

# WEEKLY NEWSLETTER



## Goods and Services Tax

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### ABOUT US:

A2Z TAXCORP LLP is a boutique Indirect Tax firm having professionals from Multi disciplines which includes Goods and Services Tax (GST), Central Excise, Custom, Service Tax, VAT, DGFT, Foreign Trade Policy, SEZ, EOU, Export - Import Laws, Free Trade Policy etc.

## Recent Judgements

### Return in Form GSTR- 3B not a return under Section 39 of the CGST Act, 2017: Gujarat HC

<b>Facts</b>	The Petitioner contended that as per Section 16(4) of the CGST Act/GGST Act states that the last date for taking ITC by a registered person in respect of any invoice or debit note pertaining to a financial year is the due date of furnishing of the return under Section 39 for the month of September following the end of financial year or furnishing of the relevant annual return, whichever is earlier. From a conjoint reading of Rule 61(1) and Rule 61(5) of the CGST/GGST Rules it can be construed that, Form GSTR-3B is not the return in lieu of a return specified in Form GSTR-3. The legality of press release dated October 18, 2018, which links the last date for availing the ITC to the last date for filing of the return in Form GSTR-3B, was also questioned.
<b>Held</b>	<b>The Hon'ble High Court of Gujarat vide its R/Special Civil Application No. 18962 of 2018 dated June 24, 2019</b> held that, the impugned Press Release is illegal to the extent that its Para-3 purports to clarify that the last date for availing ITC relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B. <b>It observed that, GSTR-3B is not a return in lieu of GSTR-3 as Government had omitted the reference to GSTR-3B being "return in lieu of Form GSTR-3" vide Notification no. 17/2017-(CT) dated July 27, 2017.</b>

### Revenue liable to pay interest if not paid within expiry of 3 months from the application of refund

<b>Facts</b>	<b>M/s. Alfa Packaging ("the respondent")</b> is a cosmetic shampoo manufacturer. The Revenue was of the view that the cosmetic shampoo has to be assessed to duty under the Maximum Retail Price ("MRP") based assessment under Section 4A of the Excise Act whereas, as per respondent the assessment had to be done on the transactional value of the cosmetic shampoo under Section 4 of the Excise Tariff Act. The assessment is being made on the provisional basis on MRP based assessment for the period August 10, 1998 to October 31, 1998. Later, it was finalized that valuation is to be based on transactional value. This led to the respondent being entitled to refund of ₹ 49.17 lakhs for which he filed an application on January 18, 1999. The CESTAT rejected the claim for refund on grounds of unjust enrichment. Revenue refunded the principal amount but did not pay interest under Section 11BB of the Excise Act. This led to the assessee demanding interest from the Revenue for April 18, 1999 to September 20, 2012 under Section 11BB of the Excise Act. The Authorities rejected the claim for interest.
<b>Held</b>	<b>The Hon'ble High Court of Bombay vide Appeal No. 81 of 2019 dated June 18, 2019</b> , held that liability of interest commences after 3 months of the refund application.

### Retrospective amendment to deny credit of EC and SHEC challenged before Gujarat HC

<b>Facts</b>	M/s Grasim Industries Limited ("the Appellant") filed a writ petition before Hon'ble Gujarat High Court challenging the validity of amendment in CGST Act, 2017 vide Section 28 of CGST Amendment Act, 2018. Vide Section 28 of CGST Amendment Act, 2018, the Government denied the credit of Education Cess ("EC") and Secondary Higher Education Cess ("SHEC") retrospectively w.e.f. July 01, 2017. These credits were earlier allowed to be carried forward under GST, if duly reflected in last return of pre-GST regime, as it was covered within scope of 'CENVAT credit'. The Appellant contended that, such type of amendments is violative to Article 19(1)(g) of the Constitution of India, being absolutely arbitrary and unreasonable.
<b>Held</b>	<b>The Hon'ble Gujarat High Court vide oral order dated 10/07/2019 in R/Special Civil Application No. 11061 of 2019</b> issues notice to Attorney General of India and to respondents for explaining the reasons for bringing around such amendment with retrospective effect. Interim relief was granted, and next hearing date was fixed for July 31, 2019.

## Advance Rulings

### Deploying Gaming Machines and Equipment in a Mall would not be termed as an 'amusement park' but fall under 'amusement' facilities and taxable at 28%

<b>Facts</b>	<b>M/s Bandai Namco India Pvt. Ltd. ("the applicant" or "BNIPL")</b> has stationed various gaming equipment and machines in a mall for different age groups, consisting of kids, teenagers and adults. The equipment and machines are either coin operated or card operated in its faculty. At present, the applicant is discharging tax liability @28% as a supply of services as per Sr. No. 34 of the Notification no. 11/2017 Central Tax (Rate) dated June 28, 2017. The applicant seeks an Advance Ruling as to the applicable rate of GST on the services/ activities of the Company?
<b>Held</b>	<b>The Hon'ble AAR, Maharashtra vide its Advance Ruling Order No. GST-ARA-109/2018-19/B-37 dated April 08, 2019</b> held that, the subject services or activities supplied by the applicant by deploying gaming machines and equipment would not fall within the expression 'amusement park' rather it will fall under 'amusement facilities' and taxable at the rate of 28% w.e.f. January 25, 2018.

