



## Notifications

### **Notification No. 61/2018- Central Tax dated 05.11.2018**

TDS provisions shall not be applicable in respect of supply of goods or services from one public sector undertaking to another public sector undertaking wef 01.10.2018.

### **Notification No. 66/2018 Central Tax**

Due date for filing GSTR 7 for the months October 2018 to December 2018 has been extended till 31.01.2019.

**GSTR 7:** Return for tax deducted at source

## Circulars

### **COLLECTION OF TAX AT SOURCE BY TEA BOARD OF INDIA**

Tea Board of India being the operator of electronic auction system for trading of tea, is liable to collect tax at the notified rate in the following manner:

<b>Name of the party</b>	<b>Tax to be collected</b>
Seller of the tea	Tax shall be collected on the value of supply of goods
Auctioneers/ Brokers	Tax shall be collected on the value of supply of services (ie brokerage)

## SCOPE OF PRINCIPAL AGENT RELATIONSHIP IN THE CASE OF DEL-CREDERE AGENT (DCA)

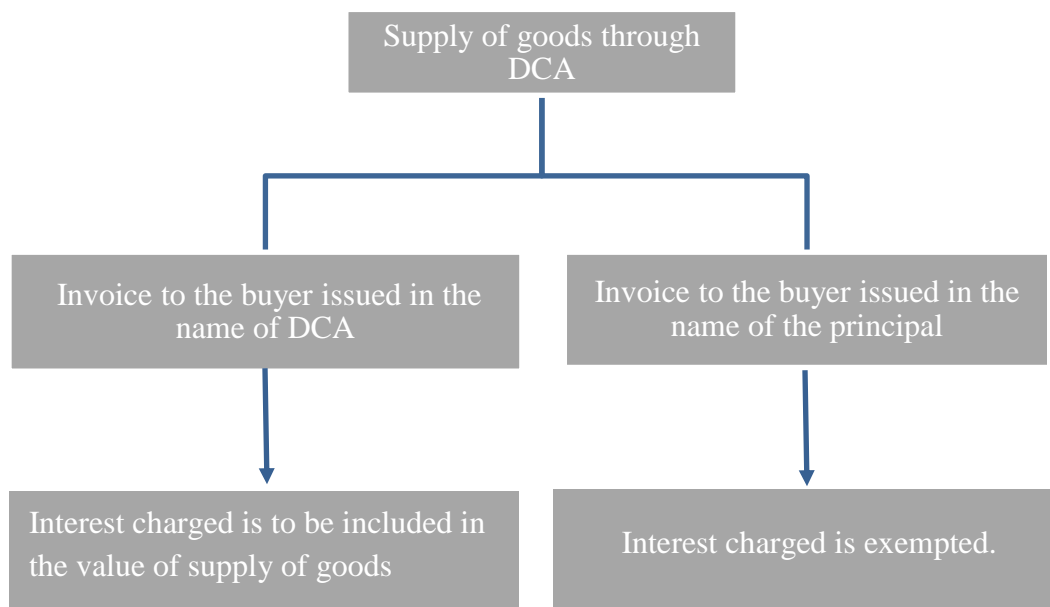
**Del-Credere Agency:** A Del-Credere agency is a type of principal agent relationship wherein the agent acts not only as a sales person or a broker, but also as a guarantor for the credit extended to the buyer.

**Issue: Whether DCA falls under the ambit of agent under Schedule I (Activities to be treated as supply even if made without consideration) of CGST Act?**

- Where invoice for supply of goods is issued in the name of principal, such transactions are not covered under Schedule I.
- Where invoice for supply of goods is issued in the name of DCA, such transactions are covered under Schedule I.

**Issue: Whether interest charged by the DCA for any short term loan extended to the buyer is to be included in the transaction value of supply of goods?**

- Where DCA doesn't come within the purview of Schedule I, loan extended is an independent supply and interest charged is exempted vide Notification 12/2017- Central Tax (Rate).
- Where DCA comes within the purview of Schedule I, loan extended cannot be treated as an independent supply. Hence interest charged in such transactions are to be included in the transaction value of supply of goods.



