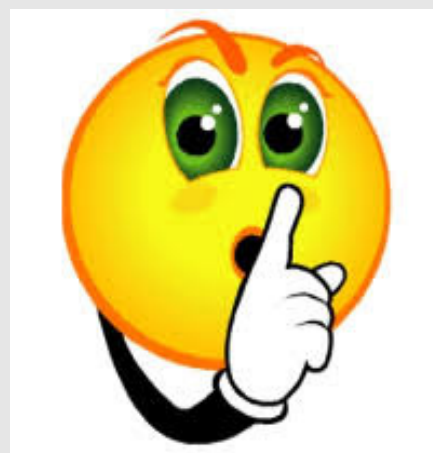


**“National Conference on
Indirect Taxes”
Nagpur Br of WIRC of ICAI**

**“Controversies & Assorted
Case laws on GST”
by
CA Deepak Thakkar
Mumbai
23 Nov 2018**



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Rules for Interpretation of GST Rate Notifications

- **Explanation to the Rate Notification No. 1/2017-Central Tax (Rate) dt 28.06.2017 states that:**
“For the purposes of this Notification:
 (iii) **“Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). (CTA)**
(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.”
- Therefore, while the Rate Notification under GST provides the rate of tax on goods & services, in order to interpret these Rate Notifications for purposes of levy of GST, one has to read the same along with the First Schedule (including the Section and Chapter Notes and General Explanatory Notes) of the Customs Tariff Act, 1975 (“Tariff”).

GST reduced on supply of certain goods

- New Notification # 18/2018- CTR dt 26 July 2018 amends CGST Sch Rates wef 27 July 2018:
- Amends Principal Notfn # 1 CTR dt 28 June 2017, last amended by Notfn # 6- CTR dt 25 Jan 2018

Sr. #	HSN Code	Description of Goods	CGST Rate wef 1 July 2017	Remark
222	61	Articles of apparel and clothing accessories, knitted or crocheted, of sale value not exceeding Rs. 1000 per piece	2.5%	Q.1. Sale value means? Sec. 15(2): The value of supply shall include— (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State/UT GST Act,.. if charged separately by the supplier
		<u>Entry substituted as under</u>	<u>Wef 27 July 2018</u>	
222	61 or 6501 or 6505	Article of <u>apparel</u> and <u>clothing accessories</u> or cap/ topi , knitted or crocheted, of sale value not exceeding Rs 1000 per piece	2.5%	Q.2. Tax rate on cap/topi upto 26 July 2018? [Cap & Muffler is a 'garment' – to cover the body or wear on body, whether inner or outer part of body- Pareek Hosiery Products (1962) 13 STC 722 (Raj)]; [Neck tie is a garment- Janton vs St of WB (2010) 34 VST 497 (WBTT)]

GST reduced on supply of certain goods

- New Notification # 18/2018- CTR dt 26 July 2018 amends CGST Sch Rates wef 27 July 2018:
- Amends Principal Notfn # 1/2017- CTR dt 28 Jun 17, last amended by Notfn # 6/2018-CTR dt 25 Jan 18

Sr. #	HSN Code	Description of Goods	CGST Rate wef 1 July 2017	Remark
225	64	Footwear having a retail sale price not exceeding Rs.500 per pair, provided that such retail sale price is indelibly marked or embossed on the footwear itself.	2.5%	'RSP' vs. "Sale value"?
		<u>Entry substituted as under</u>	<u>Wef 27 July 2018</u>	
225	64	Footwear having a retail sale price not exceeding Rs.1000 per pair, provided that such retail sale price is indelibly marked or embossed on the footwear itself.	2.5%	

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GST reduced on supply of notified Handicraft goods

- New Notification # 21/2018- CTR dt 26 July 2018 amends CGST Sch Rates wef 27 July 2018:
- Old Notfn 32/CT/15-9-2017 & 38/CT/13-10-2017; **IGST Notfn # 3/2018 (IT) dt 22 Oct 2018;**

