

EXCISE



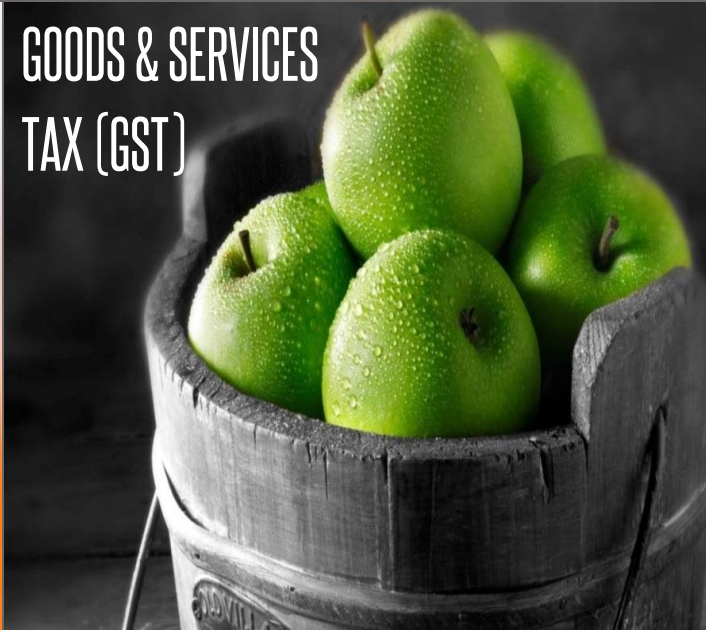
CUSTOMS



SERVICE TAX



**GOODS & SERVICES
TAX (GST)**



Inside this edition

- The combined Annual Return of Central Excise and Service Tax shall not be required to be filed for FY 15-16.
- All OIDAR services shall come into the ambit of service tax for the B2C segment as well.
- New section of GOODS & SERVICES TAX (GST). An introduction to the new tax structure.

& more...

EXCISE LAWS

NOTIFICATIONS AND CIRCULARS

- Notification No. 35/2016-CE dated 28.11.2016 seeks to exempt Point of Sale (POS) devices and goods required for its manufacture from central excise duty till 31st March, 2017.
- Circular No. 1050/38/2016-CX dated 08.11.2016 outlines that due to impending implementation of Goods and Services Tax (GST) it has been decided that, the Combined Annual Return for Excise and Service Tax shall not be required to be filed for FY 2015-16, which was due to be filed by 30.11.2016. After implementation of GST, annual return for non-GST goods only may be required. A final view on the same would be taken after due consultation with the trade.

JUDGEMENTS

- In the case of Union of India vs. Cairn Energy India (P) Ltd., the High Court of Rajasthan observed that Section 91, read with section 93, of the Finance (No. 2) Act, 2004, section 136, read with section 138, of the Finance Act, 2007 and section 15, read with section 16 of the Oil Industries (Development) Act, 1974, assessee was engaged in crude/petroleum oil business. Department demanded 'Education Cess' and 'Secondary and Higher Education Cess' ("EC/SHEC") on amount of 'Oil Cess'



levied on crude/petroleum oil. Tribunal held that since 'oil cess' is levied by Ministry of Petroleum and not by Ministry of Finance, hence, EC/SHEC cannot be levied thereon. It was HELD that EC/SHEC is levied on "all duties of excise levied and collected by Central Government in Ministry of Finance". Thus, Oil Cess levied and collected under Oil Industries (Development) Act is not exclusively for purposes of that Act only; in fact, as per section 16 of said Act, oil cess forms part of Consolidated Fund of India and use thereof is well within broad discretion of Central Government as per appropriation made by Central law. Therefore, scope of levy of EC/SHEC extends to all excise duties (including oil cess) leviable under Central Excise Act or any other law. Hence, EC/SHEC will be levied on 'oil cess'.

- CESTAT, Mumbai Bench in the case of Bhor Industries Ltd. V. Commissioner of Central Excise, Mumbai-V concluded that 'Foam Patti' (side trimmings of laminated, impregnated and coated fabrics) and 'waste' and cannot, therefore, be classified as 'laminated textile fabrics' under Heading 59.03.

SERVICE TAX

NOTIFICATIONS AND CIRCULARS

- Notification Nos. 46-50/2016 all dated 09.11.2016 seeks to amend that 'Online Information and Database Access or Retrieval (OIDAR) Services provided from Non-Taxable Territory to Service Recipient in Taxable Territory will now be taxable w.e.f. December, 01st 2016. As on date the cross border B2C (Business to Consumer) services provided in taxable territory in relation to any purpose other than commerce, industry or any other business or profession were exempt vide Entry No. 34(a) of the Mega Exemption Notification No. 25/2012-ST dated June 20, 2012 ("the Mega Exemption Notification"). Further, Place of Provision (POP) of Service Rules, 2012 with respect to OIDAR services, the place of supply is location of service provider and thus cross border B2B/B2C services provided by a person in non-taxable territory and received by a person in taxable territory are outside the levy of Service Tax. Now, with a view to include electronic services, changes have been made to the POP rules, the Mega Exemption Notification and the Reverse Charge Notification. Thus, from 01st December, 2016 any person downloading an e-book, a movie, music or using cloud computing/storage from an overseas service provider; the charges will be enhanced by the service tax component that shall now be chargeable.