## Advance Rulings

### ➤ FAIRMACS SHIPSTORES PVT LTD

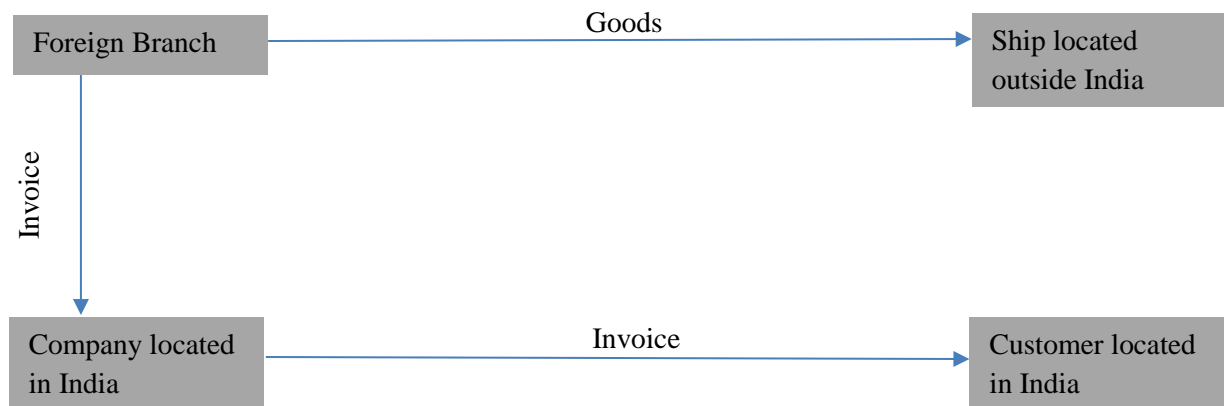
#### 2018-TIOL-247-AAR-GST

Outward supplies made from special warehouses to ocean-going merchant ships, Indian Navy Ships and Indian Coast Guard Ships, are to be treated as exports.

### ➤ JOTUN INDIA PVT LTD

#### 2018-TIOL-271-AAR-GST

*No GST shall be levied on supply of goods located outside India without bringing the same to India.*



As per proviso to Section 5(1) of IGST Act 2017 read with Section 3 of the Customs Tariff Act, 1975 and Section 12 of the Customs Act 1962, IGST on imported goods shall be levied and collected only after they clear the customs frontier. Hence, no IGST shall be levied in respect of the transaction described above.

### ➤ MERIT HOSPITALITY

#### 2018-TIOL-23-AAAR-GST

Service provided to the employees of SEZ unit is not a zero rated supply as the employees cannot be by any stretch of imagination be considered as an SEZ unit or SEZ developer.

➤ **INDIAN COTTON SOLUTIONS.COM PVT LTD**

**2018-TIOL-258-AAR-GST**

Input tax credit cannot be claimed in respect of vehicles to be used as mobile testing labs.

➤ **SPACEAGE SYNTEX PVT LTD**

**2018-TIOL-269-AAR-GST**

*Sale of license under DFIA scheme is taxable*

License issued under Duty free Import Authorization Scheme (DFIA) cannot be treated equivalent to Duty Credit Scrips. Hence sale of license issued under DFIA scheme cannot be considered as exempted under the Serial No 122A of Notification 12/2017 – Central Tax (Rate).

➤ **KUNDAN MISTHAN BHANDAR**

**2018-TIOL-276-AAR-GST**

*Supply of take away items in a sweetshop cum restaurant shall be liable for GST at 5%*

In respect of a sweet shop cum restaurant, the sweet shop shall be treated as an extension of the restaurant. Since such services are provided in the normal course of business, the same shall be treated as a composite supply. Services from the restaurant shall be treated as the principal supply and other supplies combined with such principal supply shall be treated as incidental or ancillary services. Accordingly, take away items from sweet shop shall also attract 5% GST subject to non-availment of input tax credit.