Sr. #	HSN	Description of Goods	CGST Rate	Remark
39 Entries	3406... .9703	Handicraft goods as notified Eg. Handicraft candles, handbags, purses, jewellery box, coir articles, toran, etc	1.5% or 2.5% or 6% wef 27 July 2018	Different rates as covered by different entries/schedules upto 26 July 2018
16	6117, 6214	Handmade/hand embroidered shawls of sale value not exceeding Rs. 1000 per piece	2.5% wef 27 July 2018	----do----
17	6117, 6214	Handmade/hand embroidered shawls of sale value exceeding Rs. 1000 per piece	6% wef 27 July 2018	----do----

Explanation - For the purpose of this notification, the expression "handicraft goods" means –
"Goods predominantly made by hand even though some tools or machinery may also have been used in the process; such goods are graced with visual appeal in the nature of ornamentation or in-lay work or some similar work of a substantial nature; possess distinctive features, which can be aesthetic, artistic, ethnic or culturally attached and are amply different from mechanically produced goods of similar utility."

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Supply of certain goods, made exempt

- New Notification # 19/2018- CTR dt 26 July 2018 amends CGST Sch Rates wef 27 July 2018:
- Amends Principal Notfn # 2/2017- CTR dt 28 Jun 17, last amended by Notfn # 7/2018- CTR dt 25 Jan 18

Sr. #	HSN Code	Description of Goods	New CGST Rate wef 27 July 2018	Old CGST Rate wef 1 July 2017 to 26 July 2018
114A	44 or 68	Deities made of stone, marble or wood	Nil	Residuary Entry Sr # 453 rate 9% or 14% as article of stone....
117	48 or 4907 or 71	Rupee notes or coins when sold to RBI or the Govt of India	Nil	Residuary rate 9% or (14% as coin under HSN 7118 -Sr. 18 of Sch. IV)
146 A	9619 00 10 /20	Sanitary towels (pads) or sanitary napkins ; tampons	Nil	6% (u/Sch IV- Sr # 235) upto 26 July 2018
152	Any Chapter except 71	Rakhi (other than those made of goods falling under CH 71)	Nil	Residuary Entry Sr # 453 rate 9% (CH 71 is for precious stones, pearls, precious metals, jewellery, etc)

Note for Reversal of ITC u/s 18(4) of CGST Act: Where supply of goods/Services become wholly exempt then pay back the ITC in respect of inputs held in stock or inputs contained in semi-finished/finished goods held in stock on the day immediately preceding the date of such exemption.

Clarification regarding GST rate on certain goods; TRU Circular # 52/26/2018-GST dt 9 Aug 2018

Goods	Fortified Toned Milk
Issue	Whether it is milk?
Description of 'Milk' entry in GST Rate Notfn.	HSN 0401/ Sr 25/ Notfn 2/CTR/28-6-2017/ GST @ Nil ; <i>"fresh milk and pasteurised milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT)"</i>
Observation	As per HSN Explanatory Notes milk enriched with vitamins & minerals is classifiable under HSN 0401
Clarification	Toned milk with vitamins 'A' & 'D' is milk covered under HSN 0401
GST Rate	HSN 0401/ Sr 25/ Notfn 2/CTR/28-6-2017/ GST @ Nil
Binding effect of Circulars; Circulars can't be withdrawn retrospectively;	Commr of Sales Tax, UP vs Indra Industries 122 STC 100 (SC); Wipro Ltd Vs St of Mah. 135 STC 503 (Bom); Suchitra Components Ltd. Vs CCE 20 VST 726 (SC); St of TN vs India cements Ltd 40 VST 225 (SC);

Clarification regarding GST rate on certain goods;
TRU Circular # 52/26/2018-GST dt 9 Aug 2018

Goods	Tamarind Kernel Powder (TKP) (Modified & Un Modified form)
Issue	Tamarind powder whether modified/treated or plain/unmodified attracts same GST rate?
Observation/ Facts	TKP are of 2 grades; plain/unmodified form (hot, water soluble; chemically treated/modified form (cold, water soluble).
Clarification	As unmodified & modified TKP falls under Chapter 13, hence though the GST notfn does not specifically mention the word “modified”, both are covered by said GST Notfn attracting same GST rate
GST Rate	Tamarind kernel powder - CH13/ Sr 76A/ Notfn 6/CTR/25-1-2018/ GST @ 5%; Tamarind, dried - HSN 0813/ Sr 33A/ Notfn 27/CTR/22-9-2017/ GST @ 5%;

