

Week of 4<sup>th</sup> June, 2018

## A. CHANGES IN THE GST REGIME

### GST on priority sector lending certificates (PSLCs) and renewable energy certificates (RECs)

The government had erstwhile clarified that PSLCs of banks are in the nature of 'goods' and are liable to tax at the rate of 18% under residual entry under GST. Further, earlier in response to FAQs, it was clarified that scrips like MEIS and SEIS are 'goods' classifiable under the heading 4907 and liable to tax at the rate of 12% (Please refer to our GST Update Volume 7 for more details). Representations were made seeking clarification regarding the classification and applicable GST rate on REC and PSLCs. The matter was re-examined and a circular has been passed clarifying that the various certificates like RECs, PSLCs and other similar documents are classified under heading 4907 and will accordingly attract GST at the rate of 12%.

### Amendment in the GST Settlement of Fund Rules

The Central Government has notified the GST Settlement of Funds (Second Amendment) Rules, 2018. The "Goods and Services Tax (Settlement of Funds) Rules, 2017", seeks to regulate the apportionment of taxes between Centre, States and Union Territories (Please refer to our GST Update Volume 5 for more details). As per the amended rules, at any point of time in any particular financial year, the Central Government may, on the recommendations of the GST Council, provisionally settle any sum of IGST collected in that particular financial year which has not been settled so far which will be adjusted in the subsequent month(s)/year(s), based on the returns filed by the taxpayers.

### GST FAQ's on financial services

The CBIC has issued 91 FAQs on financial services sector which clarify, *inter alia*, the following: -

- Free services provided by a bank to its customers will not attract GST.
- Derivatives and future contracts qualify as 'securities' which is neither 'goods' nor 'services' and are therefore not chargeable to GST. However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of service and chargeable to GST.
- Securitized assets are in the nature of 'securities' and hence not liable to GST. However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of services related to securitization and chargeable to GST.
- Services provided by banks to the Reserve Bank of India would be taxable as these are not covered by any of the exemptions or excluded from the purview of GST.

- In case of import of gold, IGST will apply once, on import, and not again when it is appropriated by banks.

### **PAN based refund clearance for exporters**

The CBIC has now allowed clearance of GST refunds based on PAN of exporters if such refunds are held up due to mismatch in GSTIN mentioned in shipping bill and return forms. As CBIC is organizing a special refund fortnight from 31 May 2018 to 14 June 2018 for a fast-track clearance of refund dues, the CBIC has said that the refund should be cleared if the PAN mentioned in the shipping bill and returns form GSTR-3B/GSTR-1 is same.

### **AAR Rulings**

#### **A brief summary of various AAR rulings are stated below**

- **GST on sale of land and superstructure: Delhi AAR ruling**

The applicant plans to engage itself in the development and sale of residential houses. The applicant sought advance ruling on two questions i.e. (i) whether GST would be applicable on the sale of undivided and impartible share of land represented by agreement to sell the land; and (ii) whether GST would be applicable on sale of superstructure (which is under construction). The Delhi AAR has observed that during the construction of a complex, building etc., the land and its superstructure becomes inseparable and hence, separate sale of land and its superstructure does not appear to be permissible. The AAR ruled that in the case of supply of services by way of construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly (except where the entire consideration has been received after issuance of completion certificate), GST would be payable. As per Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017, the value of land, or the undivided share of land, as the case may be, would be deemed to be one-third of the total amount, which is excluded from the value for the purposes of payment of GST. Hence, GST would be payable on two-third of the total amount consisting of amount charged for transfer of land or undivided share of land, as the case may be, and whole of the consideration charged for the supply of goods and services. The applicable rate of GST will be 18%.

- **GST on tyres of e-rickshaw: Uttarakhand AAR ruling**

The applicant sought advance ruling on the question that whether there is any difference between an electric rickshaw operated by chargeable batteries (e-rickshaw) and three wheeled, powered cycle rickshaw provided under tariff notification. The AAR ruled that e-rickshaw and powered cycle rickshaw are not one and same but two different items. Tyres used in e-rickshaw are not tyres of powered cycle rickshaw and, hence, they are required to be classified under Chapter Heading 4013 of GST Tariff, 2017 and attract 28% GST as on date as against three wheeled powered cycle rickshaws which attract 5% GST as on date.

- **GST on disc brake pads & brakes shoes: Uttarakhand AAR ruling**

The applicant sought advance ruling on classification and rate of applicable GST on "disc brake pads & brakes shoes" used in automobiles. The AAR ruled that disc brake pads and brakes shoes being used in automobile industry which are in form of friction material already mounted on metal plate are appropriately classifiable as 'part and accessory of automobiles' and not as 'friction material'. Therefore, they are to be classified under sub heading 8708 of GST tariff as other parts and accessories of motor vehicles of headings 8701 to 8705 which will attract 28% GST.

## **B. PROPOSED CHANGES AND INDUSTRY ISSUES**

### **GST on natural gas and aviation turbine fuel**

As per the media reports, the next GST Council meeting may bring in the petroleum products like natural gas and aviation turbine fuel under the GST ambit. The date of the next GST Council meeting is yet to be decided but it is expected to be held later during this month.

### **GST on duty free shops**

By virtue of an AAR ruling passed recently a number of representations have been made to the department in order to seek clarification on the applicability of GST on sale of goods from duty-free shops at airports. As per the media reports, the GST department will soon issue a clarification to bring relief to the duty-free shops by exempting it from GST which will keep them competitive with the duty-free shops in other countries.

### **AAR mechanism in GST**

As per the media reports, the government is considering to revamp the AAR mechanism under GST due to contrary orders being passed by the AARs in different states on same or similar issues. The government is considering to either set up a centralised AAR or regional AARs.

## **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**

**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.**  
**MEIS - Merchandise Exports from India Scheme**  
**SEIS - Service Exports from India Scheme**

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