➤ **ASSOCIATION OF INNER WHEEL CLUBS IN INDIA**

**2018-TIOL-273-AAR-GST**

*Membership fee collected by a social welfare club is liable to GST.*

Social welfare clubs which organize meetings and gatherings, provide facilities and benefits to the members in the form of a platform for social mixing, networking, promotion of friendship etc. Therefore subscription and membership fee collected by such clubs are to be considered as consideration for the supply of services, which are classifiable under SAC Heading 99959 under the category 'Services furnished by other membership organization'.

➤ **PREMIER VIGILANCE AND SECURITY PVT LTD**

**2018-TIOL-243-AAR-GST**

*GST is applicable on toll charges reimbursed to an agent.*

Toll charges paid for own vehicle cannot be treated as payment made in the capacity of pure agent. Such payment if reimbursed, has to be included in the transaction value.

➤ **BAJAJ FINANCE LTD**

**2018-TIOL-264-AAR-GST**

*Penal charges collected on loans and advances are liable to GST*

Exemption for financial transactions under GST laws is only in respect of interest/discount earned or paid for loans, deposits or advances. Recovery of penal charges is made in view of toleration of the act of the loanee. Hence the same is not exempted under Serial no 27 of Notification 12/2017 Central Tax (Rate).

➤ **RAJAGIRI HEALTH CARE AND EDUCATION TRUST**

**2018-TIOL-238-AAR-GST**

*Supply of medicine to in-patients in a hospital is exempted from GST.*

Supply of medicines, consumables and implants used in the course of providing health care services to in-patients for diagnosis or treatment are naturally bundled and are eligible for exemption under the category of 'health care services'.

➤ **SARASWATHI METAL WORKS**

**2018-TIOL-239-AAR-GST**

- No GST is payable in respect of supply of parts under warranty without consideration. Further, no reversal is required to be made in respect of input tax credit relating to the components used for the warranty replacement.
- Input tax credit on raw materials can be claimed even if the final goods are taxable at a lower rate.

➤ **MARUTI ISPAT AND ENERGY PVT LTD**

**2018-TIOL-250-AAR-GST**

*Input tax credit cannot be claimed with respect to the construction of shed for machinery.*

Construction of shed cannot be treated as foundation or structural support for the plant and machinery. Hence input tax credit on goods and services used for such construction is ineligible under Section 17(5).

➤ **COCHIN PLANTATION LTD**

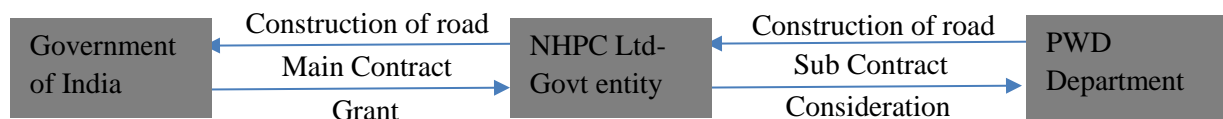
**2018-TIOL-241-AAR-GST**

Lease rent paid to Kerala Government on the land used for coffee plantation is exempted from GST vide Notification No.12/2017-Central Tax (Rate).

➤ **NHPC LTD**

**2018-TIOL-279-AAR-GST**

*Where principal contract for works contract is exempted, sub contract for works contract services shall also be exempted.*



In light of the scenario narrated above, advance ruling was sought by the applicant as to whether the service received from the PWD department is liable for GST under reverse charge mechanism.

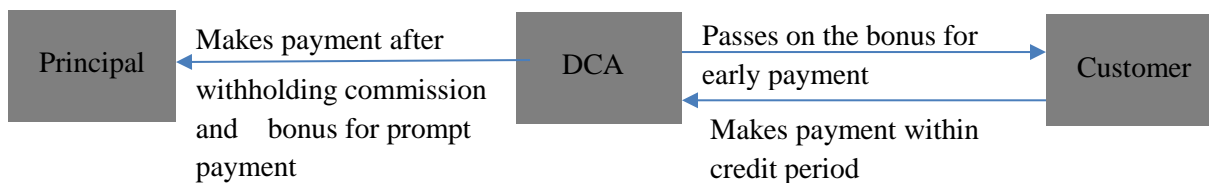
In this regard it was observed by the ruling authority that service provided by a government entity to the Government for which consideration is received in the form of grants is exempted from the purview of GST vide Entry no 9C of Notification No 12/2017 Central Tax (Rate). In view of the above and placing reliance on the Government view in the pre GST regime, it was held that works contract service provided by the subcontractor shall be treated as exempted service if the works contract services provided by the principal contractor are exempted.