### Importer is liable to pay IGST on ocean freight under Reverse Charge Mechanism ("RCM")

<b>Facts</b>	<b>M/s. E-DP Marketing Private Limited ("the applicant")</b> intends to import soyabean oil on CIF basis (Cost + Insurance + Freight) which includes the component of ocean freight in the price of imported goods. The applicant is required to authorize the seller, who is a person located in non-taxable territory, for transporting the goods by a vessel from supplier's place up to the place in Indian Custom Territory. The payment of ocean freight would be made by the seller located outside India. Further, as per the corrigendum issued on June 30, 2017 in regards to Notification No. 8/2017-Integrated Tax (Rate) dated June 28, 2017, the importer of the goods is required to pay IGST on RCM basis on the amount of deemed ocean freight equal to 10% of the value of goods imported. Therefore, the issue was raised by the applicant on the applicability of RCM on Ocean Freight when IGST is paid by the importer on Goods Imported on CIF Basis.
<b>Held</b>	<b>The AAR, Madhya Pradesh vide Advance Ruling Order No. 05/2019 dated May 02, 2019</b> observe that, in case of such imports, the ocean freight is collected by seller being located in non-taxable territory from importer being located in the taxable territory. Further, the authority held that in view of the Notification No. 10/2017-Integrated Tax (Rate) dated June 28, 2017 and Notification No. 8/2017- Integrated Tax (Rate) dated June 28, 2017, the applicant shall be liable to pay IGST on ocean freight paid on imported goods under RCM irrespective of the ocean freight component having been a part of the CIF value of imported goods and rejected the applicant's contention that it will amount to double taxation.

### Membership/admission fees collected by the club liable to GST

<b>Facts</b>	<b>M/s Rotary Club of Mumbai Queens Necklace ("the applicant" or "Club")</b> is a not for profit institution and it neither renders any commercial service to its members, nor does it render services to outsiders for a fee. The Club collects membership fee and admission fee from existing members and new members respectively. The expenses are mainly in the form of meeting expenses, fees and contributions to district or secretariat of Club. The applicant seeks advance ruling as to whether the membership subscription and admission fees from members is liable to GST as a supply of services? If the above receipts are liable to GST, can the Club claim the Input Tax Credit ("ITC") of the tax paid on banquet and catering services for holding members meetings and various events?
<b>Held</b>	<b>The Hon'ble AAR, Maharashtra vide Order No. GST-ARA-118/2018-19/B-46 Mumbai, dated April 30, 2019</b> held that, the amount collected as membership subscription and admission fees from members by Club is liable to GST as the supply of services. It further holds that the applicant is not entitled to ITC of the tax paid

on banquet and catering services for holding members meetings and various events as outward taxable supply is not of the same category of goods or services or both.

### CGST/SGST leviable on services to foreign clients as the place of supply and location of supplier of service are in same state

<b>Facts</b>	<p><b>M/s Bilcare Ltd. (“the applicant” or “the Company”)</b> is engaged in an innovation-led packaging solutions. The applicant’s Global Clinical Material Supplies (“GCS”) division provides various types of services to its foreign clients i.e. Pharmaceutical Company or a Clinical Research Organization (“CRO”). The standard quotations are submitted to clients and sample POs’ are received from those foreign clients for various services are provided by the GCS division.</p> <p>Whether the various services provided to foreign clients situated outside India and for which the place of supply is in the taxable territory shall be liable to IGST or CGST and SGST? In case it is ruled that IGST is payable, what is the procedure to be followed for payment of IGST as the GST portal indicate place of supply as a state of Maharashtra?</p>
<b>Held</b>	<p><b>The AAR, Maharashtra vide its Advance Ruling No. GST-ARA-117-2018-19/B – 45 dated April 26, 2019</b> held that, the services supplied are in respect of goods which are made physically available by the recipient of the services to the supplier of the services for the services to be performed and thus, the provisions of sub-section (3)(a) of Section 13 of Integrated Goods and Services Act, 2017 (“IGST Act”), is squarely applicable for the supply in the instant case. In terms of Section 13(3)(a) of IGST Act, the ‘place of supply’ is the location where services are actually performed. Since, ‘place of supply’ and location of ‘service provider’ are in the same state, CGST and SGST are payable for this transaction.</p>

### Circular

The CBIC vide Circular No. 213/3/2019-Service Tax July 05, 2019, has clarified that, no requirement is there for reversal of Credit under Rule 6(3) of the CCR 2004 by service providers of catering and restaurant services or providing any services on which abatement has been prescribed vide Notification No. 26/2012 - ST dated June 20, 2012, unless twin conditions specified in rule 2(e) of CCR is satisfied.

### Recent Releases

GST Audit Manual 2019	Statistical Report on completion of 2 years of GST Implementation.
<p>CBIC has issued GST audit Manual (“GSTAM”) 2019 after approval by the Board.</p> <p><b>Some of the highlights of GSTAM, 2019 are as under:-</b></p> <ol style="list-style-type: none"> <li>1. Introduction and Legal Authority</li> <li>2. Objectives and Principles of audit</li> <li>3. Management of GST audit</li> <li>4. Selection of registered persons for audit</li> <li>5. Audit - Preparation and Verification</li> </ol> <p>Click <a href="#">here</a> for Complete GSTAM.</p>	<p><b>The report highlights the key statistics on below mentioned subjects:</b></p> <ol style="list-style-type: none"> <li>1. Registration trend (August’17 to June’19)</li> <li>2. Total Returns filed since July 2017, GSTR-1 return filing trend (F.Y 2017-19), GSTR-3B filing compliance</li> <li>3. Payments made from July’17 - May’19</li> <li>4. Data transmission to Customs for IGST Refunds (Jun’18 till June’19)</li> <li>5. E-way bill statistics for the period April’18 to June’19</li> <li>6. GSTN outreach initiatives (webinars, training)</li> </ol> <p>Click <a href="#">here</a> for Complete Statistical Report.</p>

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Thanks & Best Regards,

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