



Week of 23rd October 2017

A. CHANGES IN THE GST REGIME

Deemed Exports

Under GST, the government is empowered to notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India. In exercise of this power, a notification has been issued by CBEC to notify the following supplies of goods as deemed exports under GST:

- Supply of goods by a registered person against advance authorization^[1]
- Supply of capital goods by a registered person against export promotion capital goods authorization^[2]
- Supply of goods by a registered person to an export oriented unit^[3]
- Supply of gold by a bank or specified public sector undertakings specified against Advance Authorization.

The above mentioned schemes were linked to the erstwhile indirect tax regime and allowed tax exemptions on inputs and capital goods procured for the purpose of exports. These schemes were not yet integrated in GST. The implication of the above notification is that all these supplies will be deemed as exports i.e. will be subject to zero tax rating and same refund processes as exports. Earlier, due to non-integration of these schemes in the GST regime, IGST was payable on such input supplies by the exporter. However, as exports (the output supply) were zero-rated, problem of credit accumulation and delayed refunds was arising. By notifying the above supplies as deemed exports, this problem is expected to be resolved.

Reduced GST rate on supply to merchant exporters

In yet another measure to give impetus to the export sector, the CBEC has issued notifications to prescribe that CGST will be levied at a concessional rate of 0.05% (SGST to be notified by respective state governments, presumably at the same rate) in case of intra-state supply of taxable goods meant for the purpose of export by a registered supplier to a registered recipient (i.e. merchant exporters)^[4]. In case of such supplies being made inter-state, the rate of IGST will be 0.1%. This move stems from the recommendations of the GST Council in its 22nd meeting for a reduced rate for merchant exporters (refer to our GST Weekly Highlights Volume 15A) The above stated reduced rates will apply subject to fulfilment of certain specified conditions which, inter alia, are:

- The supplier has to supply the goods on a tax invoice.
- The recipient will export the said goods within a period of 90 days from the date of issue of such tax invoice. The supplier will cease to be eligible for the above mentioned reduced rates if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.
- The recipient has to indicate the GSTIN of the registered supplier and the tax invoice number

issued by the supplier in respect of the said goods in the shipping bill or bill of export.

- The recipient must be registered with an export promotion council or a commodity board recognised by the Department of Commerce.

It may be noted that the above rates will apply only in case of procurement of goods only from registered suppliers, thereby discouraging purchases from small suppliers which may not require registration under GST.

Refund in case of deemed exports

The CGST Rules, 2017 have been amended for the tenth time to allow for provisions of claiming refund by deemed exporters. The new notified rules prescribe, inter alia, that in respect of deemed exports, the refund application may be filed either by the recipient or the supplier of deemed export supplies (where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund). Further, a separate notification has been issued to notify certain evidences which are required to be produced by the supplier of deemed export supplies for claiming such refund.

Increase in threshold limit for composition scheme

The threshold limit for composition scheme has been increased to Rs. 10,000,000 (Rs. 7,500,000 for taxpayers registered in specified special category states) from Rs. 7,500,000 for eligible taxpayers. This means that eligible registered persons, whose aggregate turnover in the preceding financial year did not exceed Rs.10,000,000 may opt for composition scheme and pay, in lieu of the GST applicable, a specified lump sum amount on a quarterly basis.

Waiver of late fee for GSTR-3B

A notification has been issued by CBEC to waive the late fee on delayed filings of details in form GSTR-3B for the months of August and September, 2017. Electronic cash ledger of the taxpayers who have already paid the late fee on delayed filings of GSTR-3B either for the month of August or September, 2017 will be credited with the amount of late fee so paid by them.

Extension of date of filing GST TRAN-1

An order has been issued by CBEC to further extend the date of filing and one-time revision of details in form GST TRAN-1 to 30th November, 2017. The earlier date was 30th October 2017. It may be noted that filing of this form is necessary in order to bring forward the eligible input tax credit of the earlier regime to the GST regime.