➤ **ADVENTAGE AGENCY PVT LTD**

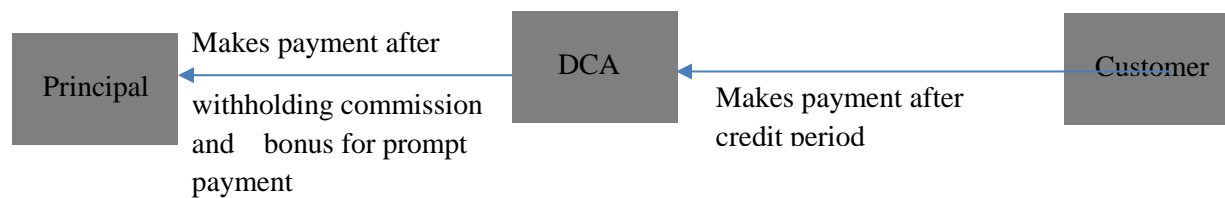
**2018-TIOL-273-AAR-GST**

*Discount passed on by a Del Credere Agent to the customer is not liable to GST*

Transaction made between a Del Credere Agent (DCA) and customer for passing on the discount received from the principal on account of early payment shall not be treated as supply



However any amount retained by the DCA on account of early payment shall be treated as consideration received for the supply of services to the principal in the nature of business support services.



➤ **NASH INDUSTRIES PVT LTD**

**2018-TIOL-260-AAR-GST**

*Tools provided free of cost to the manufacturer by the service recipient has to be included in the value of service.*

Where tools have been provided free of cost to the manufacturer by the recipient of services, recipient has incurred a cost which would have been otherwise incurred by the manufacturer. Hence amortized cost of such tools shall also be added to the consideration received by the manufacturer for the purpose of determining value of supply.

➤ **IIM- BENGALURU**

**2018-TIOL-242-AAR-GST**

*IIM is eligible for exemption both under entry 66(a) and 67 of the Notification no. 12/2017- Central Tax (Rate)*

Services exempted from GST as per Notification no 12/2017 – Central Tax (Rate) for the ease of reference:

Serial No 66: a) Services provided by and educational institution to its students, faculty and staff.

b) Specified services provided to educational institution.

Serial No 67: Services provided by IIMs to their students by way of specified educational programmes

After introduction of the Indian Institutes of Management Act, 2017 wef 31.01.2018, IIM has the right to award honours, degrees etc as provided under the IIM Act. Therefore, IIM qualifies as an ‘educational institution’ as defined under clause 2(y) of the Notification No. 12/2017 Central Tax (Rate). Hence IIM shall be eligible for exemption both under entry no. 66(a) and entry no.67 of the exemption notification.

➤ **IIM- CALCUTTA**

**2018-TIOL-259-AAR-GST**

*IIM is not eligible for exemption under entry 66(a) of the Notification 12/2017- Central Tax (Rate)*

Serial no 67 of Notification 12/2017 – Central Tax (Rate) has been carved out specifically and only for the educational services provided by the IIMs. IIMs have been segregated from all other educational institutes and the educational services provided by them are subject to different treatment in terms of

exemptions. The constitution of the Notification does not allow selective application of Serial No. 67 and Serial No.66 of Notification 12/2017 – Central Tax (Rate). **When Notification number 12/2017 provides for a specific entry for the IIMs at serial no. 67, the provisions of serial number 66 shall not apply to them.**

➤ **NATIONAL SECURITY SERVICES**

**2018-TIOL-283-AAR-GST**

*Security services comes within the meaning of municipal functions.*

Security services provided to Municipal Corporation is an activity in relation to the functions entrusted to the municipality under article 243W of the constitution. In view of the above the same shall be eligible for exemption under Entry 3 of Notification No. 12/2017- Central Tax (Rate).

