



Week of 13th August, 2018

A. CHANGES IN THE GST REGIME

Clarification on applicability of GST on certain goods and services

Representations were made seeking clarification on the applicability of GST on certain items. The government vide circular no. 52/26/2018 – GST dated 9th August, 2018 has issued clarification on the applicability of GST on fortified toned milk, refined beet and cane sugar, tamarind kernel powder, drinking water, plasma products, wipes using spun lace non-woven fabric, real zari kasab (thread), marine engine, quilt and comforter, bus body building as supply of motor vehicle or job work and disc brake pad.

Vide this circular, the government has clarified as follows: -

- (a) toned milk fortified (with vitamins 'A' and 'D') attracts NIL rate of GST;
- (b) beet and cane sugar (including refined beet and cane sugar) attracts 5% GST;
- (c) tamarind kernel powder attracts 5% GST;
- (d) supply of drinking water for public purposes (if it is not supplied in a sealed container) attracts NIL rate of GST;
- (e) plasma products attract 12% GST;
- (f) baby wipes, facial tissues and similar products if impregnated with perfumes or cosmetics attracts 18% GST and if coated with soap or detergent also attracts 18% GST under different heading;
- (g) imitation zari thread or yarn known as kasab attracts 12% GST;
- (h) marine engine for fishing vessel attracts 5% GST;
- (i) quilt filled with cotton constitutes a cotton quilt and attracts 5% GST if the sale value of such cotton quilt does not exceed INR 1000 per piece or 12% if the sale value of such cotton quilt exceeds INR 1000 per piece;
- (j) bus body building where supply is made of bus (working on chassis owned by the supplier) attracts 28% GST whereas bus body building where fabrication service is provided (working on chassis provided by the principal) attracts 18% GST;
- (k) disc brake pad attracts 28% GST.

Due date for filing monthly GSTR 1

The CBIC vide notification no. 32/2018 central tax dated 10th August, 2018 has extended the due date for filing the GSTR 1 (for furnishing the details of outward supply of goods or services or both) for the months of July 2018 to March 2019 by a day i.e. from 10th day of the next month to 11th day of the next month for the taxpayers having turnover above INR 15,000,000 (15 million).

Due date for filing quarterly GSTR 1

The CBIC vide notification no. 33/2018 central tax dated 10th August, 2018 has notified the due date of filing quarterly GSTR-1 (for furnishing the details of outward supply of goods or services or both) for the taxpayers having annual aggregate turnover up to INR 15,000,000 (15 million). The due dates for the period of July to September 2018, October to December 2018 and January to March 2019 are 31st October, 2018, 31st January, 2019 and 30th April, 2019 respectively.

Due date for filing GSTR 3B

The CBIC vide notification no. 34/2018 central tax dated 10th August, 2018 has notified the due date for filing GSTR 3B (monthly return) for each of the months of July 2018 to March 2019 on or before 20th of the month succeeding such month for all registered persons.

GST on services provided by Industrial Training Institutes (ITIs)

The CBIC vide circular no. 55/29/2018 dated 10th August, 2018 clarified that (1) services provided by private ITIs in respect of designated trade notified by Apprenticeship Act, 1961 are exempt from GST; (2) services provided by private it is in respect of other designated trades would be liable to GST; (3) service provided by private ITIs by way of conduct of entrance examination against consideration in the form of entrance fees in respect of designated trades and also services relating to admission to or conduct of examination by private ITIs are also exempt from GST; (4) service provided by private ITIs by way of conduct of entrance examination against consideration in the form of entrance fees in respect of other designated trades and also services relating to admission to or conduct of examination by private ITIs would be liable to GST; and (5) services provided by government ITIs to individual trainees/ students are exempt as these are in the nature of services provided by central or state government to individuals.

GST on services associated with manufacturing of metal : West Bengal AAR ruling

The applicant proposes to offer contract management services (CMS). The applicant explains that CMS includes but is not limited to application, installation and fixation of various refractories. The applicant proposes to design the refractories required, monitor their usage and inventory, and supply the required refractory components and systems. This apart, the applicant would monitor round-the-clock production process during the entire contract period, and continuous evaluation of the requirement of refractories, quality control, replacement and disposal of used refractories etc. The applicant has sought advance ruling on whether the CMS activity proposed to be undertaken by the applicant will result in supply of goods or services. The AAR has ruled that the activities that the applicant proposes to undertake are services associated with manufacturing of metal, and may be termed as "continuous supply of service" within the meaning of section 2(33) of the CGST Act, provided the service is agreed to be provisioned for a period exceeding three months.

