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Notifications & Circulars

Government waives late fee on failure to furnish July's GST Return by due date

Notification No– 28/2017(Central Tax) Date– September 1, 2017

Government vide. Notification No. 28/2017 (central tax) has waived off the late fee on failure to furnish Form GSTR– 3B for the month of July, 2017 before the due date. Earlier the date was extended from August 20 to August 28 to facilitate the tax payer.

Comments: This is a positive step to ensure that the tax payer do not face any difficulties. Since it is first return to be furnished under new tax regime, some kind of leniency is acceptable.

Government prescribes detailed procedure for reconciliation of Form GSTR-3B

Circular 7/7/2017 **date—September 1, 2017**

Government has prescribed a detailed system based reconciliation of information furnished in FORM GSTR-1 and FORM GSTR-2 with FORM GSTR-3B. Few of the points explained in the notification are as under

- * Furnishing of information in FORM GSTR- 1 & FORM GSTR-2
 - After the registered person had filed his return in FORM GSTR 3B and the statement of outward supplies in FORM GSTR –1, the inward supplies will be auto drafted for the all the registered persons and made available in FORMGSTR-2A . Based on the details in FORM GSTR –2A, the registered person may prepare the statement in FORM GSTR –2.
- * Correction of erroneous details furnished in FORM GSTR-3B
 - if the outward supplies have been under reported or excess reported in FORM GSTR-3B, the same maybe correctly reported in the FORM GSTR-1. Similarly, if the details of inward supplies or the eligible ITC have been reported less or more than what they should have been, the same maybe reported correctly in the FORM GSTR-2 .
- * Action on the system-based reconciliation:
 - After the registered person has furnished the statement of inward supplies in FORM GSTR-2 by the extended date, the common portal will auto-draft Part-A of the return in FORM GSTR-3 for the said month based on the information furnished in FORM

- Where there is no difference between the details of output tax liability and eligible input tax credit furnished in FORM GSTR-3B and the details furnished in FORM GSTR-1 and FORM GSTR-2, the amount of tax payable and tax paid shall be the same in FORM GSTR-3B and FORM GSTR-3.

* Additional payment of taxes

- If the tax payable by a registered person as per FORM GSTR-3 is more than what has been paid as per FORM GSTR-3B, the common portal would show another instance of Table 12 for making additional payment of taxes, in accordance with the mandate of clause (b) of sub-rule (6) of rule 61. As the tax payable in column (2) of Table 12 of FORM GSTR-3 is more than what was shown in FORM GSTR-3B, the additional amount of tax payable can be paid by debiting the electronic cash or credit ledger .
- If the eligible ITC claimed by the person in FORM GSTR-2 is less than the ITC claimed and utilised by the registered person in FORM GSTR-3B, the same would be added to his output tax liability and shall have to be paid by him along with interest by debiting the electronic cash or credit ledger .

* Additional claim of eligible ITC

- If the eligible ITC claimed by the taxpayer in FORM GSTR-3B is less than the ITC eligible as per the details furnished in FORM GSTR-2, the additional amount of ITC shall be credited to the electronic credit ledger of the registered person when he submits the return in FORM GSTR-3.

* Reduction in output tax liability

- If the output liability of the registered person as per the details furnished in FORM GSTR-1 and FORM GSTR-2 is less than the output tax liability as per the details furnished in the FORM GSTR-3B and the same is not offset by a corresponding reduction in the input tax credit to which he is entitled, the excess will be carried forward to the next month's return to be offset against the output liability of the next month by the taxpayer when he signs and submits the return in FORM GSTR-3 .

Comments: This detailed prescription of procedure would help full to the assesseees as they faced a lot problems while furnishing FORM GSTR 3B.

Central Govt. prescribes detailed procedure regarding generation of E-Way Bill

Government vide Notification No –27/2017 dated August 30, 2017 has prescribed procedure for generating the e-way bill by substituting Rule 138. Few of the important points are discussed as under.

- * Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—
 - in relation to a supply; or
 - for reasons other than supply; or
 - due to inward supply from an unregistered person

Should furnish information relating to the said goods in Part A of FORM GST EWB-01 before such movement.

- * If the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the recipient may generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01.
- * If the e-way bill is not generated and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter in Part B of FORM GST EWB-01 on the common portal and the e-way bill shall be generated by the transporter on the portal, the basis of the information furnished by the registered person in Part A of FORM GST EWB-01
- * Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.
- * Any transporter transferring goods from one conveyance to another in the course of transit shall update the details of conveyance in the e-way bill on the common portal in FORM GST EWB-01 before the movement of goods.
- * After e-way bill has been generated where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.
- * Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled , with 24 hours of generation of the e-way bill.

Comments: Generation e-way bill has become mandatory after amendment of Rule 138.

Finmin notifies lower rates & exemptions on specified services, including works contract / GTA

Notification No. 20/2017-Central Tax (Rate) Date—August 22, 2017

Finance Ministry notified changes in certain services including works contract services for specific fields and also notified that GTA would be taxable at 12% if the goods transport agency is opting to pay tax.

Comments: Rate of works contract has been amended to 12% only upon supply for certain specified purposes.

Case Laws

HC allows transition credit of Clean Energy Cess despite CBEC's clarification otherwise

Delhi HC in case of Mohit Minerals Pvt Ltd v. Union of India & ANR case found prima facie merit in the challenge to GST (Compensation to States) Act 2017 insofar as it contemplates levy of "a cess on such intra-State supplies of goods or services or both". Based on the history of the abolition of Clean Energy Cess on coal w.e.f. July 1 and introduction of GST regime, HC observes that power of Parliament to enact the GST Compensation Act cannot be traced to Section 18 of Constitution (One Hundred and First Amendment) Act, 2016.