Clarification regarding GST rate on certain goods;
TRU Circular # 52/26/2018-GST dt 9 Aug 2018

Goods	Supply of Safe Drinking Water for public purpose
GST Rate on Water	Water – Sr # 99/ HSN 2201/ Notfn 2/CTR/28-6-2017/ GST @ Nil %; [Water other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]
Clarification	Supply of drinking water for public purposes, if it is not supplied in a sealed container , is exempt from GST
GST Rate	Sr # 99/ HSN 2201/ Notfn 2/CTR/28-6-2017/ GST @ Nil%
Sealed container means?	The container is considered to be a sealed container if it is closed in a manner that it is not possible to access the contents or remove the contents without breaking either the container or the fastening , if it is closed. Packing with Rubber-band or stapling or crimping & fastening is done only to facilitate easy carrying of content, it does not mean supplied in sealed container . [Balkrishna Hatcheries vs Clarification & Advance Ruling Authority (2006) 148 STC 137 (SC)]

Clarification regarding GST rate on certain goods;
TRU Circular # 52/26/2018-GST dt 9 Aug 2018

Goods	Baby wipes, facial tissues and other similar products
Facts	Such products are generally made by using <u>non-woven</u> fabrics of viscose and poly viscous blend and are sprinkled with demineralized water, various chemicals and fragrances, which impart the essential character to the product. The base raw materials are moisturizing and cleansing agents, preservatives, aqua base, cooling agents, perfumes etc. The textile material is present as a carrying medium of these cleaning/wiping components.
Industry Practice	These products are classified under different HSN: either 3307 or 3401 or 5603
GST Rate under HSN 5603	Non-wovens , whether or not impregnated, coated, covered or laminated; HSN 5603/Sr # 135/Sch II/ Notfn 1/CTR/28-6-2017/ GST @ 12%
Observation	Referred to General Rules for Interpretation- GRI-3(b) of First Sch to the Customs Tariff Act & observed that essential character of wipes is imparted by the components which are to be mixed with the textile material ; HSN Explanatory Notes to HSN 5603 clearly excludes non-woven , impregnated, coated or covered with substances or preparations such as perfumes or cosmetics, soaps or detergents, polishes, creams or similar preparations. HSN Explanatory Notes to HSN 3307 includes wadding, felt and non-wovens impregnated, coated or covered with perfume or cosmetics; HSN Explanatory Notes to HSN 3401 includes wipes made of paper, wadding, felt and non-wovens , impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale.
Clarification	If the baby wipes are impregnated with perfumes or cosmetics, then it falls under HSN 3307 and if they are coated with soap or detergent, then it falls under HSN 3401 ; Under both entry, GST is @ 18%

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Clarification regarding GST rate on certain goods;
TRU Circular # 52/26/2018-GST dt 9 Aug 2018

Goods	Real Zari Kasab (Thread) (Metallised yarn)
Relevant Sch Entries	<u>Specified embroidery product</u> falls under HSN 5809/5810 which is covered by Sr # 220 of Sch I & attracts GST @ 5% ; <u>Yarn</u> falls under HSN 5605 which is covered by Sr # 137 of Sch II & attracts GST @ 12%
Observation	HSN 5809 and 5810 cover embroidery and zari articles. It does not cover yarn of any kinds. Hence, while these headings apply to embroidery articles, embroidery in piece, in strips, or in motifs, they do not apply to yarn, including Kasab yarn. Further all types of metallised yarns or threads are classifiable under HSN 5605
Clarification	Imitation zari thread or <u>yarn known as kasab</u> or by any other name in trade parlance, would be covered under HSN 5605 which is covered by Sr # 137 of Sch II & attracts GST @ 12%

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Clarification regarding GST rate on certain goods;
TRU Circular # 52/26/2018-GST dt 9 Aug 2018

