

Week of 28th May, 2018

A. CHANGES IN THE GST REGIME

Intra-state e-way bill

The e-way bill system for inter-state movement of goods has been implemented from 1st April, 2018. Various states and union territories have also notified the implementation of intra-state e-way bill within their respective territories. It has now been notified that e-way bill for intra-state movement of goods will be effective in the states of Chhattisgarh, Jammu & Kashmir, Odisha, Mizoram and Punjab from 1st June, 2018; in the state of Tamil Nadu from 2nd June, 2018 and in the state of West Bengal from 3rd June 2018.

GST on priority sector lending certificates (PSLCs)

The government had recently clarified that PSLCs of banks are in the nature of 'goods' and are liable to tax at the rate of 18% under GST. It has now been notified that the supply of PSLCs would attract GST under Reverse Charge Mechanism (RCM).

GST on goods stored in customs warehouse

The CBIC GST policy wing addressing principal chief commissioners and chief commissioners has issued a circular clarifying that IGST on goods supplied while being deposited in a customs bonded warehouse shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e. at the time of filing the ex-bond bill of entry. The supply of goods before their clearance from the warehouse would not be subject to the levy of IGST and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse. This circular would be applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse on or after 1st April, 2018.

GST relating to farmers, agriculturists and support services to agriculture, forestry, fishing or animal husbandry

The government on Monday has clarified that reports that the farmers would be required to take registration and pay GST from 1st June, 2018 at the rate of 18% when they lease out their land is factually incorrect and misleading. The government has clarified that no change is made in the GST law and taxation relating to farmers since 1st July, 2017. Further, the support services to agriculture, forestry, fishing or animal husbandry are exempt from GST and agriculturists are also exempted under GST.

Authority for conducting exams for GST Practitioners

The government has notified the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, on the recommendations of the GST council, as the authority to conduct the examination of GST practitioners as per rule 83(3) of the CGST rules.

Procedure for refund claims by exporters

CBIC prescribes the procedure for sanction of pending IGST refund claims. A number of representations were made by the exporters/trade associations seeking resolution of problems which have hindered sanction of refund of IGST paid on exports. It has been observed by the department that exporters have inadvertently mis-declared IGST paid on export supplies as IGST paid on interstate domestic outward supplies. Exporters have also in certain cases short paid IGST as against their liability declared in GSTR1. As a result of these mismatches, the transmission of records from GSTN to customs EDI system has not happened and consequently IGST refunds could not be processed. CBIC has prescribed a procedure to overcome the problem of refund blockages. This would be an interim solution subject to undertakings/submission of chartered accountant certificates by exporters and post refund audit scrutiny. The proposed procedure is prescribed under two cases: - (i) cases where there is no short payment; (ii) cases where there is short payment.

Special drive Refund Fortnight

After the first special drive refund fortnight held in March 2018, the government is starting a second special drive refund fortnight from 31st May, 2018 to 14th June, 2018. This would facilitate all types of refund claims in which customs, central and state GST officers will strive to clear all GST refund applications received on or before 30th April, 2018. This will include refunds of IGST paid on exports, refunds of unutilized ITC and all other GST refunds submitted in GST refund form.

AAR Rulings

A brief summary of various AAR rulings are stated below.

- **GST on sale of going concern: Karnataka AAR ruling**

The applicant has three manufacturing units and it intended to sell one unit along with all its fixed assets namely land, building, plant & machinery etc., current assets namely stock & trade receivables etc., and liabilities namely bank term loans, bank working capital loans, creditors for supplies etc., for a lump sum consideration. The applicant sought an advance ruling on two questions i.e. (i) whether the transaction would amount to supply of goods or supply of services or supply of goods and services; and (ii) whether the transaction would be exempt under sr. no. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (being services by way of transfer of a going concern, as a whole or an independent part thereof). The Karnataka AAR has ruled that (i) the transaction of transfer of business as a whole of one of the units of the applicant in the nature of a going concern amounts to supply of service; and (ii) this transaction is covered under sr. no. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 subject to the condition that the unit is a going concern.

- **GST on damages paid for cancellation contract: Maharashtra AAR ruling**

The applicant paid liquidated damages on operation and maintenance and erection and commissioning contracts. The Maharashtra AAR has ruled that payments in respect to non-performance of a contract would be liable to GST at the rate of 18% concluding that liquidated damages will be considered to be a deemed service and will be covered under the phrase 'agreeing to tolerate an act or situation', under para 5 of schedule II of CGST Act.

- **GST on printing of photographs from media: West Bengal AAR ruling**

The applicant is printing content supplied by the customers on photographic paper. The applicant sought an advance ruling on two questions (i) whether the nature and classification of the activity is supply of goods or service; and (ii) whether the activity carried out by the applicant is taxable under HSN 4911 (as goods) or SAC 9989 (as service). The AAR ruled that where the applicant does not supply content of printed matters but only provides printing service to its customers and does not have any ownership of content at any point of time, and cannot transfer title of the printed matters, the applicant cannot be said to be supplying goods but is providing a service, namely, service of printing and is liable to be classified as service under SAC 9989. Thus, the activity carried out by applicant of "printing of photographs from media" is classifiable as service under SAC 9989 and thus is taxable at 12%.

- **GST on diagnostic services: Karnataka AAR ruling**

The applicant, a healthcare company, is involved in the diagnosis, pre and post counselling, therapy and prevention of diseases by providing tests that are sophisticated and relevant. The applicant is specifically working in precision diagnostics detecting the origin of the cancer. They have collaborated with other diagnostic company to provide advanced genetic diagnostic tests that help in prevention and management of cancers and blood disorders. In all these diagnostic tests, the medical team is involved in the complete cycle of testing process beginning with patient counselling. The applicant sought an advance ruling claiming that the services provided by them are covered under health care services and hence it is a nil rated supply. The AAR ruled that the applicant's services qualify as health care services that will attract a nil rate of GST.

- **GST on premises taken on lease by hospital: Karnataka AAR ruling**

The applicant, a cardiology specialised hospital, is running on a premises taken on lease. They are providing cardiology related, life saving, health care services to the patients and the said output services are exempt from GST. They have taken premises of one floor on rental basis for heart care services only. The applicant sought an advance ruling on the question of whether GST is leviable on the rent payable by a hospital providing life saving services. The AAR has ruled that GST is leviable on the rent paid/payable for premises taken on lease by the applicant, as no specific exemption is available under any notification for the time being in force. Further, there is no provision available under GST which allows exemption on an input service if the output service provided by a taxable person is exempt.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

GST on freebies

As per the media reports, pharmaceutical companies offering buy one get one free schemes or 20% extra for the same price may have to pay GST or reverse the input tax credits on the extra quantities. However, this issue is not only restricted to pharmaceutical companies and so tax demands can be raised on such schemes run by the fast moving consumer goods industry (FMCG), consumer electronics and so on.

Glossary

AAR- Authority for Advanced Rulings

CBIC- Central Board of Indirect Taxes and Customs

CGST- Central goods and Services Tax

GSTN- Goods and Services Tax Network

IGST- Integrated Goods and Services Tax

GSTR – Goods and Service Tax Return

HSN - Harmonized System of Nomenclature

SAC - Services Accounting Code

GST Council- Goods and Services Tax Council, a constitutional body comprising of members of the Central and the State Governments to recommend changes under the existing GST regime.

GSTN – Goods and Service Tax Network

EDI – Electronic Data Interchange

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