



Week of 1st April, 2019

A. CHANGES IN THE GST REGIME

CGST rates for real estate services notified

The CBIC has vide Notification no. 03/2019 – Central Tax (Rate) dated 29th March, 2019 amended Notification no. 11/2017- Central Tax (Rate) so as to notify CGST rates for real estate services as recommended by GST Council with effect from 1st April, 2019. The effective GST rates notified for affordable housing project is 1% (without ITC) and for projects other than affordable housing is 5% (without ITC).

A similar amendment is notified in the IGST rates via Notification no. 03/2019 - Integrated Tax (Rate) dated 29th March, 2019.

Exemption for real estate services notified

The CBIC has vide Notification no. 04/2019 - Central Tax (Rate) dated 29th March, 2019 amended Notification no. 12/2017 – Central Tax (Rate) so as to notify exemption for certain real estate services as recommended by GST Council with effect from 1st April, 2019. The exemption relates to service by way of transfer of development rights or floor space index after 1st April, 2019.

A similar amendment is notified in the IGST exemption list via Notification no. 04/2019 - Integrated Tax (Rate) dated 29th March, 2019.

Reverse Charge Mechanism for real estate supplies notified

The CBIC has vide Notification no. 05/2019 – Central Tax (Rate) dated 29th March, 2019 amended Notification no. 13/2017- Central Tax (Rate) so as to notify services to be taxed under RCM for real estate sector as recommended by GST Council with effect from 1st April, 2019. The RCM list now notifies that the service recipient shall be liable to pay GST for (1) the service supplied by any person by way of transfer of development rights or floor space index for construction of a project by a promoter¹; and for (2) the long term lease of land (30

¹ the term “promoter” shall have the same meaning as assigned to it in section 2(zk) of the Real Estate (Regulation and Development) Act, 2016. Section 2(zk) of the Estate (Regulation and Development) Act, 2016 defines ‘promoter’ to mean (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of – (a) buildings or

years or more) by any person against consideration in the form of upfront amount and/or periodic rent for construction of a project by a promoter².

A similar amendment is notified in the IGST RCM list via Notification no. 05/2019-Integrated Tax (Rate) dated 29th March, 2019.

Reverse Charge Mechanism for real estate sector supplies received by an unregistered supplier

The CBIC has vide Notification no. 07/2019 – Central Tax (Rate) dated 29th March, 2019 notified that the promoter³ shall pay tax on reverse charge basis as recipient of the following goods or services or both in respect of supply of goods or services received from an unregistered supplier:- (1) Capital goods supplied to a promoter⁴, (2) Cement and (3) supplies (other than services by way of grant of development rights and long term lease of land) with effect from 1st April, 2019.

A similar amendment is notified in the IGST RCM list via Notification no. 07/2019-Integrated Tax (Rate) dated 29th March, 2019.

CGST rates for real estate goods notified

The CBIC has vide Notification no. 08/2019 – Central Tax (Rate) dated 29th March, 2019 amended Notification no. 01/2017- Central Tax (Rate) by inserting certain supplies of real estate goods to be taxed at the rate of 18% as recommended by GST Council with effect from 1st April, 2019. The category of supply would include the supply of any goods (other than capital goods and cement), by an unregistered person to a promoter⁵ for construction of the project on which tax is payable by the promoter⁶ as recipient of goods under section 9(4) of the CGST Act, 2017 as prescribed in Notification no. 07 / 2019- Central Tax (Rate), dated 29th March, 2019.

A similar amendment is notified in the IGST rates via Notification no. 08/2019 - Integrated Tax (Rate) dated 29th March, 2019.

Composition Scheme for annual turnover up to INR 5,000,000

The CBIC had vide Notification no. 2/2019 – Central Tax (Rate) dated 7th March, 2019 notified that a registered person making “first supplies of goods or services or both” up to an aggregate turnover of INR 5,000,000 on or after the 1st April in any financial year, for the intra-state supply of goods or services or both shall be liable to pay GST at the rate of 6% (3% CGST plus 3% SGST) (For details, please refer to ALMT GST highlights Volume 89). The CBIC now vide Notification no. 09/2019 – Central Tax (Rate) dated 29th March, 2019 amended the above notification by inserting that the CGST Rules, 2017, as applicable to a person paying tax under section 10 of the CGST Act shall, mutatis mutandis, apply to a person paying tax under this notification.

apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public. Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder.

² ibid

³ ibid

⁴ ibid

⁵ ibid

⁶ ibid

CGST (Second Amendment) Rules 2019

The CBIC has vide Notification no. 16/2019 dated 29th March, 2019 made amendments to the CGST Rules, 2017. The amendments inter alia relate to (1) rule 41 on transfer of credit on sale, merger, amalgamation or transfer of business; (2) rule 42 on manner of determination of input tax credit in respect of inputs or input services and; (3) rule 43 on manner of determination of input tax credit in respect of capital goods. The amendments have also inserted a new rule 88A on order of utilisation of input tax credit.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

GST collection for March 2019

As per media reports, the GST collection for March 2019 has been recorded as the peak, crossing the Rs. 1000 billion mark. The total gross GST revenue collected in March, 2019 is approximately Rs. 1065 billion which comprises of approximately CGST of Rs. 204 billion, SGST of Rs. 275 billion, IGST of Rs. 504 billion crore and cess of Rs. 82 billion.

GST impact on restaurant service

Presently, the GST rate on restaurant food service is 5% (without ITC). As the industry is not able to claim ITC on the purchase of raw materials and the rent paid, the margins are getting affected. As per media reports, the restaurant service sector is not looking for expansion in the country as increasing the prices by 3% to 5% and passing it on to the customers are not enough to protect margins. Therefore, the restaurants now plan to set up online outlets or outlets within hotel premises where they can continue to avail of the tax credit.

Proposed technology support in the e-way bill system

As per media reports, the e-way bill system will be supported by technology to calculate the distance for movement of goods automatically based on the postal PIN codes of source and destination locations and allowing a variation of 10%. Therefore, if the system has displayed the distance between Place A and B, based on the PIN codes, as 600 kms; then the user will be able to enter the actual distance up to 660 kms (600 kms plus 60 kms).

Glossary

CBIC – Central Board of Indirect taxes and Customs
CGST – Central Goods and Services Tax
GST – Goods and Services Tax
IGST – Integrated Goods and Services Tax
ITC – Input Tax Credit
RCM – Reverse Charge Mechanism

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.
SGST - State Goods and Services Tax

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