Goods	Cotton Quilt and comforter
Relevant Sch Entries	Cotton quilts, with sale value upto Rs.1000 per piece, falls under HSN 9404 & attract <u>GST rate of 5%</u> as per S. No. 257A of Schedule I of Notfn # 1/CTR dt 28.06.2017; <u>Cotton quilts, with sale value exceeding Rs.1000 per piece</u> attract <u>GST rate of 12%</u> (as per S. No. 224A of Schedule II of the said Notification).
Issue	<u>What constitutes cotton quilt</u> , i.e. whether a Quilt filled with cotton, with cover of cotton, OR Quilt filled with cotton but cover made of some other material, or filled with material other than cotton.
Observation	<u>The essential character of the cotton quilt is imparted by the filling material.</u> Thus a quilt filled with cotton constitutes a cotton quilt, <u>irrespective of the material of the cover of the quilt.</u>
Clarification	The GST rate would apply accordingly.

Clarification regarding GST rate on certain goods;
TRU Circular # 52/26/2018-GST dt 9 Aug 2018

Activity	Bus body building whether “a supply of motor vehicle” or “a job work”?
Issue	Whether the activity of bus body building is a “supply of Motor Vehicle” attracting GST @ 28% or is a “job-work services” attracting GST @ 18%?
Observation	<u>Type A:</u> Bus body builder builds a body, working on the <u>chassis owned by him</u> and supplies the bus to the customer OR <u>Type B:</u> Bus body builder builds a body working on the <u>chassis provided by other person</u> and charges for fabrication of bus body.
Clarification	<u>Type A:</u> is a <u>supply of bus, a motor vehicle</u> attracting <u>GST @28%</u> ; <u>Type B:</u> is a <u>fabrication of body on the goods provided by other person</u> which is the <u>supply of services</u> , which attracts <u>GST @ 18%</u>

Clarification regarding GST rate on certain goods;
TRU Circular # 54/28/2018-GST dt 9 Aug 2018;

Facts & Issue	Whether simple fertilizers, such as MOP (Murate of Potash) classified under Chapter 31, and supplied for use in manufacturing of a complex fertilizer, are entitled to the concessional GST rate of 5%, as applicable in general to fertilizers
Observation	Fertilizer is covered under CH 31 of Customs Tariff Act. Fertilizer is mostly used for increasing soil and land fertility, either directly, or by use in manufacturing of complex fertilizers; Certain fertilizers & similar goods may be used for other purposes like use of molten urea for manufacture of melamine or use of urea for organic synthesis, etc.
Pre-GST regime	The concessional duty was applied when CH 31 goods were directly used as fertilizers or in manufacture of other fertilizers.
GST Regime	The tax structure on fertilizers has been prescribed on the lines of Pre-GST tax incidence. The wording of GST Notfn is similar to the Central Excise Notfn except certain changes to meet the requirement of GST regime.
Clarification	The intention has been to provide concessional rate of GST to <u>fertilizers supplied which are used directly as fertilizers or used in manufacturing of complex fertilizers</u> . Thus, such supply will be covered by Sr# 182A to 182D of Sch I for HSN 3102 to 3105 by Notfn 18/CTR dt 30-6-2017, GST@ 5% . Fertilizer supplied, <u>which are clearly not to be used as fertilizer</u> will be covered by Sr# 42 to 45 of Sch III of Notfn 1/2017-CTR dt 28-6-2017, GST@ 18% ;
Supplier's Responsibility w.r.t. Recipient's use?	Radio & Electricals Ltd. (1966) 18 STC 222 (SC) and Chunnilal Parshadilal (1986) 62 STC 112 (SC) held that genuineness of the certificate and declaration may be examined by the selling dealer but not the correctness and truthfulness of the statements made therein.

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'MRP' provisions under The Legal Metrology (Packaged Commodities) Rules, 2011.

