



Week of 6th November 2017

A. CHANGES IN THE GST REGIME

Procedure to be followed for deemed exports

As recently notified by CBEC, supply of goods, inter alia, by a registered supplier to an export oriented undertaking (EOU)[1] is to be treated as deemed exports under GST and the refund of the GST paid on such supplies can be claimed (for details, please refer to our GST Update Volume 17). In this regard, a circular has now been issued by CBEC to prescribe some procedure/safeguards to be observed in respect of such deemed exports. Some of these are:

- The EOU has to give prior intimation of such deemed export in a prescribed format before such deemed export supplies are made, to its jurisdictional GST officer, the supplier, and the supplier's jurisdictional GST officer.
- The registered supplier thereafter will supply goods under a tax invoice to the recipient EOU. On receipt of such supplies, the recipient EOU has to endorse the tax invoice and send a copy of the endorsed tax invoice to its jurisdictional GST officer, the supplier, and the supplier's jurisdictional GST officer. The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to the EOU.
- The recipient EOU has to maintain records of such deemed export supplies in the prescribed digital format which will incorporate the feature of audit trail.

Writ petition on GST on royalties

A writ petition has been filed before the Delhi High Court challenging the levy of GST on the transfer of the right to use a copyright by an author to a publisher in exchange of a royalty amount[2]. Earlier, there was no service tax or VAT on royalty. However, under GST, tax on the royalty amount is payable at the rate of 12% on reverse charge basis, making the publishers liable to pay such GST. To add to their woes, though input supplies for publishers such as royalties, printing services, etc. are taxable under GST, the sale of books (output supply for publishers) has been kept exempt. Due to this, the publishers are unable to avail credit of the GST paid on input supplies as they have no output tax liability. Input tax so paid then becomes a cost for the publishers. Further, as books are kept out of the purview of GST, no refund of the input tax paid can be claimed as currently refund mechanism is absent for input taxes in case of exempted supplies. The publishers operate on a lean margin of about 5%. Payment of input tax at rates of 12% with no refund or pass-on benefit available is upsetting their cost structure and profit margins. The cost of books may go up due to this cascading tax effect.

Challenge to non-availability of transitional credit

A writ petition has been filed before the Delhi High Court challenging a provision in the CGST Act, 2017[3] which disallows the input tax credit in relation to such input stock which was purchased by a taxpayer earlier than one year immediately preceding appointed day i.e. stock purchased before 1st July, 2016. A similar writ petition has already been filed before the Gujarat High Court (for further details, please refer to

our GST Update Volume 16). The Delhi High Court has issued notices to the government/revenue department directing them to file counter-affidavit and the matter is listed for the next hearing on 11th December, 2017.

Challenge to levy of IGST on services by Indian branch offices to foreign head offices

Due to a provision in the IGST Act, 2017^[4] services rendered by head offices/branch offices in India to their respective branch offices/head offices outside India have become taxable under GST. Such services fall short of qualifying as an export^[5] under GST as these are services between establishments of distinct persons. Consequently, IGST is payable on such services. In the service tax regime, services between head offices/branch offices in India and their respective branch offices/head offices outside India were not subject to service tax even though these services did not qualify as an export since there was no charge on services provided outside India. A writ petition has therefore been filed before the Delhi High Court by an Indian branch of a foreign bank challenging this levy under GST regime. In its response to this petition, the government has clarified that this is an inadvertent consequence and the GST Council will address/rectify this issue at its next council meeting. The government also stated that in such cases, the government may be approached directly by the taxpayers rather than approaching the courts. The high court has posted the matter for next hearing in January 2018.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

Proposed agendas for the GST Council meeting

As per media reports, the most comprehensive overhaul of GST since its inception is likely to take place pursuant to the 23rd GST Council meet to be held today 10th November, 2017. Some of the expected changes are:

- **GST rate structure-** Based on the recommendations made to the GST Council from industry representatives (refer to our GST Update Volume 18), the GST Council may consider lowering the GST rates on certain goods which are currently taxed at the rate of 28% such as handmade furniture, plastic products and daily-use items. The Council is also likely to rationalise the tax rate in sectors where the total incidence of taxation has gone up because the goods were earlier either exempt from excise or attracted lower VAT rates in the previous indirect tax regime. Also on the agenda is lowering the GST rates on all standalone restaurant services to 12% with no distinction between air conditioned and non-air conditioned restaurants while keeping the rate stable at 18% for restaurants attached to hotels.
- **GST returns-** The GST Council may review the present requirement of filing three returns every month to ease the compliance burden of taxpayers and may consider allowing quarterly filing of returns by all tax payers. The Council may also consider extension of furnishing of GSTR-3B return (provisional monthly return) for subsequent months beyond the current prescribed period of December, 2017.
- **Composition scheme-** The Council may decide to increase the threshold limit of composition scheme to Rs. 15,000,000 from the present Rs.10,000,000. It may also recommend that all persons in composition scheme pay tax at the flat rate of 1% (for further details, please refer to our GST update Volume 18).
- **Incentive for digital payments-** To give impetus to digital payments, the Council may provide incentives in the GST regime for making digital payments. This could be done as a credit or exemption. The actual details are not yet clear.
- **Real estate-** The council may consider the revenue implications of including real estate into the GST ambit and subsuming stamp duty and registration charges and the methods to do the same. Currently, only under construction projects attract GST and sale of land and building is outside the GST ambit as the central government does not possess the constitutional power to tax the same. If real estate is to be brought under GST regime, a constitutional amendment is necessary.