Further, HC noted that petitioner's grievance for stocks of coal on which Clean Energy Cess was already paid in terms of Finance Act 2010 and no input tax credit is available, fresh Cess has to be paid again at Rs. 400 per tonne in terms of GST Compensation Rules r/w Notification No. 1/2017-Compensation Cess (Rate). Holding that petitioner has made out prima facie case for partial ad interim relief subject to conditions, HC bars additional payment on sale and clearance of stocks of coal which have already suffered Clean Energy Cess and in the event of petitioner succeeding in present petition, would be entitled to refund thereof.

Also directed Revenue to depute a team to petitioner's premises to verify the Clean Energy Cess paid on stock and give credit thereof, while clarifying that where petitioner cannot adduce proof of payment of such Cess, it would pay Compensation Cess, and accordingly lists the matter on October 26.

Comments: HC found merits in the argument that the power of Parliament to enact the GST Compensation Act cannot be traced to Section 18 of Constitution (One Hundred and First Amendment) Act, 2016.

Government Clarifications & Press releases

Deemed credit available after Form GST TRAN-II filing

Government has clarified that deemed would be available only after filing FORM GST TRAN-II, which can be filed only after making payment of tax against the supply for which deemed credit is to be availed. Thus, the credit through FORM GST TRAN-II will be available on tax periods subsequent to the tax period in which payment for such supply has been made.

Comments: This is clarification will very helpful to the industry as there was confusion regarding the availment of deemed after the payment has been made.

Cabinet approves hike in Cess on luxury cars & SUVs

On September 2, 2017, President has given assent to Goods and Ser-

vices Tax (Compensation to States) Amendment Ordinance, 2017. Under the Act, maximum rate at which Compensation Cess can be levied has been increased from 15% to 25% on motor vehicles for the transport not more than thirteen persons including the driver falling under sub-headings 870210, 870220, 870230 or 870290 and 8703 i.e. SUVs, mid-size, large and luxury cars

Comments: This has already been taken by the GST council in its 20th meeting and the received the president's assent.

Government issues FAQs on IT/ITES Sector

There were a lot of concerns in IT industry regarding the new tax regime which needed to be addressed by the Government. In this regard, Government has issued FAQs. Few of the important FAQs are asunder.

Question: Whether software is regarded as goods or services in GST.

Answer: In terms of Schedule II of CGST Act, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology (IT) software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services. But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523.

Question: What are the implications of recognizing the development, design, programming, etc. of information technology software as a service.

Answer: The primary implication is that the place of supply rules applicable to services would apply in determining taxability of the supply of software services. The other implication is that the supplier of software services would not be eligible for the composition scheme.

Question: What is the rate of tax on IT services.

Answer: The rate of GST on IT services is 18%.

Question: Whether exports of software services attract GST.

Answer: Exports and supplies to SEZ units and SEZ developers are zero-rated in GST.

Question: How do I determine whether IT services provided by me constitute export of service?

Answer: The supply of any service is considered an export of service, where the following conditions are met: (1) the supplier of service is located in India; (2) the recipient of service is located outside India; (3) the place of supply of service is outside India; (4) the payment for such service has been received by the supplier of service in convertible foreign exchange; and (5) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 of section 8 of IGST Act, 2017.

Question: I am an Indian Company who makes software and sells it outside the country. I have hired a firm (not a related party) 'C' located abroad to facilitate the supply of software in Europe and the USA; would I be liable to pay GST on the payments that I make to this entity abroad.

Answer: No. In this case, 'C' is covered by the definition of 'intermediary' [section 2(13) of the IGST Act, 2017]. The place of supply of such intermediary service is location of the supplier in terms of section 13(8) of the IGST Act, 2017. As 'C' is located outside India, GST is not payable in this case.

Question: I have a unit in the DTA and another in the SEZ; can I take a common registration.

Answer: No. A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State, shall make a separate application for registration for SEZ unit(s) as a business vertical distinct from his other units located outside the Special Economic Zone in that State (Refer Rule 8(1) of CGST Rules, 2017).

Question: If I supply a laptop bag along with the laptop to my customer, what would be the rate of tax leviable.

Answer: If the laptop bag is supplied along with the laptop in the ordinary course of business, the principal supply is that of the laptop and the bag is an ancillary. Therefore, it is a composite supply and the rate of tax would that as applicable to the laptop.

Question: When would it be construed that I have made a supply of services involving temporary transfer or permitting the use or enjoyment of any intellectual property right.

Answer: To find out as to whether there is an element of supply involved when software is delivered to its customer, the terms and condi-

tions of the End User Licence Agreement (EULA) are material. The contract for supply therefore assumes significance in this test to decide whether or not there has been 'temporary transfer or permitting the use or enjoyment of any intellectual property right'.

Question: What would be the tax liability on replacement of parts (no consideration is charged from a customer) under a warranty and whether the supplier is required to reverse the input tax credit.

Answer: As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse the ITC on the parts/components replaced.

Comments: These clarify a lot issues pertaining to IT sector.

Government issues clarification regarding GST on Selling of space for advertisement in print media

Government through a press release has clarified that Selling of space for advertisement in print media is leviable to GST @ 5%. If the advertisement agency works on principal to principal basis, that is, buys space from the newspaper and sells such space for advertisement to clients on its own account, that is, as a principal, it would be liable to pay GST @5% on the full amount charged by advertisement agency from the client. On the other hand, if the advertisement agency sells space for advertisement as an agent of the newspaper on commission basis, it would be liable to pay GST@ 18% on the sale commission it receives from the Newspaper. ITC of GST paid on such sale commission would be available to Newspaper

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