JUDGEMENTS

- In the case of Kerala Classified Hotels & Resorts Association Vs. Union of India {[2016] 75 taxmann.com 272 (Kerala)}, the honourable High Court concluded that the levy of service tax on air conditioned restaurants is unconstitutional since when food is supplied as part of any service, such transfer would be deemed as sale. Thus, there is no component of service which could be charged to service tax when food is supplied by air conditioned restaurant. This judgement comes as a major contradiction to the existing law and practice. However, the said judgement is pending in front of the Supreme Court, and looks unlikely that the Revenue shall let go of the existing provisions.
- The High Court of Bombay, in the case of Jindal Drugs (P) Ltd. v. Union of India [2016] 75 taxmann.com 47 (Bombay) ruled that if the refund filed under Rule 5 of the Cenvat Credit Rules, originally by the assessee is complete in all respects and refund is not granted within 3 months therefrom, then, the assessee is entitled to interest on belated refund; revised calculation submitted by assessee on instance of the department cannot amount to filing of a fresh 'refund claim'.

CUSTOMS

NOTIFICATIONS AND CIRCULARS

- Notification No. 135/2016-Customs (N.T.) dated 02.11.2016 permits Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty.
- Notification No. 03/2016-Cus.(SG) dated 23.11.2016 seeks to levy safeguard duty on Hot Rolled flat sheets and plates (excluding hot rolled flat products in coil form) of alloy or non-alloy steel having nominal thickness less than or equal to 150mm and nominal width of greater than or equal to 600mm. The rate of safeguard duty shall be as follows:
 - i. 10% ad valorem minus anti-dumping duty payable, if any, when imported during 23.11.2016 to 22.11.2017.
 - ii. 8% ad valorem minus anti-dumping duty payable, if any, when imported during 23.11.2017 to 22.11.2018.
 - iii. 6% ad valorem minus anti-dumping duty payable, if any, when imported during 23.11.2018 to 22.05.2019.
- Notification No. 51/2016-Cus. (ADD) dated 02.11.2016 seeks to levy provisional anti-dumping duty on 'Wire Rod of Alloy or Non Alloy Steel' originating in or exported from China PR.
- Notification No. 53/2016-Cus. (ADD) dated 25.11.2016 seeks to levy anti-dumping duty on the imports of Low Ash Metallurgical



Coke originating in or exported from Australia and Peoples' Republic of China for a period of 5 years.

GOODS & SERVICES TAX (GST)

The biggest tax reform in India since Independence is a virtual reality now. The Government, industry, small traders, consultants, professionals, and the common man who shall be the end consumer, all are under prepared for something as big as GST. Verendra Kalra & Co., Chartered Accountants is making a professional and astute approach towards the new tax reform and through this monthly communique will aim to clarify and discuss the provisions of the new upcoming statute.

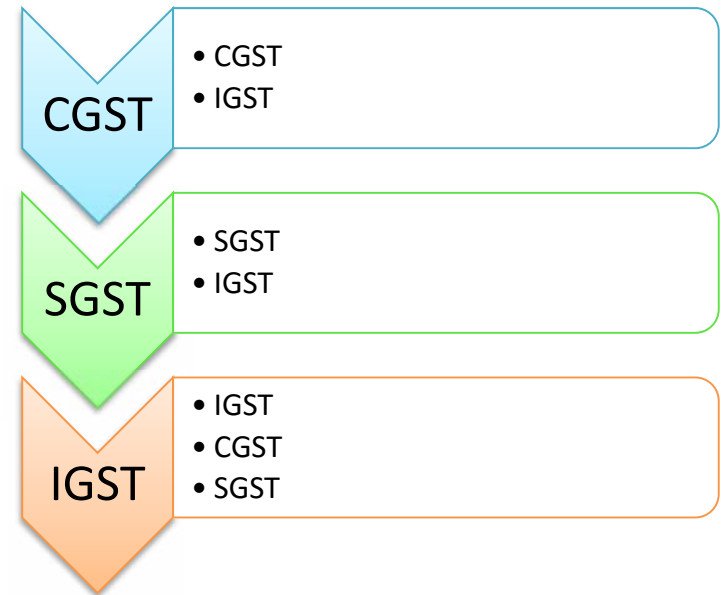
AN INTRODUCTION

Goods & Services Tax (GST) has been long overdue in India. GST proposes and challenges to be the biggest overhaul in the taxation structure of India post-Independence. Following points highlight some basic contours of this new law:

- The new tax structure shall subsume over 10 existing laws including Central Excise, Service Tax, VAT, CST, Entry Tax, Additional Customs Duty and levies, etc.
- In the new structure, Central GST (CGST), State GST (SGST) and Integrated GST (IGST) shall be levied.
- GST shall be a consumption based tax which shall be payable in the State where the goods are finally consumed.
- The point of taxation shall be “supply” of goods and services in comparison to ‘sale’ in the existing structure of taxation. The term supply encompasses barter, trade, transfer, etc. and thus enhances the scope of taxation by broadening the tax base.
- CGST and SGST shall be charged on intra-state supply of goods and services whereas IGST shall be charged on inter-state supply of goods and services.
- The GST council which was formed on 16th Sept. 2016 has already announced a 4-tier tax rate, notifying 5%, 12%, 18% and 28% as tax rates.
- The various goods to be covered under the different slabs are yet to be notified.
- The major objective and advantage of bringing in GST shall be the availability of credit in respect of all the taxes a dealer pays. Thus, payment of Central Excise Duty which could not be set off against the Output VAT liability in the current structure shall be allowed under the new scheme.
- There shall be no cascading of taxes. The other major takeaways from the new tax structure are as highlighted as follows:



- Another important thing is to understand how the credit shall be available. The following infographic helps us to understand the same:



Thus, CGST can be set off against CGST and IGST (in that order); SGST can be set off against SGST and IGST (in that order) and IGST can be set off against IGST, CGST and SGST (in that order).

These are some basics of GST Model Law as notified by the GST Council. In the coming editions of this communique, we shall focus on specific topics and try to analyse and discuss the provisions in extreme detail.

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EXCISE



SERVICE TAX



CUSTOMS



GOODS & SERVICES TAX (GST)

