

GST Update

Weekly Update
29.12.2018

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 22.12.2018. It supplements the earlier GST Updates.
- This presentation is based on CGST Act/Rules/ Notifications. Similar parallel provisions in State Laws may be referred to as required

- One circular issued on Seva Bhoj Yojana by CBIC for reimbursement of GST paid to religious/charitable institutions
- SOP on TDS updated
- FAQs on Banking updated
- Third Edition of GST FAQs with addition of new chapters issued
- Results of the GST Practitioners exams held on 17th December, 2018 issued

Seva Bhoj Yojana

- <http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-75.pdf;jsessionid=F2C0DAB1A3291379A90580CC83E82055>
- **Ministry of Culture** has introduced a Central Sector Scheme called the “Seva Bhoj Yojna”
- Reimbursement of central tax and the Central Government's share of integrated tax paid on the purchase of certain raw food items namely, ghee, edible oil, sugar/ burra/ jaggery, rice, atta/ maida/rava/flour and pulses used for distributing free food to general public/devotees by charitable/religious institutions like Gurudwaras, temples, Dharmik Ashrams, Mosques, Dargahs, Churches, Math, Monasteries, etc
- Financial Assistance will be provided on First-cum-First Serve basis of registration linked to fund available for the purpose in a Financial Year.

Seva Bhoj Yojana (Contd)



- Scheme made operational w.e.f the **1st of August, 2018**
- Designated nodal central tax officer of each State or Union territory (Same nodal officers as for the purpose of facilitating the processing of refund applications for UIN entities) to process the re-imbusement applications
- **DG, GST** is the nodal agency for reporting and monitoring the reimbursements
- The institutions opting to avail of the Scheme must first register with the Darpan Portal of NITI Aayog to obtain a Unique ID (SBY-UIN) from the portal and thereafter, apply on the CSMS Portal on the Ministry of Culture's website www.indiaculture.nic.in the prescribed format, and upload the requisite documents.

Seva Bhoj Yojana (Contd)

- After enrolling with the Ministry of Culture, a unique enrolment number will be given by the Ministry of Culture for filing claims for the reimbursement of the said taxes. The details of the institutions enrolled under this scheme can be viewed online at <https://indiaculture.nic.in/scheme-financial-assistance-under-seva-bhoj-yojna-new> .
- The claimant is then required to submit an application in FORMSBY-01 for obtaining a Seva Bhoj Yojana - Unique Identity Number (SBY-UIN), to the jurisdictional nodal officer of the State/Union Territory, in which the specified activity is undertaken.

Seva Bhoj Yojana (Contd)

- Since the reimbursement of the said taxes by the nodal officers shall be done State-wise or Union territory-wise, the claimant would be required to apply for a separate SBY-UIN for each State or Union territory in which they undertake the specified activity.
- Upon receipt of the application in FORM SBY-01 and the information of allocation of a Unique Enrolment Number by the Ministry of Culture, a unique ten digit SBYUIN shall be communicated to the applicant in FORM SBY02 within seven days from the receipt of the complete application by the nodal officer.

Seva Bhoj Yojana (Contd)

- Application for claiming reimbursement in FORM SBY-03 shall be submitted to the nodal officer of the State/Union territory in whose jurisdiction the claimant undertakes the specified activity, on a quarterly basis, before the expiry of six months from the last day of the quarter in which the purchases of the specified items have been made.
- The application shall be shall be submitted along with the following documents:
 - Self-attested copies of the purchase invoices mentioning the unique enrolment number allotted by the Ministry of Culture and SBY-UIN;

Seva Bhoj Yojana (Contd)

- A Chartered Accountant's Certificate certifying the following:
(i) quantity, price and amount of central tax, State tax/Union territory tax or integrated tax paid on the purchase of the specified items during the quarter for which the claim is filed; (ii) the claimant is involved in charitable/religious activities; (iii) the reimbursement claimed in the current quarter/year is not more than the purchases in the previous corresponding quarter/year plus a maximum of 2.5%/10% for the current quarter/year, as the case may be; (iv) the claimant is using the specified items for only distributing free food to the public/devotees etc. during the claim period; and the claimant fully satisfies the conditions laid down in para 6 of the guidelines issued by the Ministry of Culture

- **Other important Features**
- Institutions for serving **free food** to public / devotees
- shall serve free food to **at least 5000 people in a calendar month**
- distributing free food, langar and prasad to public for at-least past three years on the day of application(Self certification)
- Institutions not in receipt of any Financial Assistance from the Central/State Government for the purpose of distributing free food
- should have been in existence for preceding three years before applying for assistance

FAQs on Banking, Insurance and Stock Brokers Sector (Updated as on 27.12.2018)

