



Week of 11th December, 2017

A. CHANGES IN THE GST REGIME

GST on real estate

A clarification has been issued by CBEC on its twitter handle @askGST_GoI to clarify the applicability of GST on under construction and ready-to-move-in properties. It has been clarified therein that sale of ready-to-move-in or completed property, i.e. where completion certificate has been issued, does not attract GST. But in case of under construction property where entire consideration has been paid to the builder before 1st July, 2017 or the invoice has been raised before 1st July, 2017, service tax would be applicable at the effective rate of 4.5%¹ and accordingly, no GST shall be payable on such transaction. In case of part payment of consideration, service tax will be payable to the extent of invoices which have been raised before 1st July, 2017 or the consideration which has been paid before 1st July, 2017, and on the remaining portion, GST will become payable.

Interim relief for input tax credit

The Delhi High Court has granted interim relief to the petitioner, who had filed a writ petition before it challenging the non availability of the transitional input tax credit in respect of input stock purchased before one year of the appointed date i.e. before 1st July, 2016 (Please refer to our GST Update Volume 19 for details). As per the present provisions under the GST legislations, credit in respect of input stock is not available where the invoices pertaining to such stock are dated before 1st July 2016. However, under a separate provision, where the taxpayer is not in possession of any invoice in respect of input stock, 40-60% of input tax credit is available. In that sense, there is unfair advantage in favour of those taxpayers who did not have invoices, while those who possessed receipts were restricted by the time-limit of one year. In its interim order, the High Court has directed that the credit for period beyond one year should not be denied to petitioner till finalization of the matter. It may be noted that a tax payer has to file form TRAN-1 to avail the transitional input tax credit. The last date for filing of form TRAN-1 is 27th December, 2017.

¹ Point of Taxation Rules, 2011

Challenge to compulsory registration under GST

A writ petition has been filed before the Delhi High Court challenging the requirement of registration in every state and union territory in order to avail the input tax credit of the SGST component of that state. The petitioner is engaged in business of booking tours and hotel packages for customers. It is his contention that input tax credit of SGST paid to hotels in another state cannot be availed by him unless he has obtained a registration in that state, as credit of SGST of one state can be set off against credit of SGST of that state only. This results in effective rate of GST going up to the extent of the SGST component. The High Court has directed the Government to examine this anomaly and consider whether the matter should be placed before GST Council, while listing the matter for next hearing on 8th February, 2018.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

Recommendations of the GST Advisory Panel

The GST Advisory Panel, set up by the GST Council to recommend changes in the existing GST structure had submitted its first report and put forth its suggestions to the GST Council, suggesting around 100 major changes in the existing GST regime (Please refer to our GST Update Volume 23 for details). The recommendations of the GST Advisory Panel have now been referred to the Law Review Committee of the GST Council for a final view on the matter. It may be noted that the Law Committee and the GST Advisory Panel were both constituted on 2 November, 2017 following a decision taken at the 23rd meeting of the GST Council.

Simplification of return filing process

Until now, taxpayers seeking to file a return on the government portal www.gst.gov.in were shown all tiles (columns) under a return format, many of which were completely inapplicable to them. As per media reports, a new functionality will soon be introduced on the GST portal for ease of the taxpayers under which questions will be posed as soon as the taxpayer enters the 'Returns' facility and only relevant tiles will be displayed to the taxpayers based on the answers to the questions posed. For 'nil' GSTR 3B returns, one-click filing has been introduced as no tile will be shown to such taxpayers. Also, a help section has been provided on each page for the convenience of the taxpayer.

Declaration of revised MRP may be allowed till 31st March, 2018

As per media reports, the department of consumer affairs is expected to allow use of stickers to display revised maximum retail price (MRP) on unsold pre-GST stocks for three more months until 31st March, 2018. The department had earlier extended the deadline from 30th September, 2017 to 31st December, 2017 (Please refer to our GST Update Volume 21 for details). The need to revise the MRP has arisen from the recent changes in GST rates applicable to goods. As per the same media reports, from April 1 onward, manufacturers will not have to display details of GST on packaged commodities. They will need to display only the revised MRP, the official said.

Glossary

CBEC- Central board of excise and customs

SGST- State goods and services tax

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