



Week of 27th November, 2017

A. CHANGES IN THE GST REGIME

Constitution of the National Anti-Profitteering Authority

Earlier this month, the Union Cabinet had given its clearance to the constitution of the National Anti Profitteering Authority (Please refer to our GST Update Volume 20 for details). Now, this apex anti-profitteering body has been set up by the government and its chairman and four other technical members have been nominated. This authority is mandated to ensure that the benefits of input tax credit and the reduction in GST rates on specified goods or services are passed on to the consumers by way of a commensurate reduction in prices. In addition to this authority, the institutional mechanism for effective implementation of the anti-profitteering measures enshrined in the GST rules consists of a standing committee, state-level screening committees and the Directorate General of Safeguards in the CBEC. The rules regarding anti-profitteering are yet to be prescribed by the government.

Revised rates under Remission of State Levies notified

The ministry of textiles has notified the revised post-GST rates for claiming rebate of state taxes under the scheme for Remission of State Levies (RoSL)¹ on exports of readymade garments in a bid to support the export of textiles and garments. When notified earlier in July 2017, these rates stood at a maximum of 0.39%. The revised post-GST rates of RoSL are now up to a maximum of 1.70% for cotton garments, 1.25% for man-made fibres, silk and woollen garments and 1.48% for apparel of blends. The new rates of RoSL will be effective from 1st October 2017. However, these increased rates are still 3.7% lower as compared to the pre-GST regime. Due to higher tax incidence under the GST regime, the apparel exports industry is losing its competitiveness in the global market and as such the industry association is pushing the government to restore the pre-GST RoSL rates for the apparel exports industry.

¹Remission of State Levies is a part of the duty drawback scheme under which the eligible exporters get refunds from the Central government against all the levies they pay at the states' level.

GST on goods transferred / sold from a custom bonded warehouse

Presently, an importer is required to pay basic customs duty and IGST on imported goods before they can be cleared for consumption in the territory of India². In order to defer the liability to pay customs duty and IGST on imported goods, the importers do not obtain the custom clearance immediately and generally deposit the goods imported by them in a bonded warehouse and sell the goods directly from such warehouse³. A circular has now been issued by CBEC to clarify the GST liability at the time of sale of imported goods from such custom bonded warehouse. In the said circular, it has been stated that in case of sale of imported goods by the original importer from a custom bonded warehouse, it is the purchaser who is liable to file an ex-bond bill of entry and pay basic customs duty and IGST on import of goods (whose payment was deferred earlier by the original importer). Additionally, the purchaser also has to pay the applicable GST on the sale of the imported goods to the original importer. Thus, the GST liability on import of goods as well as the subsequent sale of those goods is to be borne by the purchaser.

Procedure for budgetary support

The CBEC has issued a circular to prescribe the procedure for the manual disbursement of the budgetary support under the GST budgetary support scheme (Please refer to our GST Update Volume 16 for details) to the units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim. The budgetary support will be disbursed from the budgetary allocation department of the Department of Industrial Policy and Promotion, which will further allocate to the principal account office of the CBEC for its disposal.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

Product specific anti-profiteering

As per media reports, the government may adopt a product-specific approach to impose the anti-profiteering provisions. A product specific approach means that the rate reduction in respect of one product must be passed on as a reduced price of that product only and not as price reduction of other products in the same category. For example, a reduction in a rate applicable to a shampoo manufactured by a company cannot be passed on as a reduced rate of say soaps manufactured by the same company. The government is keen to ensure that benefits of price cuts are passed on for all the items and there is no averaging at an organisational level. Industry experts however opine that the companies should be allowed to have differential pricing as long as the total quantum of profit has been passed on. Also, to pass on the benefits to the consumers, the companies wish to have an option to either reduce prices or increase the quantity of a product to be given to the consumer at the same price.

Recommendations of the GST Advisory Panel

The advisory group set up by the GST Council (Please refer to our GST Update Volume 19 for details) is in the process of reviewing the glitches in the existing GST regime which merit immediate attention. The group is likely to propose its recommendations in its first report scheduled to be submitted in the first week of December. As per the media reports, after the recent focus on the GST rates, the advisory group is now concentrating on the

² Section 5 of the IGST Act, 2017 read with section 3 of the Customs Act, 1963

³ The liability to pay basic customs duty and IGST on imported goods remains deferred as long as these goods remain deposited in the custom bonded warehouse. The liability arises at the time the goods are cleared for home consumption or further export from the custom frontiers into the territory of India by filing an ex-bond bill of entry. The ex-bond bill of entry may be filed either by the original importer or the purchaser to whom the goods are sold by the importer.

substantive and procedural amendments required in the GST legislations and CGST Rules, 2017. It is expected that the key recommendations will essentially revolve around, inter alia, the following:

- Simplification and automation of the procedure for granting of refunds;
- Deferring the provisions relating to reverse charge mechanism in case of unregistered suppliers and electronic way bill for at least one year;
- Reducing the rate of composition tax to 1% as against the present 5% for restaurant service providers opting for composition scheme and allowing inter-state supply by persons opting for composition scheme;
- Eliminating the requirement of declaration of HSN code in the invoice for easier return filing; and
- Amending the existing system of classification of goods in a manner such that the raw material and finished product are in the same slab.

GST on real estate

As per the present GST regime, a builder/developer has to pay GST at the effective rate of 12% in respect of sale of an under construction property, after claiming the deduction for value of land being transferred in such sale thereby levying GST only on the service component. However, the services by the sub-contractor to the builder/developer are taxable at the rate of 18% as no deduction of land value is available in this case. In most cases, the prices of real estate projects are already fixed and therefore, the sub-contractors are not able to pass on this burden of differential GST of 6% to the builder/developer and ultimately to the end consumer. The industry associations have now approached the government to fix this anomaly and bring parity in GST rates charged from contractors and subcontractors, or provide a mechanism to make good their losses. The association has also sought a 'reverse anti-profiteering mechanism' from the government on the premise that when the cost of inputs have gone high, the burden of the same must be borne by the final recipient by way of increased prices.

GST on hydroelectric power

The industry body ASSOCHAM has made a representation to the government seeking to rationalise the GST rates applicable to hydroelectric power projects at par with wind energy and solar energy so that the cost is commensurate for all renewable power projects. Currently, the equipments for hydropower projects attract 18% GST while the GST rate for solar equipments is 5%. This escalates the engineering, procurement and construction (EPC) cost for hydropower projects which has a glaring additional cost impact on power produced from hydro projects. Also distribution of electricity to the consumer or the electricity distribution companies (DISCOM) does not attract any GST. Thus, the burden of the higher rate of GST is borne by the hydro power plants, making their operative expenses exceed exponentially. In a paper titled 'Need for Hydropower in India – Industry Submission', the industry body has raised these concerns. In our view also, the rationale for such a differential rate between various sources of renewable power is not intelligible and keeping in mind the growing need of renewable power, taxes on this sector must be kept at a minimum level.

Glossary

ASSOCHAM- Associated Chambers of Commerce of India

IGST- Integrated goods and services tax

CGST-Central goods and service tax

CBEC- Central board of excise and customs

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