- http://www.cbic.gov.in/resources//htdocs-cbec/gst/27122018-UPDATED_FAQs%20ON%20BANKING,%20INSURANCE%20AND%20STOCK%20BROKERS.pdf;jsessionid=90B1DF099914B503FAA436D0672C1425
- **Q 80. Is GST leviable on interest/ delayed payment charges charged to clients for debit for settlement obligations/ margin trading facility?**
- *Any interest/ delayed payment charges charged for delay in payment of brokerage amount/ settlement obligations/ margin trading facility shall **not** be leviable to GST **since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances and are covered by entry No. 27 of notification No.12/2017- Central Tax (Rate) dated 28th June, 2017. (Amended as on 27.12.2018)***

SOP on TDS (Updated as on 27.12.2018)

- **Filing of TDS Return for period during which there was no registration**
- All deductions made on or after 1st October, 2018 but before the date of registration may be included in the first return to be furnished after obtaining registration.

(inserted as on 27/12/2018)

SOP on TDS (Updated as on 27.12.2018) Contd.

- **Q68. What needs to be done if I have taken registration for TDS on 1st November, 2018 but was required to deduct TDS from 1st October, 2018?**
- *Ans. All deductions made earlier must be included while furnishing the first return. In other words, while furnishing the return for the month of November, 2018, TDS deducted for the months of October and November, 2018 shall be included in the said return
(inserted as on 27/12/2018)*

GST FAQs Third Edition issued



- <http://www.cbic.gov.in/resources//htdocs-cbec/gst/Final-GST-FAQ-31218.pdf;jsessionid=94272862B25AA55543D3420B91EB7272>
- Third Edition of the GST FAQs as on 15th December, 2018 issued
- New Chapters /topics on Composition levy, Amendment/Cancellation of registration, Invoice, Accounts and Records, Exports, SEZs, EOUs, Imports and Anti-Profitteering added

Results of the GST Practitioner exams

- <http://www.gstcouncil.gov.in/sites/default/files/Result-dated-17-12-2018.pdf>
- NACIN conducted examination for confirmation of enrollment of GST Practitioners (GSTPs) in terms of second proviso to rule 83(3) of the CGST Rules, 2017. The examination was held on 17.12.2018 at twenty two centres across India. The GSTPs enrolled on the GST Network under rule 83(2) and covered by rule 83(1)(b), i.e. those meeting the eligibility criteria of having enrolled as sales tax practitioners or tax return preparer under the existing law for a period not less than five years, were invited to appear in this exam.
- Results declared and available on the above link



GST Legal Updates

GST leviable on Supply of Goods and Services to Duty free shops at International Airports in India

Case of Vasu Clothing Pvt Ltd Vs UoI reported in 2018-TIOL-191-HC-MP-GST

Facts

Petitioner is a manufacturer and exporter of garments in India and he intends to supply goods to Duty Free Operator (DFO), who in turn is selling the goods from Duty Free Shops (DFSs) -Petitioner seeks indulgence of the High Court for grant of relief from payment of goods and service tax by way of exemption and on the goods and service supply to the Duty Free Shops (DFSs) at the international Airports in India - Petitioner's contention is that after enactment of Central Goods and Services Tax Act, 2017 and the Rules framed thereunder, the petitioner is entitled to supply goods and services to Duty Free Shops without payment of taxes and similar supplies from all over the world except India are permitted without payment of taxes.

GST leviable on Supply of Goods and Services to Duty free shops at International Airports in India

The Hon'ble High Court held as under

For the purpose of CGST Act, India extends up to the Exclusive Economic Zone up to 200 nautical miles from baseline. The location of the Duty Free Shop (DFS), whether within customs frontier or beyond, shall be within India as long as it is not beyond EEZ (200 nautical miles). Therefore, DFS cannot be said to be located outside India.

Instead, the DFS is located within India. As the supply to a DFS by an Indian supplier is not to 'a place outside India', therefore, such supplies do not qualify as 'export of goods' under GST. Consequently, such supplies cannot be made without payment of duty by furnishing a bond/letter of undertaking (LUT) under rule 96-A of the CGST Rules, 2017. Also, the petitioner cannot claim refund of unutilized input tax credit (ITC) under Section 54 of the CGST Act, 2017.

GST leviable on Supply of Goods and Services to Duty free shops at International Airports in India

- **The High Court held as under**
- It is true that we cannot export our taxes but the facts remains that it is not the petitioner, who is exporting the goods or taking goods out of India. Petitioner is liable to pay GST on supply of indigenous goods to DFS.
- A statute is an edict of the legislature and the Courts do not have the power to enact a statute and the Court can only do interpretation of statute and once the Court does not have power to legislate, the question of granting exemption in absence of any statutory provision to the petitioner under the GST Act does not arise.