➤ **MUN AGRO INDUSTRIES PVT LTD**

**2018-TIOL-268-AAR-GST**

As per Notification 2/2017 Central Tax (Rate), meat of sheep or goat is exempted from GST unless the same is frozen and packed in a unit container. In this regard, it was held by the ruling authority that packing in gunny bags which do not indicate any information related to weight/number of the product in such bags would not tantamount to being a product put in unit container.

➤ **AMARAVATI METRO RAIL CORPORATION LTD**

**2018-TIOL-244-AAR-GST**

*Consultancy services provided by metro rail corporation is exempted.*

Consultancy services provided by the metro rail corporation for preparation of transport studies is covered under the head “Urban planning including town planning” of twelfth schedule to Constitution of India. Hence such services can be classified as functions of municipality under Article 234W read with twelfth schedule to Constitution of India. In view of the above the same shall be eligible for exemption under Entry 3 of Notification No. 12/2017- Central Tax (Rate).

➤ **PUNJAB SMALL INDUSTRIES AND EXPORT CORPORATION LTD**

**2018-TIOL-272-AAR-GST**

As per Entry No. 41 of Notification 12/2017- Central Tax (Rate), upfront payment received by State Government Industrial Development Corporation for the allotment of industrial units is exempted from GST. However any other ancillary services provided in respect of the same plot cannot be treated as exempted under this entry.

## Judgments

### ➤ SAJI S VS COMMISSIONER STATE GST DEPARTMENT

#### **2018-TIOL-162-HC-GST**

##### *Tax paid under wrong head can be adjusted*

Section 77 of the CGST Act, 2017 provides for the refund of the tax paid mistakenly under one head instead of another. Further, Rule 92 of the CGST Rules, 2017 speaks of adjustment of refund against any outstanding demand under the Act. In view of the above provisions direction was issued by the High Court to allow the transfer of GST paid under the wrong head to the correct one.

### ➤ PIONEER POLYLEATHERS LTD VS ASSISTANT STATE TAX OFFICER

#### **2018-TIOL-168-HC-KERALA-GST**

##### *Authorities shall not insist that demand be paid through physical means.*

Petitioner was demanded to pay IGST for the release of goods detained under Section 129(3) of the CGST Act 2017. On this account, petitioner discharged the demand through GSTN portal. However the state tax officer refused to release the goods stating that the payment should have been made by physical means ie either in cash or through demand draft.

In this regard it was observed by the Hon'ble Kerala High Court that, where the Government has tried to ensure that everything is made online under the GST regime, insisting that the payment be made through physical means is out of tune. Under this circumstance the Hon'ble Kerala High Court directed the state tax officer to release the goods.

### ➤ KASHI BARTAN BHANDAR VS STATE OF UP

#### **2018-TIOL-157-HC-ALL-GST**

##### *Notice by affixation can be resorted only as a last resort*

Notice under the GST Act is required to be served in accordance with the provisions of Section 169 of the Act. It is only if the mode of service as provided in the earlier parts of Section 169 are not practicable that the authorities can resort to service of notice by affixation.

➤ **NVK MOHAMMED SULTHAN RAWTHER AND SONS VS UOI**

**2018-TIOL-170-HC-KERALA-GST**

*Process of detention of goods cannot be resorted when the dispute is bonafide.*

Petitioner's vehicle was intercepted and goods were detained alleging the misclassification of goods.

In this regard it was observed by the Hon'ble Kerala High Court that, if the records seized by the inspecting officer truly reflect the transaction and the assessee's explanation accords with the returns he has filed earlier, process of detention is not the answer. Further it was held that the process of detention of goods cannot be resorted to when the dispute is bona fide, especially, concerning the exigibility of tax and, more particularly, the rate of tax.