IGST refund on export of goods

An instruction circular has been issued by CBEC to the customs department asking it to use the existing tax refund payment system for refund of IGST paid on export of goods and make immediate payments of refund due till 14th October, 2017. Thereafter, the refunds will be disbursed through the public finance management system (PFMS) portal. In the existing system, a lump sum refund amount is given by the department to the authorised bank and it is for the banks to thereafter credit the sum due to each exporter based on the list of details provided by the department.

Sale on approval basis

A circular has been issued by CBEC to clarify the applicable rules for movement of goods, including jewellery, within the state or outside along with an e-way bill, for sale on an approval basis. Such movement may take place, for example, for business exhibitions and such events where actual sale may or may not happen. It has now been clarified in the above circular that the goods which are taken for sale on an approval basis can be moved from the place of business of the registered supplier to another place within the same state or to other states on a delivery challan along with the e-way bill wherever applicable. The tax invoice may be issued once the actual sales happen. For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified. Moreover, all such supplies, where the supplier carries goods from one state to another and supplies them in a different state, will be inter-state supplies and attract IGST. Thus, such supplier may not register as a casual taxable person in the state in which he is carrying goods for sale on approval basis.

GST on the superior kerosene oil [SKO] retained for the manufacture of linear alkyl benzene

A circular has been issued by CBEC to clarify the applicability of GST during the manufacture of linear alkyl benzene (LAB). In such a transaction, the LAB manufacturers receive the raw material i.e. superior kerosene oil from a refinery through a dedicated pipeline. On an average, about 15 to 17% of the total quantity of superior kerosene oil received from refinery is retained and balance quantity is returned back to refinery. The retained superior kerosene oil is used towards extraction of a certain chemical compound (normal paraffin), which is used in the manufacturing of LAB. In this transaction, consideration is paid by LAB manufactures to the refinery only for the quantity of retained superior kerosene oil. Doubts were raised as to whether in this transaction GST would be levied on the entire quantity of superior kerosene oil sent by the refinery or only on the quantity retained by the LAB manufactures. Further, it was also unclear as to whether the return of remaining Kerosene by LAB manufactures to the refinery would separately attract GST. Vide the above circular, it has been clarified that, in aforesaid case, GST will be payable by the refinery only on the net quantity of superior kerosene oil retained by the manufacture. The refinery would be liable to pay GST on such returned quantity of superior kerosene oil, only if the same is supplied by it to any other person.

GST on printing contracts

A circular has been issued by CBEC to clarify that supply of books, pamphlets, brochures, envelopes, cartons, boxes etc. printed with logo, design, name, address or other contents which are supplied by the recipient of such printed goods, are composite supplies^[5] consisting of supply of goods in the form of books, envelopes etc and the supply of service in the form of printing.

- In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only the content is supplied by the publisher but the physical inputs including paper used for printing belong to the printer, supply of printing is the principal supply and therefore the entire composite supply will be taxed as the supply of service i.e. printing services.
- In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. printed with design, logo etc. which is supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore the entire composite supply will be taxed as the supply of goods.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

GST on real estate

The GST Council will consider bringing the real estate sector within the GST ambit at its next meeting on 10th November, 2017. This inclusion, if occurs, will make the industry more regulated as the move will curb black money and prevent tax evasion. Currently, the GST rate on under-construction real estate projects stands at 18%. The industry views that if this rate of 18% is also applied to the cost of land and on the sale of ready-to-move properties, it will adversely impact the prices. However, if the GST Council decides to lower the GST rate on real estate and subsume the cost of stamp duty and property registration in GST, the adverse impact can be marginally mitigated. The states seem to be divided in their opinion on inclusion of real estate in GST. While states such as Jammu and Kashmir and Delhi have for long been supporting the inclusion of real estate in GST, the Maharashtra Government in a very recent report has shown reticence towards such inclusion.

