



Week of 25th September 2017

GST on legal services

CBEC has clarified the applicability of reverse charge on legal services by issuing corrigendum to the reverse charge notifications[1]. Earlier, doubts were raised that reverse charge is applicable only on representational services by advocates. Further, the taxability of legal services provided by senior advocates was also ambiguous. These uncertainties also led to the filing of a writ petition in the Delhi High Court to seek clarification from the government (refer to volumes 4 and 13 of GST Weekly Highlights for details). The corrigendum which has been issued now puts to rest these controversies surrounding taxability of legal services in the GST regime. In the corrigendum, it has been clarified that legal services provided by an individual advocate, a senior advocate or firm of advocates to business entities located in India (with aggregate turnover of more than Rs. 2,000,000) will be taxable under reverse charge [2] i.e. GST on legal services so received will be payable by such business entities. Such reverse charge will apply in case of legal services in the nature of advice, consultancy or assistance in any branch of law and representational services before any court, tribunal or authority as per the corrigendum. From this corrigendum, it appears that there is no change in the taxation of legal services in the GST regime vis-a-vis the earlier service tax regime.

The above corrigendum was also noted by the Delhi High Court during the hearing on 26th September, 2017 in respect of writ petition filed before it regarding levy of GST on legal services. In this hearing, the High Court after taking note of the corrigendum, further directed the government to issue a clarification with regard to services rendered by lawyers / firms to foreign clients. The matter has been posted for a later date as of now.

GST on branded food items

Last week, a press release was issued by CBEC to clarify the meaning of the term 'registered brand name' in relation to supply of certain food items (details in Volume 13 of our GST Weekly Highlights). The scope of this term becomes important as specified food items when supplied under a registered brand name attract GST at the rate of 5% as opposed to the nil rate of GST which is applicable in case of them being supplied loose. Now, in lines with the press release, notifications have been issued by CBEC to state that a registered brand name will include:

- A brand registered as on 15th May, 2017 under the Trademarks Act, 1999 irrespective of whether or not such brand is subsequently deregistered;
- A brand registered as on 15th May, 2017 under the Copyright Act, 1957;
- A brand registered as on 15th May, 2017 under any law for the time being in force in any other country; and
- A mark or name in respect of which any actionable claim or enforceable right in court of law is available. Such mark or a name may be a symbol, monogram, label, signature or any word or writing which is used in relation to such specified goods for indicating a connection between these goods and the person using such name or mark i.e. such name or mark which helps the consumer to identify the supplier or the manufacturer.

However, a mark or name will not be considered as registered brand name if the actionable claim or enforceable right available against it have been voluntarily foregone by the concerned person. In order to

forgo such a brand name:

- The concerned person has to file an affidavit with the jurisdictional commissioner of CGST that he is voluntarily foregoing his actionable claim or enforceable right on such brand name; and
- The concerned person has to clearly print in indelible ink, both in English and the local language, on each of the unit so sold under the brand name that he has foregone his actionable claim or enforceable right voluntarily in respect of the brand name.

Apart from the above clarifications, these notifications also revise the GST rates applicable on certain specified goods as mentioned in these notifications. This revision in rates is pursuant to the recommendations of the 21st meeting of the GST Council.

Exemption on inter-state supply of skimmed milk powder or concentrate

A notification has been issued to exempt inter-state supply of skimmed milk powder or concentrated milk when it is supplied by a person to its own branch (registered in a different state or registered as a business vertical in the same state) for use in production of milk for distribution through dairy cooperatives. However, this exemption is not available when the skimmed milk powder or concentrate is supplied for its further supply as such i.e in case of supplies made to wholesalers, retailers or end consumers of such milk powder or concentrate.

Twitter FAQs

The following clarifications have been provided at the official twitter handle of the Government of India for queries on GST (askGST_Gol) in the form of responses to queries asked therein:

- Input tax credit is available for the tax paid on expenses incurred by companies as a part of their corporate social responsibility as these payments are in furtherance of business.
- Input tax credit is available for the tax paid on fire and theft insurance.
- An export is considered as an inter-state supply under GST and is one of the categories compulsorily liable to obtain registration under GST. Accordingly, an exporter of service is mandatorily required to register under GST, irrespective of its turnover. It may be noted that this is in contrast to the service tax regime where export of services was a non-taxable supply in respect of which no registration was required.
- Credit of the input tax paid on reverse charge basis (i.e. where supplies subject to reverse charge are received by a person and GST on the same is paid by such person) can be claimed in the same month in which it is paid. Further, such credit can be used to discharge the output tax liability of the same month.

Amendment of registration

The facility of amendment of registration under GST is now available on the GST common portal www.gst.gov.in. Taxpayers who wish to change or amend any particulars furnished in the application for registration can do so by submitting an application to that effect in the prescribed form online. It may be noted that for the purposes of amendment of registration, the particulars have been classified into core field and non-core field. An amendment in the core field requires the verification and approval of the proper authority before such amendment may be brought about. Amendment in the non-core field, however, is effective immediately upon submission of the amendment [3] application. An amendment application cannot be filed when there is a change in PAN, change in constitution of business resulting in change of PAN or change in place of business from one state to other. In these cases, an application for new registration has to be filed.

[1] Notification number 13/2017-CT and 10/2017-IT both dated 28th June, 2017

[2] It may be noted that legal services to business entities with aggregate turnover upto Rs. 2,000,000 are exempt from payment of GST.

[3] The core fields for the purpose of amendment are legal name of business, address of principal place of business or additional places of business (provided that the new place of business is in the same state as earlier) and addition, deletion or retirement of partners or directors, managing committee, board of trustees, chief executive officers or such persons responsible for day to day affairs of the business. All fields other than these are non-core fields.

Glossary

CBEC- Central Board of Excise and Customs	CGST-Central goods and service tax
FAQs- Frequently asked questions	PAN- Permanent account number

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