High Court upholds jurisdiction of Mumbai CGST Commissionerate even in case where parallel proceedings were commenced in



Jaipur

Case of Shafi Khan Khokhar Vs State Of Maharashtra reported in 2018-TIOL-192-HC-MUM-GST

Facts

During the period of dispute, the assessee, an individual, was subjected to enquiry proceedings under CGST Act, initiated by the Commissionerate at Mumbai. He was issued summons in this regard, u/s 14 of the CEA 1944 and Section 70 of the CGST Act. The Assessee claimed that he was already facing enquiry by the GST authorities at Jaipur Commissionerate. Accordingly, he filed the present writ, contesting what he termed to be parallel proceedings running against him.

High Court upholds jurisdiction of Mumbai CGST Commissionerate even in case where parallel proceedings were commenced in



Jaipur

- **Case of Shafi Khan Khokhar Vs State Of Maharashtra reported in 2018-TIOL-192-HC-MUM-GST**
- **The Hon'ble High Court held as under**
- The Assessee is registered at Mumbai & is subject to jurisdiction of the Mumbai Commissionerate. Merely because the Assessee has his primary business at Jaipur, this does not determine the issue of jurisdiction. Moreover, Section 25 of the CGST Act provides for separate registration for each state. Hence where both registration taken & services rendered are at Mumbai, the Assessee is subject to jurisdiction of Mumbai Commissionerate. Thus no intervention is warranted in the proceedings launched by it.

High Court directs constitution of expert committee to examine grievance of Adlabs Entertainment Ltd

- **Case of Adlabs Entertainment Ltd Vs UoI reported in 2018-TIOL-193-HC-MUM-GST**
- **Facts**
- The Assessee-company, set up a theme park and a water park. As part of State Govt policy, it was offered incentives such as waiver of entertainment tax, since the Assessee was heavily investing capital. Moreover, such waiver gave an advantage to the Assessee over other entities in the same line of business. Upon implementation of GST, entertainment tax was subsumed, due to which the Assessee lost the incentive of waiver of such tax . Further, it became liable to pay GST @ 18%, at par with others. The Assessee claimed that its business became unviable & was unable to return borrowed funds, while also failing to recover its capital investment. Hence the present writ seeking relief.

High Court directs constitution of expert committee to examine grievance of Adlabs Entertainment Ltd

- **Case of Adlabs Entertainment Ltd Vs UoI reported in 2018-TIOL-193-HC-MUM-GST**
- **The Hon'ble High Court held as under**
- The issue warrants examination by the Government. Chief Secretary of State Govt directed to constitute committee comprising of Principal Secretary of Finance and the Secretary of Tourism. Assessee be permitted to make representations before it. Recommendations of committee be presented before this court on next date of hearing, i.e., Feb 21, 2019.

Satisfaction to be Recorded before passing order of attachment of Assets under GST

- **Case of Patran Steel Rolling Mill Vs Assistant Commissioner of State Tax reported in 2018-TIOL-197-HC-AHM-GST**
- **Facts**
- The Assessee company is engaged in manufacturing & supplying TMT bars and paid GST on the same. The Revenue visited the Assessee's factory & compared stock of raw material & finished goods with recorded quantity of the same. Investigation at the end of the transporters revealed that the Assessee supplied & received goods without payment of tax. The Assessee was also compelled to give post-dated cheques towards payment. Later the Revenue passed an order of attachment against the stock found to be in excess. Several bank accounts operated by the Assessee & its executives were also attached - The Assessee claimed that the attachment of the bank accounts had crippled the day-to-day activities of the Assessee & was impeding upon its ability to pay taxes . Hence the present writ.

Satisfaction to be Recorded before passing order of attachment of Assets under GST

The Hon'ble High Court held as under

As per mandate of Section 83(1) of the GGST Act, the **Commr. must record written reasons before attaching any property or bank accounts or taking any such drastic action.** Besides, the Commr. must record satisfaction that such action was justified so as to protect the Revenue's interests. In the present case, the Commr. recorded no such satisfaction. Hence no opinion could be formed to validate the provisional attachment of property. **Hence the attachment order is unsustainable.** Besides, the sum already deposited by the Assessee need not be construed as admission of dues on its part. Before exercising powers u/s 83 of the GGST Act, the Revenue must balance the interest of the Revenue with those of the assessee, so as to ensure that while the Revenue's interests are safeguarded, the functioning of the Assessee does not get crippled. Drastic action u/s 83 of the Act is justified if the assessee is a fly-by-night operator or habitual offender, which is not the case here. **Powers under this provision must be exercised after due application of mind.** Hence the attachment of the bank accounts is directed to be lifted.

Any ISSUES/ queries?

- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
 - 1800 1200 232
 - cbecmitra.helpdesk@icegate.gov.in
- GSTN Help Desk
 - <https://selfservice.gstsystem.in/> - Grievance redressal portal
 - Help Desk Number: 0120-4888999

Any ISSUES/ queries?

- Twitter Handles
- For General Questions
- https://twitter.com/askGST_GoI
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- https://twitter.com/NACIN_OFFICIAL

THANK YOU