GST on aviation sector

In the initial days of GST, it was considered that the impact of GST on aviation would largely be neutral. However, with the passage of time, it is being realised that the taxability in aviation sector is fraught with glitches. Some of them are:

- Though the GST rate on air travel in economy class has been reduced to 5% under the GST regime, the reduced rate comes with a rider namely that no input tax credit (ITC) on goods used in supplying such service should be taken. Therefore, for passenger service in economy class, the airlines can claim ITC only on their input services. On the contrary, business and first class air travel are better placed with availability of full input tax credit, though they may be subject to a higher rate of 12%. Economy sector accounts for a major share of the airline business in India. The airlines industry are considering to approach the government to allow availability of input tax credit of goods used for providing services in the economy class as well.
- Another issue is being faced by the maintenance, repair and overhaul (MRO) industry in aviation which is currently subject to GST at the rate of 18%. This means that when aircrafts are serviced

in India, the airlines have to bear the tax of 18%. Due to legal restrictions, the input tax credit of the tax paid to Indian MRO units cannot be availed by the airlines for their output passenger transport services in economy class. However, there is no customs duty when an aircraft serviced abroad is imported into India. Owing to double whammy of 18% tax and no provision for input tax credit, airlines are increasingly availing the MRO services from abroad, thereby jeopardising the Indian MRO industry. The Indian MRO industry is in the process of making representation to the government to either seek exemption for the Indian MRO industry from levy of GST or alternatively imposition of customs duty on aircrafts imported in India after being serviced abroad.

GST on restaurants

As per the recent media reports, the government is considering a proposal to bring down the GST rates on air-conditioned restaurant services to 12% from 18%. However, the proposal in its present form, disallows availment of input tax credit by restaurants in case such reduced rates are applied. Under the current 18% tax rate, full input tax credit is available for restaurants and the restaurants get to claim credit on the GST paid by them on inputs such as processed food, rent, electricity and transportation. However, if the GST rate is brought down to 12% with absence of facility to avail input tax credit; it may result in increased operational costs for the restaurants leading to higher costs for the end consumer. The industry association has requested the government to reduce the rates but with the provision to allow input tax credit.

Possible IGST relief on services provided outside India

Under the erstwhile service tax regime, only services provided within the territory of India were liable to service tax. However, under the GST regime, tax is also payable on the services provided outside India by service providers located in India^[6], unless such provision of service qualifies as an export of service^[7]. This means that branch/liason offices in India rendering services to their head offices outside the country or head offices rendering services from India to their branch located in any other country are now liable to pay IGST on such services (as such supplies do not satisfy the conditions of export of services). A writ petition challenging this provision has already been filed in the Delhi High Court. As per certain media reports, it appears that such a levy is an inadvertent consequence and the government is now considering to offer respite to service provided outside India from India which are currently subject to IGST. A notification to this effect may be issued in the near future.

Valuation under GST

The rules on valuation under GST prescribe that the taxable value of supplies between distinct or related persons or between principal and his agent or of supplies where non-monetary consideration is involved will be the open market value^[8]. Open market pricing valuation seems conceptually analogous to the transfer pricing mechanism under the Income Tax Act, 1961 although the rules for both of them are not harmonised. The incongruence between these two principals may lead to different pricing under direct and indirect tax regime for the same transaction leading to increased tax demands.

[1] Advance Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports.

[2] Export Promotion Capital Goods Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015- 20 for import of capital goods for physical exports.

[3] 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.

[4] Merchant Exporter as defined in Foreign Trade Policy means a person engaged in trading activity and exporting or intending to export goods.

[5] A composite supply under GST means a supply consisting of two or more taxable supplies of goods or services which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is the principal supply. The composite supply is taxed according to the principal supply.

[6] Section 7(5)(a) of the IGST Act prescribes that supply of goods or services when supplier is located in India and the place of supply is outside India is an inter-state supply under GST.

[7] 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 in accordance as defined;

[8] Open market value of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, state tax, union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

Glossary

CBEC- Central board of excise and customs	CGST-Central goods and service tax
GSTIN- Goods and service tax identification number	IGST- Integrated goods and services 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.