- **Sec. 2(m): "retail sale price" means** the maximum price at which the commodity in packaged form may be sold to the consumer and the price shall be printed on the package in the manner given below; **'Maximum or Max. retail price (MRP) Rs/.....inclusive of all taxes** or in the form **MRP Rs/.....incl., of all taxes, rounded off....;**
- **Rule 4: Regulation for pre-packing and sale etc. of commodities in packaged form. –**
On and from the commencement of these rules, no person shall pre-pack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon or, a label is securely affixed thereto such declarations as are required to be made under these rules.
Explanation.- The existence of packages without the declaration of retail sale price within the manufacturer's premises shall not be construed as a violation of these rules and it shall be ensured that **all packages leaving the premises of manufacturer for their destination shall have declaration of retail sale price on them as required in these rules.**
- **Rule 6(3):** It shall **not be permissible to affix individual stickers on the package for altering or making declaration** required under these rules:
Provided that for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer, as the case may be, **on the label of the package.**

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**Clarification by Legal Metrology Division of Dept of Consumer Affairs,
Ministry of Consumer Affairs, Food & Public Distribution of Govt Of India vide
Letter #WM-10(31)/2017 dt 4 July 2017; & dt. 27 July 2018**

Subject	Stamping or putting sticker or online printing of new MRP on unsold stock of Pre-packaged commodities, due to impact of GST.
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- 1). Exercising powers u/r 33(1) of Legal Metrology (Packaged Commodities) Rules, 2011, (LM Rules) the Central Govt permitted the manufacturers or packers or importers of pre-packaged commodities to declare the changed **Retail Sale Price (MRP)** on the unsold stock prior to 1 July 2017, after inclusion of the increased amount of tax due to GST in addition to the existing MRP, upto 30 Sept 2017; **(31 Dec 2018)**
- 2). The **changed MRP (New MRP)** shall be made by stamping or putting sticker or online printing on the package.
- 3). The **Revised MRP** shall not be higher than the extent of increase in tax on account of implementation of GST Act & Rules.
- 4). The **Original MRP** shall be continued to be seen/ displayed even after putting the Revised MRP.
- 5). Atleast 2 advertisements in newspapers & circulation of notices indicating the change in the price of such packages to the dealers & to the Director & Controllers of Legal Metrology in the Central & State Govt.
- 6). **U/r 6(3) of the LM Rules for reducing the MRP, a sticker with revised lower MRP (inclusive of all taxes) may be affixed & the same shall not cover the MRP declaration.**
- 7). Any packaging material or wrapper which could not be exhausted prior to 1 July 2017 may be used for packing of material upto 30 September 2017 **(31 Dec 2018)**, after putting revised MRP.

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Anti-Profiteering Measure (Sec. 171 of CGST Act)

- **Sec. 171(1): Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.**
- **Sec. 171(2):** The Central Government may, on recommendations of the Council, by notification, constitute **an Authority**, or empower an existing Authority constituted under any law for the time being in force, **to examine whether ITC** availed by any registered person or the reduction in the tax rate have actually **resulted in a commensurate reduction in the price** of the goods or services or both supplied by him.
- **Sec. 171(3):** The **Authority** referred to in sub-section (2) **shall exercise such powers and discharge such functions as may be prescribed.**
 - **Price is determined by forces of demand & supply Many other factors..... And Not only based on levy of taxes in an area**
 - **Revision of prices may be done for new batches After lapse of some time.....**

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Applicability of Advance Ruling (Sec. 103 of CGST Act)

- **Sec.103. (1) “The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—**
 - (a) on the applicant** who had sought it in respect of any matter referred to in Sec. 97(2) for advance ruling;
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.**

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.”

- **For Others, Advance Ruling may be persuasive or guiding.**

Child development program to boost brainpower, provided by UCMAS using abacus is an exempt service under GST?

- **Sr # 80 of Notifn #12/2017-CTR dt 28 Jun 2017 exempts services by way of training or coaching in recreational activities relating to arts or culture or sports;**
- The words 'recreational activities' and 'arts' are **not defined** in the GST law.
- **Dictionary meaning: 'art'** is the expression or application of human creative skill and imagination, **typically in a visual form such as** painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power.
- **Held: Improvement of speed & accuracy of calculations or development of mental capabilities, such as, concentration, observation, visualization, imagination & memory cannot be said to fall within the meaning of 'art', therefore above program is not covered by Exemption** Notifn referred above.
- **Omnisoft Technologies (P) Ltd. [2018] 98 Taxmann.com 135 (AAR-GUJ)**

Supply of medicine, food, etc to In-patients in Hospital is taxable?

