



Week of 9th April, 2018

A. CHANGES IN THE GST REGIME

Clarification on online submission of LUT

A circular has been issued by CBIC on acceptance of letter of undertakings (LUTs) submitted online in the prescribed format. The Circular states that an LUT shall be deemed to be accepted as soon as acknowledgement thereof, bearing Application Reference Number (ARN), is generated online. No document needs to be physically submitted to the jurisdictional office for acceptance of LUT. The circular also states that if it is subsequently discovered that an exporter whose LUT has been accepted, was ineligible to furnish the same, the LUT will be liable for rejection. In case of rejection, LUT shall be deemed to have been rejected *ab initio*.

GST on supply of foods by Indian Railways

Presently, due to lack of clarity, different GST rates are being applied for mobile (i.e. on train) and static (i.e. on platform) catering in Indian Railways which is leading to a situation whereby the same licensee supplying the same food is subjected to different GST rates depending on whether it is mobile or static catering. The rate difference is resulting in the same food being supplied at two different rates to the railway passengers, which is anomalous. To resolve this anomaly, a circular has been issued by CBIC to clarify that the GST rate on supply of food and/or drinks by the Indian Railways or Indian Railways Catering and Tourism Corporation Limited or their licensees, whether in trains or at platforms (static units) will be 5% without input tax credit.

Intra- state e-way bill

As per the decision of GST Council, the e-way bill system for all inter-state movement of goods has been implemented with effect from 1st April, 2018. E-way Bill system for Intra-State movement of goods in the State of Karnataka is also operational from the said date. A press release has now been issued by CBIC stating that the e-way bill system for intra-state movement of goods would be implemented from 15th April, 2018 in the following states of Andhra Pradesh, Gujarat, Kerala, Telangana and Uttar Pradesh.

GST on lease premium

In a writ petition filed before it, the Bombay High Court has upheld the levy of GST on one-time lease premium charged by registered persons from builders in respect of letting of plots of land. The Hon'ble High Court has held that in respect of such lease, consideration in the form of one-time premium is charged. As per the provisions of the CGST Act, 2017, any lease, tenancy, license to occupy land and lease / letting out of a building for business is a supply of 'service' and therefore, taxable under GST. The high court also rejected the contention that long term lease of 60 years would tantamount to sale of immovable property.

GST on recovery of canteen expenses from employees

An application was made to the Kerala Authority of Advance Ruling (AAR) on whether the canteen expenses recovered by the employer from the employees are liable to GST. It was the applicant's case that he is only facilitating the supply of food to employees, which is a statutory requirement in terms of the Factories Act, 1948 and recovers only the actual expenditure incurred in connection therewith without making any profit. The AAR has ruled that such service by canteen maintained in factory covered under Factories Act were earlier specifically exempted from service tax¹. However, there is no similar provision under the GST legislations. The Kerala Authority of Advance Ruling (AAR) has clarified that recovery of food expenses from employees for canteen services provided by applicant is liable to GST as it is an 'outward supply', even though there may be no profit as claimed by the applicant. In this case, the cost of food recovered from the employee by the applicant constitutes the consideration for such an outward supply.

GST on food supplies by restaurant

With a view to remove any doubt or uncertainty regarding the rate of GST applicable on supply of food and drinks in educational institutions, a press release has been issued to clarify that: -

- I. GST rate on supply of food and drinks in a mess or canteen in an educational institution attracts GST at 5% without Input Tax Credit (ITC).
- II. If schools up to higher secondary level supply food directly to students, then the same are exempt from GST.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

GSTN may be wholly owned by the Government

Currently, GSTN, the company that handles the IT infrastructure for the GST regime, is jointly owned by the State (49% stake) and private parties (51% stake). The government is now considering making GSTN a wholly-owned company with 100% shareholding and has asked the respective departments to examine the feasibility of the same. Once a feasibility report is prepared, the GST Council will take a decision on the change in shareholding. After the GST Council's clearance, the proposal would go to the Union Cabinet for final approval.

¹Entry 19A of Notification Number 25/2012-ST dated 20th June, 2012 states that " Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year" are exempt from service tax

Glossary

CBIC- Central Board of Indirect Taxes and Customs
CGST- Central goods and services tax
GSTN- Goods and services tax network

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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