

Week of 19th March, 2018

A. CHANGES IN THE GST REGIME

Writ petition for transitional credit dismissed by High Court

The Bombay High Court has dismissed the writ petition challenging the provision in the CGST Act, 2017 which disallows the input tax credit in relation to such input stock which was purchased by a taxpayer earlier than one year immediately preceding appointed day i.e. stock purchased before 1st July, 2016 (Please refer to our GST Update Volume 19 for details). The Hon'ble High Court has held that for smooth transition from old indirect tax regime to GST regime, some arrangements, which are purely policy decisions, were required to be made and conditions with respect thereto were imposed. The one year limit on availment of credit imposed by the legislature has clear nexus with objective sought to be achieved by GST legislation and therefore, cannot be struck down.

Exemption under export promotion schemes extended till 1st October, 2018

A notification has been issued by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce to exempt procurements made under the Advance Authorisation Scheme¹ and Export Promotion Capital Goods Scheme (EPCG Scheme)² from payment of IGST and compensation cess till 1st October 1, 2018. This exemption was earlier available till 31st March, 2018. This extension in exemption is pursuant to the recommendations of the 26th meeting of the GST Council (Please refer to our GST Update Volume 37 for details). The move is aimed at giving relief to exporters, who are reeling under stress with regard to claiming refund under GST.

No GST on works contract entered into prior to 1st July, 2017

A writ petition was filed before the Madras High Court to seek clarity on the taxes applicable on works contract, for which agreements were executed prior to 1st July, 2017. The petitioner was an association carrying works contracts for Governmental organizations. Earlier, the petitioner used to remit 2% tax on value of work executed by them towards Work Contract Tax under the respective legislation. After the advent of GST, the Central Government and the State Governments issued notification notifying that 12% GST was to be levied towards work contract. The Hon'ble High Court has held that since CGST Act, 2017 came in force with effect from 1st

¹ Under the advance authorisation scheme, advance authorisation is issued to allow duty free import of input goods, which is physically incorporated in export product.

² Export Promotion Capital Goods (EPCG) is an export promotion scheme under which an exporter can import certain amount of capital goods at zero duty for upgrading technology related with exports.

July, 2017 no GST would be leviable on works contract, for which agreements were executed prior to 1st July, 2017. These contracts would continue to be taxed under the erstwhile value added tax and service tax regime.

GST on race course services

The Bangalore Turf Club has filed a writ petition before Hon'ble Karnataka High Court, challenging the levy of GST at the rate of 28% on their turnover which is contrary to the erstwhile service tax regime where service tax was levied only on their commission. It is the case of the petitioner that GST being a tax on, inter alia, services, should be levied only on the consideration for such service i.e. the commission. The matter will come for hearing in due course of time.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

Standardised documents for claiming refunds to be released soon

Presently, no specific list of documents necessary for processing refund arising out of exports of goods and services has been notified. In absence of any specified requirements, the field officers are demanding arbitrary documents, many of which are not prescribed in the GST legislations or rules made thereunder, and rejecting refund applications in case the exporters fail to furnish such documents. In the light of the complaints made by the exporters, the Commerce Ministry has moved the Finance Ministry to prescribe a standard list of documents required for GST refund claim applications. Responding to such complaints of the exporters, the Central Government has decided to notify a standard list of documents that all officers will have to stick to while processing claims. The standardised list will be circulated to all field offices and States and no document beyond what is mentioned in the list could be demanded from exporters.

Glossary

CGST- Central goods and services tax
IGST- Integrated Goods and Service 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.

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