GST on supply of goods by café coffee day to SEZ units : Karnataka AAR Ruling

The applicant is engaged in supply of non-alcoholic beverages to SEZ units using coffee vending machines and undertakes the following types of transactions (1) The applicant installs beverage vending machines inside SEZ premises, prepares beverages using the vending machines and its ingredients, supplies to SEZ units which are consumed by the employees of SEZ units and charge the SEZ units based on number of cups of beverages supplied; (2) The applicant installs beverage vending machines inside SEZ premises, supplies beverage ingredients to the SEZ units and bills based on the quantity of ingredients supplied. SEZ units prepare the

beverages using the vending machines and serve them to its employees. There is consideration for the usage of vending machine by the SEZ units. The applicant has sought an advance ruling to determine whether supply of non-alcoholic beverages to SEZ units using coffee vending machines is in the nature of zero rated supply as defined under section 16 of the IGST Act 2017. The AAR has referred to the provisions of section 4(2) and section 15(9) of the SEZ Act, 2005. These sections provide that each SEZ unit is allowed to carry out predefined activities (termed as 'authorised operations') to be eligible to avail the benefits of being in the Special Zone. The activities to be carried out have, therefore, to be strictly in consonance with the authorized operations certified by the proper office of the SEZ. Though the IGST Act, in section 16(1)(b) does not categorically say that the supplies of goods and services should be for authorized operations, it is implicit therein when it says that the supplies are for the SEZ developer or SEZ unit. Therefore the litmus test for any supply to be termed as zero-rated supply is to ascertain essentially whether it is for authorized operations or not. The applicant has not made out a case that the activity undertaken by them is certified as an authorized operation by the proper officer of the SEZ. The AAR has therefore ruled that the activity undertaken by the applicant does not qualify to be a zero-rated supply.

GST on activities between head office and its branches : Karnataka AAR ruling

The applicant, a private limited company engaged in providing health care services has sought advance ruling on whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per section 25(4) of the CGST Act shall be treated as supply as per Entry 2 (supply of goods or services or both between related persons or between distinct persons as specified in section 25 when made in the course or furtherance of business) of Schedule I (activities that are to be treated as supplies even if made without consideration) of the CGST Act or it shall not be treated as supply of services as per Entry 1 (services by an employee to the employer in the course of or in relation to his employment) of Schedule III (activities which are to be treated neither as supply of goods nor supply of services) of the CGST Act. The AAR observed that the services provided to the employer, i.e. the corporate office by the persons employed by the corporate office are in the nature of the employee-employer relationship. As the corporate office and the units are distinct persons under the CGST Act, there is no such relationship between the employees of one distinct entity with another distinct entity, even if they are belonging to the same legal entity. The AAR therefore ruled that the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per section 25(4) of the CGST Act shall be treated as supply as per Entry 2 of Schedule I of the CGST Act.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

Lok Sabha passes GST bills

The Central GST (Amendment) Bill, the Integrated GST (Amendment) Bill, the GST (Compensation to States) Amendment Bill, and the Union Territory GST (Amendment) Bill were passed by the Lok Sabha on 9th August, 2018.

Seeking audit of e-commerce companies

The National Anti-Profitsteering Authority (NAPA) had written to CBIC for Directorate General (DG) audit of all e-commerce companies to ensure if refunds have been granted to customers for any excess GST collected (For details, please refer GST update volume 59 Part B). As per the media reports, the CBIC will soon be sending its

response to the NAPA and it is of the opinion that it is not technically feasible for DG audit to scrutinize books of all e-commerce companies. The DG Audit can only audit companies which are registered with the Centre as the states will have jurisdiction over those companies which are registered with the states. Further, the CBIC is also of the view that the NAPA has no powers to give directions for such audits.

Pass on of GST benefit to consumers

The National Anti-Profiteering Authority (NAPA) ensures that the GST rate cuts on recommendations of the GST Council on a number of items are being passed on to the consumers. The GST benefit can be passed on the consumers by reduction in the prices or increase in the quantity. As per the media reports, the NAPA will accept higher quantity of any product as effectively passing on the benefit and therefore the fast-moving consumer goods (FMCG) companies that have raised the quantity of their packaged products instead of reducing prices can breathe easy. As the intention of the law is to pass on the GST benefit to the consumers, it is contemplated that the NAPA will not object as long as the tax benefit is passed on. Further as per the reports, the quick service restaurants like subway, yum restaurants (pizza hut) and kentucky fried chicken (KFC) have come under the scrutiny of NAPA for not passing on the GST rate cuts to the consumers.

Glossary

AAR- Authority for Advanced Rulings
CBIC- Central Board of Indirect Taxes and Customs
CGST- Central goods and Services Tax
GSTR - Goods and Services Tax Return
IGST- Integrated Goods and Services Tax
SEZ – Special Economic Zone

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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