- Supply of medicines & allied items like food, etc as advised by Doctor/ Nutritionist provided by hospital through Pharmacy to In-patients;
- Held: It's a Composite supply of health care treatment which is not taxable under GST;
- Supply through Pharmacy to Out-patients is taxable;
- Ernakulam Medical Centre Pvt Ltd. AR # KER/ 16/ 2018 dt 29 Sept 2018

Food & Beverages supplies in Food Court & Snack Bar

- Held: It is taxable @ 5%; It cannot, by any stretch of imagination, be treated as a part of outdoor catering
- Jabalpur Entertainment Complexes Pvt Ltd. (AAR- MP)

Lab Manuals are whether printed materials or Books?

- Lab manuals are published, which comprises of bulk instructional/ educational printed material as per CBSE syllabus for class VI to XI, written by authors. It contains Questions & Answers and some blank pages for students to practise or write notes.
- Whether it is covered by HSN 4820: Laboratory note book: GST @ 12% OR HSN 4901: Printed books: GST @ Nil ?
- Entry 119 of Good Exemption Notifn # 2/CTR/dt 28-6-17 reads as: *“HSN 4901: Printed books, including Braille books”*
- **Held:** HSN 4901: Printed books: GST @ Nil
- [Evergreen Publication \(I\) Ltd. \(2018\) 98 Taxmann.com 239 \(AAR- Punjab\)](#)
- MVAT Act, Sch. Entry A-6 for Nil Rate: *“Books, that is to say..... Including..... but excluding..... publications which contain space exceeding 8 pages for writing”*

TRAN-1 filing rule amended for cases affected due to technical glitches on GST Portal

- CGST Rules amended to give powers that Commissioner may, on recommendation of GST Council, extend the date for submission of TRAN-1 till 31 Mar 2019 in respect of Regd. Persons who could not submit it by due date on account of technical difficulties on GST Portal for whom GST Council has recommended for such extension.
- [Notifn # 48/2018 \(CT\) dt 10 Sept 2018](#)

TRAN-1 could not be filed in-time, whether window can be reopened to file?

- Madras High Court, while hearing a petition seeking re-opening of GST TRAN-1, has expressed a view that ITC is a substantive right, which cannot be denied to the assesseees on the procedural grounds.
- HC observed that due date contemplated under the laws to claim the transitional credit is procedural in nature. In view of the GST regime and the IT platform being new, it may not be justifiable to expect the users to back up digital evidence. Even under the old taxation laws, it is a settled legal position that substantive input credits cannot be denied or altered on account of procedural grounds.
- [Tara Exports – WP # 18532 of 2018 \(MAD- HC\)](#)

TRAN-1 can be rectified to include certain transactions?

- TRAN-1 was filed in-time;
- Certain transactions were missed out in TRAN-1;
- Authorities were approached to rectify the error, which was denied;
- Held: No scope for directing the Authorities to allow correction of TRAN-1; Time limits provided in rules was extended from time to time & lastly upto 27 Dec 2017; Limited extension is granted in genuine cases for unable to upload TRAN-1 due to technical glitches.
- [Jay Chemical Ind. Ltd. Spl Civil Appeal # 10828 of 2018 \(GUJ HC\)](#)

TRAN-1 Credit Verification by Mah. GST Department- Internal Circular # 1A dt 1 Jan 2018 & 23A dt 1 Sept 2018

- Circulars clarify all situations arising under Transitional Provisions u/s 140 to 142 of MGST Act, giving examples; **Specifically TRAN-1 of Builders & Developers;**
- **Nodal Officers have to verify only the credit taken of MVAT/ET in TRAN-1 (Not of CENVAT/ Service Tax)** & match it with data shared by EIU (Economic Intelligence Unit) of Mah VAT Department
- Check whether all conditions of Transitional provisions satisfied by assessee
- Check whether ITC attributable to Turnover for which CST Forms not received till 30 Jun 2017 for the transactions effected from 1 Apr 2015 to 30 Jun 2017, is reduced from credit c/f in last return of Jun 2017
- Builders & Developers eligible for credit on inputs held in stock, which are purchased after 1 July 2016 (i.e. last 12 mths);
- Builders/Developers Not eligible for credit on Capital Goods held in stock; Not eligible for credit on inputs used in construction which has become immovable property upto 30 Jun 2017.
- Issue Notice in MVAT Form 603 for information; Give Hearing; For excess credit taken, start recovery & demand action as per Sec. 73 & 74 of MGST Act

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ITC on Dumper, JCB, etc available?