GST Advisory Group

The GST Council has set up an advisory group that includes industry representatives to review and recommend the changes in the existing GST regime. The group has to give its report to the law committee of the Council by 30th November, 2017. This report will be reviewed by the law committee and then forwarded to the Council for a speedy action. As per the media reports, the advisory group is currently in the process of reviewing recommendations received from various industries relating to abolition of reverse charge mechanism in case of supplies received from unregistered dealers, increasing the scope of composition scheme, simplification of the return filing, e-way bills, input tax credit and export related issues.

GST on nutritional supplements

A leading manufacturer in the nutraceutical industry has represented to the government to reduce the GST rate of 28% on nutritional supplements to 18% which is currently applicable to curative drugs, medicines and pharmaceuticals. This representation is based on the premise that prevention of health issues must also be given similar importance as curatives.

GST on e-commerce

Under GST, all e-commerce operators and persons supplying through such operators are liable to compulsorily obtain registration, irrespective of their turnover. Most of the suppliers supplying through e-commerce operators have turnover way below the registration threshold limit of Rs. 2,000,000 but their services become subject to GST as these are sourced via e-platforms. Moreover, since the input tax credit for services for personal consumption is not available, the customers are reluctant to bear the additional GST burden on services availed by them through these e-platforms. This is causing a disadvantage to suppliers supplying through the e-platforms vis-a-vis the independent suppliers supplying directly to the customers.

Further, in case of certain services (one of which is house-keeping services like plumbing, carpentering etc.) provided through e-platforms such as UrbanClap, Housejoy, Quikr etc., it is the e-platform which is liable to pay GST instead of the actual supplier. These e-platforms themselves can't absorb the GST component as that would make them unviable and therefore seek to recover the GST from the actual suppliers. Because of this many suppliers are compelled to de-register from e-platforms which is adversely affecting the business of these e-platforms. Owing to the above issues, the e-commerce operators have now raised the issue of the differential tax system existing for the online and offline service providers which is against the government's own objective of digitisation of economy and have requested for a level playing field between the two from the government.

GST on exports

The Associated Chamber of Commerce and Industry of India (ASSOCHAM) has approached the GST Council for an expedited examination of the impact of GST on the exports sector and recommend ways to further incentivise the export sector. In its representation, ASSOCHAM has highlighted several issues grappling the export sector for immediate review such as:

- No provision of refund of GST paid on capital goods- Under the present GST regime, the exporters can opt to export goods/services without payment of IGST under a letter of undertaking (LUT) and claim refund of the GST paid on procurement of inputs and input services other than capital goods. As exporters do not have any output GST liability, the credit of GST paid on capital goods is blocked leading to non-availability of working capital.
- No credit of erstwhile custom duties- For non-fulfilment of export obligation^[6] on imports made during the pre-GST regime, the importer is required to pay the customs duty exempted from payment earlier, including the countervailing duty (CVD) and special additional duty (SAD) component. However, the credit of such CVD and SAD is not available in the GST regime in the absence of enabling provisions under the GST legislations, thus resulting in such CVD and SAD component becoming a cost to the exporters in GST regime.
- No integration of duty credit scrips in the GST regime- In the pre-GST regime, the duty credit scrips granted under various export promotion schemes were allowed to be used for payment of excise duty or service tax on procurements of inputs. However, similar facility is not available under the GST regime and now these scrips can only be used for the payment of the basic customs duty. This has substantially reduced the utility of these scrips.
- Complex procedures for merchant exporters: The government had earlier reduced the GST rate for goods received by merchant exporters to 0.1% (refer to our GST Update Volume 17 for details). However, the procedure to be observed for availing the benefit of the reduced rate of 0.1% is very tedious and complex, for e.g. the merchant exporters have been mandated to use only registered warehouse. Similarly, the merchant exporters are required to share the details of a buyer along with the price at which the goods have been exported. The exporters are hesitant to share such commercially sensitive information.

[1]Export Oriented Unit means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.

[2]Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or

enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like, is taxable on reverse charge basis.

[3]Section 140(3)(iv) of the Central Goods and Services Tax Act, 2017

[4]Section 7(5)(a) of the Integrated Goods and Services Tax Act, 2017

[5]Export of services means the supply of any service when,—

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person.

[6]Where certain inputs and capital goods are imported for the purpose of export under specified export promotion schemes, the importer-exporter is allowed exemption from payment of custom duties at the time of import subject to prescribed conditions.

Glossary

CBEC- Central board of excise and customs	CGST-Central goods and service tax
CESTAT- Customs Central Excise and Service Tax Appellate Tribunal	IGST- Integrated goods and services tax
	VAT – Value added tax

DISCLAIMER

This update has been written for the general interest of our clients and professional colleagues by the **GSTUpdateTeam@ALMT** and is subject to change. This update is not to be construed as any form of solicitation. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this update. For further clarification and details on the above, you may write to the GSTUpdateTeam@almtlegal.com. If you would like to unsubscribe from this weekly update please send an e-mail to us at the above address with the subject unsubscribe.