



Week of 12th November, 2018

A. CHANGES IN THE GST REGIME

GST Refund as on 31st October, 2018

The CBIC has vide Press Release dated 8th November, 2018 provided that total GST refunds to the tune of INR 82,775 crore have been disposed by CBIC and state authorities out of the total refund claims of INR 88,175 crore received so far. Thus, the disposal rate of 93.8 % has been achieved as on 31st October, 2018. The pending GST refund claims amounting to Rs 5,400 crore are being expeditiously processed.

TCS on Tea Board of India

A representation had been received from the Tea Board of India, seeking clarification on whether they should collect TCS under section 52 of the CGST Act from the sellers of tea (i.e. the tea producers), or from the auctioneers of tea or from both. The Tea Board of India is the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments. The participants in the said auction are the sellers i.e. the tea producers and the auctioneers are the ones who carry out the auction on behalf of such sellers and buyers. The CBIC has vide Circular No. 74/48/2018 – GST clarified that TCS shall be collected by the Tea Board of India from the — (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and (ii) auctioneers on the net value of supply of services (i.e. brokerage).

Del-credere agent under GST

Various representations had been received from the trade and industry regarding the scope and ambit of principal agent relationship under GST in the context of del-credere agent. A del-credere agent is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a del-credere agent from other agents is that the del-credere agent guarantees the payment to the supplier. In such scenarios where the buyer fails to make payment to the principal by the due date, the del-credere agent makes the payment to the principal on behalf of the buyer. The CBIC has vide Circular no. 73/47/2018 - GST clarified various issues such as whether the del-credere agent falls within the ambit of agent under GST. It is clarified that in case where the supplier issues the invoice for supply of goods to the customer, either himself or through del-credere agent, the del-credere agent does not fall under the ambit of agent whereas in the case where the invoice for supply of goods is issued by the del-credere agent in his own name, the del-credere agent would fall under the ambit of agent.

B. PROPOSED CHANGES AND INDUSTRY ISSUES

TCS returns by e-commerce industry

As the CBIC has notified the applicability of TCS provision from 1st October, 2018, e-commerce companies will have to collect tax at the rate of 1% of the value of the merchandise transacted through their marketplaces. As per the GST rules, companies are required to file TCS returns by the 10th day of the following month. In this case, since TCS will be applicable from 1st October, 2018, e-commerce companies would have had to file their first set of returns by 10th November, 2018. As per media reports, the e-commerce industry has been complaining of technical glitches in filing TCS returns. The media reports have said that the government may give more time to e-commerce companies to file TCS returns rather than slapping penalties for non-filing of returns.

Consulates, embassies and United Nations organisations

The GST law provides for allotting a Unique Identification Number (UIN) to consulates, embassies and UN organisations to enable them claim refund of the GST paid. It has been observed by the revenue authorities that these consulates, embassies and UN organisations while filling the invoice data have been reporting their 'place of supply' as the state where they are registered instead of the actual 'place of supply' illustrating that embassies registered in Delhi have declared their 'place of supply' as New Delhi even on hotel service consumed in the state of Maharashtra. As per the CBIC Press Release, dated 9th November, 2018, the finance ministry has therefore asked the consulates, embassies and UN organisations to correctly mention the 'place of supply' of services in their GST return forms to enable quick processing of refund.

Glossary

CBIC – Central Board of Indirect Taxes and Customs

CGST – Central Goods and Services Tax

GST – Goods and Services Tax

TCS – Tax Collected at Source

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