- Held: Dumper, JCB, Pokland & Tipper are mining equipments which are not covered by Sec. 2(28) of Motor Vehicles Act, hence eligible for ITC under GST law
- **Purewal Stone Crusher (2018) 98 Taxmann.com 137 (AAR- Uttarakhand)**

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No ITC on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples as per sec 17(5)(h) of CGST Act.

- Approach of Authority at the Disturbing times due to natural calamity:
- The Deputy Commissioner, Kerala State GST, Mattancherry issued letter dt 21 Aug 2018 to all ACs & STOs instructing to issue show cause notice (SCN) u/s 73(1) & recover the tax along with interest @18% and penalty of the amount of ITC claimed earlier on the goods which are lost or destroyed in devastating flood in the state.
- Aforesaid letter gives the format of statement asking the data of stock lost or damaged on which ITC was availed giving details of invoice, supplier, goods, quantity, value, tax rate, etc.
- Affix notices in the office premises requesting the taxpayers to report the damage/ loss of goods.
- Send the mail/mange to all taxpayers to report the damage/ loss of goods in the given format.
- Field visit may be conducted to ascertain the genuineness of the damage reported.
- To cross verify the damage or loss statement with GST data in Backend system.
- If taxpayer pays the tax with interest within 30 days of issue of SCN, no penalty shall be payable & proceedings be concluded.
- The proper officer shall after considering the reply, if any, determine the amount of tax, interest & penalty @ 10% of tax or Rs. 10,000, whichever is higher.
- What can a Tax payer expect more from the Authority / Govt??

Retrospective amendment to deny Refund of ITC u/r 89(5) – w.r.t Inverted rate duty structure

- Petitioners approached the Court seeking a declaration that Rule 89(5) of CGST Rules, 2017 as amended vide Notification No. 21/2018-Central Tax dt 18 Apr 2018 and Notification No.26/2018-Central Tax dt 13 Jun 2018, to the extent that the said provision denies grant of refund of unutilized tax credit in respect of tax paid on input services is ultra vires to the Constitution of India and provisions of the CGST Act, 2017.
- Gujarat HC granted an interim stay of a demand notice wherein the petitioner challenged the retrospective amendment in the CGST Laws where a change was brought in refund provision, denying the benefit of refund of unutilized input tax credit.
- Hon'ble Court upheld that there shall be ad-interim relief as prayed for in para 17(D) meaning thereby the impugned demand notice dated 21.6.2018 and its operation and implementation is stayed hereby.
- Shree Rama Newsprint Limited - Special Civil Application No. 14155 of 2018

Slump Sale of one of the units, as a going concern, for a lumpsum consideration, is not liable to GST

- **Rajashri Foods Pvt. Ltd. Advance Ruling No. KAR ADRG 06 / 2018 Dt 23rd April, 2018 (KAR):**
- **Facts:** The Company having 3 Manufacturing units situated at different places intended to sell one of the unit along with all its fixed assets viz. land, building, plant & machinery etc., current assets viz. stock & trade receivables etc., and liabilities viz. Bank term loans, bank working capital loans, creditors for supplies etc., for a lump sum consideration.
- **Issue: 1. “Whether the transaction would amount to supply of goods or supply of services or supply of goods & services?”**
Issue 2. “Whether the transaction would cover under sl.no.2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?”
- **Observations:** The unit sought to be sold is a fully functional unit and the transaction contemplates the transfer of the entire business to a new person, who would not only enjoy a right over the assets but shall also take over the liabilities. It thus postulates that there will be a continuity of business. As the unit is said to be functional and is desired to be transferred as a whole to a new owner it amounts to transfer of a going concern as a whole.
In part 4(c) of Schedule II it is provided that when the business is transferred as a going concern then it does not amount to supply of goods. It, therefore, becomes clear that such transfer of business does not constitute a supply of goods. Cont'd.....

