



Week of 3rd September, 2018

A. CHANGES IN THE GST REGIME

Annual return

Under the GST regime, the taxpayers are required to file an annual return besides the monthly and quarterly returns. However, the annual return format was not notified following compliance and IT issues. The CBIC has now vide notification no. 39/2018 – central tax dated 4th September, 2018 notified Central GST (Eighth Amendment) Rules, 2018 wherein it has notified annual return Form GSTR-9 for normal taxpayers and annual return Form GSTR-9A for composition taxpayers. The last date for filing the annual return form for the relevant year 2017-18 (commencing from 1st July, 2017 up to 31st March, 2018) is 31st December, 2018.

Scope of principal-agent relationship in context of Schedule I

Schedule I of the CGST Act lists down the activities which are treated as 'supply' even if made without consideration. Entry no. 3 discusses the principal-agent relationship. Various representations were received regarding the scope and ambit of the principal-agent relationship under GST. The CBIC has clarified vide circular no. 57/31/2018 the scope of principal-agent relationship in context of schedule I of the CGST Act with the help of examples. All the activities between the principal and the agent and vice-versa do not fall within the scope of the said entry. The entry only covers "supply of goods (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal." It is clarified that the supply of 'services' between the principal and the agent is outside the ambit of the said entry, and would therefore require "consideration" to consider it as supply. It is further clarified that for supply of goods the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

Clarification on refund related issues

The CBIC GST policy wing vide circular no. 59/33/2018 has provided clarification on various refund related issues. As the refund claims were being filed in a semi-electronic environment and the processing was completely based on the information provided by the claimants, the invoices were required to be submitted for processing of the refund. However, this is a cumbersome process. It has now been clarified that the claimant can submit a printout copy of FORM GSTR 2A for the relevant period for which the refund is being claimed. The proper officer shall rely on this form and shall not insist on submission of invoices the details of which are present in FORM GSTR 2A. The CBIC has further clarified the order for calculation of refund amount for all refund applications filed after the date of issue of this circular (4th September, 2018). It is clarified that no adverse view will be taken by the tax authorities for the applications already filed and pending with the tax authorities, where this order is not adhered to by the claimant. The CBIC also clarifies about the treatment of refund applications where the amount claimed is less than INR 1,000. The limit of INR 1,000 for refund shall be applied for each tax head separately and not cumulatively. Further, all field formations are requested to reject claims of refund from the electronic credit ledger for less than INR 1,000 and re-credit such amount by issuing an order in FORM GST RFD-01B. The CBIC has also clarified various other concerns through this circular.

Reversal of wrongly availed credit

The CBIC has vide Circular no. 58/32/2018 clarified that the taxpayers can reverse the wrongly availed cenvat credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B. The applicable interest and penalty apply on all such reversals shall be paid through entry in column 9 of Table 6.1 of FORM GSTR-3B.

Process of refund applications by Canteen Stores Department (CSD)

The central government had specified that CSD will be eligible for claim of 50% refund of central tax, state tax, integrated tax and union territory tax paid on all inward supplies of goods used for purpose of subsequent supplies of such goods. In order to process the refund claims the CBIC now vide Circular no. 60/34/2018 CBIC has specified the manner and procedure for filing and processing of such refund claims. The CSD are required to apply for refund on a quarterly basis. Till the time the online utility for filing the refund claim is made available on the common portal, the CSD shall apply for refund by filing an application in FORM GST RFD-10A manually to the jurisdictional tax office. The said form shall be accompanied by certain documents. The refund shall be based on the invoices of the inward supplies of goods received by CSD.