Contd....Slump Sale of one of the units,for a lumpsum consideration, is not liable to GST

- **Observations Cont'd:** Activities which constitute supply of services are also described in Schedule II. However, the transaction involving the transfer of a going concern is not covered under this Schedule.
Notification, No. 12/2017-CTR dt 28 June 2017, Sr # 2 of said Notification provides for “Services by way of transfer of a going concern, as a whole or an independent part thereof”. This indicates that the activity of transfer of a going concern constitutes a supply of service. The Notification further provides ‘Nil’ rate of tax on such a supply.
A going concern is a concept of accounting and applies to the business of the company as a whole. Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business. Such transfer of business as a whole will comprise comprehensive transfer of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. In the instant case, the Applicant has not furnished any documentary evidence to establish that the Applicant is a going concern except their admission that its an ongoing business and the transaction proposes to transfer all the assets and liabilities to the new owner. It implies that the business will continue in the new hands with regularity and a nature of permanency.
- **Ruling:** A.1. The transaction of transfer of business as a whole of one of the units of the Applicant in the nature of a going concern amounts to supply of service.
A. 2. The transaction of transfer of one of the units of the Applicant as a going concern is covered under Sl.No.2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, subject to the condition that the unit is a going concern.
Note: Sch II Para 4(c): “Where any person ceases to be a taxable person.....unless the business is transferred as a going concern to another person;

Whether Service Tax/ VAT/ Excise can be demanded after roll out of GST on 1 July 2017?

- **Sec. 174 of CGST Act: Repeal & Savings: Repeal of the said Acts... Shall Not...**

Sec. 174(2)(b): affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or.....

(e)and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

Sec. 174(3): The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

Whether Service Tax/ VAT/ Excise can be demanded after roll out of GST on 1 July 2017?

- **1] Contention of Petitioner/ Assessee:** After Implementation of GST law & Omission of Entry 92C of the Constitution, the Service Tax Department has no jurisdiction to levy service tax
- **Held:** Sec. 6-A of the General Clauses Act clearly shows that even if enactment stands omitted by a subsequent amendment, a proceeding initiated under the omitted enactment on its own does not come to an end upon omission; further continuance cannot be said to be impermissible under the law.
- **Mascot Entrade Pvt Ltd. WP (C) # 2059/2018, 7729/2017 & 1868/2018 dt 12 Oct 2018 (GAU HC).**
- **2] Contention of Petitioner/ Assessee:** Petitioner challenged the communication issued by the Comptroller and Auditor General of India (CAG) calling upon the petitioner to submit Service Tax audit at the hands of the officers of the CAG.
- **Held:** After analyzing Sec. 173 of the CGST Hon'ble GUJ HC observed that "clause of Sub-section (2) of Section 174 and other clauses would, prima facie, show that there was no saving of Rule 5A in such manner that fresh proceedings for audit could be initiated in exercise of powers under the said Rule. We, therefore, have serious doubts whether, with the aid of Rule 5A of the Service Tax Rules, 1994, the CAG can carry out compulsory Service Tax audit of private agencies like the petitioner." "Under the circumstances, issue Notice, returnable on 28 Nov 2018. By way of ad interim relief, the impugned order dt 9 Oct 2018 is stayed.
- **OWS Warehouse Services LLP - Special Civil Application No. 16226 of 2018 (Gujarat HC)**

Payment of GST Arrears, in installments

- Petitioners requested the Department to allow them to pay the arrears of GST in installments, due to financial difficulties
- GST Authorities rejected the request and passed an order without assigning reasons
- Petitioner submitted before GUJ HC that the Departmental Circular permits the Authority in the exercise of its discretion to grant suitable installments when financial hardship is made out
- Hon'ble GUJ HC allowed petitioner to pay amount in installments and extended the stay against coercive recoveries of the dues
- [Indus Projects Ltd. - R/Special Leave Application # 14638 of 2018](#)

* Best Wishes for GST Practice *

...THANK U ALL...

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