E-way bill for goods stored in transporter's godown

E-way bill is a document which is required for the movement of goods from the supplier's 'place of business' to the recipient taxpayer's 'place of business'. Therefore, the goods in movement including when they are stored in the transporter's godown (even if the godown is located in the recipient taxpayer's city/town) prior to delivery shall always be accompanied by a valid e-way bill. A 'place of business' is defined to mean *"a place from where the business is ordinarily carried out, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both"*. An additional place of business is the place of business from where taxpayer carries out business related activities within the State, in addition to the principal place of business. It has been stated that the transporters providing such warehousing facility will have to get themselves registered under GST and maintain detailed records in cases where the transporter takes delivery of the goods and temporarily stores them in his warehouse for further transportation of the goods till the

consignee/recipient taxpayer's premises. The transport industry is facing difficulties due to the same and a request has been made to treat these godowns as transit godowns. The CBIC GST policy wing has clarified vide circular no. 61/35/2018 that validity of e-way bill will not required to be extended for goods stored in transporter's godown because the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. Thus, in case the consignee/ recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer' additional place of business). Hence, e-way bill validity in such cases will not be required to be extended.

Due date for filing of Form GST ITC-04

The CBIC vide notification no. 40/2018 – central tax has extended the time limit for making the declaration in FORM GST ITC – 04 in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to June, 2018 till 30th September, 2018.

Due date for filing of Form GST ITC-01

The CBIC vide notification no. 42/2018 – central tax has extended the time limit for making the declaration in FORM GST ITC – 01 for the registered persons who have filed the application in FORM GST CMP-04, between 2nd March, 2018 and 31st March, 2018, till 4th October, 2018.

Late fees for filing of GSTR-3B, GSTR-4 and GSTR-6

The CBIC, on recommendation of the GST Council, vide notification no. 41/2018 – central tax has waived-off the late fees paid under section 47 of the CGST Act by the following class of persons: - (1) the registered persons whose return in FORM GSTR-3B of the CGST Rules, 2017 for the month of October, 2017, was submitted but not filed on the common portal, after generation of the application reference number; (2) the registered persons who have filed the return in FORM GSTR-4 of the CGST Rules, 2017 for the period October to December, 2017 by the due date but late fee was erroneously levied on the common portal; (3) the input service distributors who have paid the late fee for filing or submission of the return in FORM GSTR-6 of the CGST Rules, 2017 for any tax period between 1st January, 2018 and 23rd January, 2018.

GST on certain activities by charitable trusts : Maharashtra AAR ruling

The applicant, a charitable trust, with main object of advancement of religion, spirituality or yoga has sought an advance ruling on four questions :- (1) whether the applicant can be said to be in the business so as to attract CGST Act and Maharashtra GST Act, (2) whether the applicant is liable to registration under the provisions of the CGST Act and Maharashtra GST Act, (3) whether sale of spiritual products which is incidental or ancillary to the main object of the applicant can be said to be business of the applicant in terms of definition of 2(17) of the CGST Act, and (4) whether sale of spiritual products can be said to be a supply under section 7 of the CGST Act so as to attract GST. The AAR has held as follows :- (1) The applicant can be said to be in the business so as to attract CGST Act and Maharashtra GST Act; (2) The applicant is liable to registration provided the aggregate turnover exceeds the limit prescribed under section 22 of the CGST Act, (3) sale of spiritual products which is incidental/ancillary to main charitable object of applicant can be said to be business of applicant in terms of definition in section 2(17) of CGST/ Maharashtra GST Act, 2017, and (4) sale of spiritual products can be said to be supply under section 7 of CGST/ Maharashtra GST Act, 2017.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

Need to bring petrol and diesel under GST

As per the media reports, the former finance minister has stated that the centre and the states must act together to bring petrol and diesel under GST immediately as petrol and diesel prices hit new highs this week.

Concerns over levy of GST on overseas air tickets

As per the media reports, the International Airport Transport Association (IATA) chief has stated that levying GST on overseas air tickets violates International Civil Aviation Organization (ICAO) norms and also weakens the competitiveness of carriers. Presently, the GST rate is 5% and 12% on economy and business class tickets, respectively.

Glossary

AAR – Authority for Advance Ruling

CBIC – Central Board of Indirect taxes and Customs

CGST – Central Goods and Service Tax

CGSTR – Goods and Service Tax Return

ITC – Input Tax Credit

RFD - Refund

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.

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