

GST BULLETIN

Bhasin Sethi & Associates

12/03/2018

Volume I, Issue IX

Contents

Notifications & Circulars

- Government exempted supply of goods/ services between PSUs from TDS provisions compliance
- CBIC clarified on TCS collection by Tea Board of India
- Scope of principal and agent relationship in the context of del-credre agent clarified.
- Due dates extended for various FORMS.

Case Laws

- Tower Package supply contract including materials, transportation, in-transit insurance is a 'works contract' service.
- Composite 'works contract' for Govt. Department taxable at NIL till goods value does not exceed 25%

Notifications & Circulars

Government exempted supply of goods/ services between PSUs from TDS provisions compliance

Notification 61/2018-Central Tax; dated 05 November 2018

CBIC notified that TDS provisions prescribed u/s 51(1)(a) of CGST Act shall not be applicable to supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, from October 01, 2018. Consequently, Notification No. 50/ 2018- Central Tax dated September 13, 2018 was amended.

CBIC clarified on TCS collection by Tea Board of India

Circular no. 74/2018-GST dated 05 November 2018

CBIC clarified on collection of Tax at Source (TCS) by Tea Board of India stating that Tea Board of India, being the operator of the electronic auction system for trading of tea across the country including collection and settlement of payments, falls under the category of electronic commerce operator liable to collect TCS u/s 52 of the CGST Act, 2017. The buyers in the auction make payment of a consolidated amount to an escrow Account maintained by the Tea Board who thereafter pays to the sellers (i.e. tea producers) for the supply of goods made by them (i.e. tea) and to the auctioneers for the supply of services made by them (i.e. brokerage). Accordingly, it was clarified that the Tea Board of India is liable to collect TCS from the sellers (i.e. tea producers) on the net value of supply of tea and auctioneers on the net value of supply of services (i.e. brokerage).

Scope of principal and agent relationship in the context of del-credre agent clarified

Circular No. 73/2018-GST dated 05 November 2018

CBIC clarified that in case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent, whereas, where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent. It was also clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction-based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.

Due dates extended for various FORMS.

Notifications No. 62/2018-Central Tax, 63/2018-Central Tax, 64/2018-Central Tax, 65/2018-Central Tax, 66/2018-Central Tax; all dated 29 November 2018

Government has extended due date for filing: -

1. Form GSTR-7 (Persons required to deduct TDS under section 51 of GST Act) for the months of October to December 2018 till January 31, 2019.
2. FORM GSTR - 4 for the quarter July to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh.
3. FORM GSTR - 1 for taxpayers having aggregate turnover up to Rs 1.5 crores for the quarter from July, 2018 to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh.
4. FORM GSTR - 1 for taxpayers having aggregate turnover above Rs 1.5 crores for taxpayers in Srikakulam district in Andhra Pradesh and 11 districts of Tamil Nadu.
5. FORM GSTR-3B for taxpayers in Srikakulam district of Andhra Pradesh and 11 districts of Tamil Nadu.

Case Laws

Tower Package supply contract including materials, transportation, in-transit insurance is a 'works contract' service.

In the matter of Skipper Ltd., West Bengal AAR held that contract for Tower Package (comprising of erection of series of transmission towers linked together by power line) qualifies as works contract service. The AAR denied exemption under serial no. 18 of Notification No. 12/2017-Central Tax (Rate) observing that transportation of goods and in-transit insurance, being merely parts of the bundled services, same should be treated as components of value of works contract and not as separate and independent supplies. It was noted that they are not two neatly separable contracts, where provisioning of services under the Second Contract begins subsequent to transfer of property in the goods under the First Contract, but are indivisible contracts for the bundled supply of goods and services. Perusing the terms of the contract, it was observed that neither the risk in the goods passes at the factory gate nor that the JV will get any payment, other than advances paid, until and unless goods are dispatched. It was elucidated that the First Contract has "no leg" unless supported by the Second Contract as it does not include the provision and cost of such transportation and delivery, consequently, upheld classification of same as works contract in terms of Para 6(a) of Schedule II of CGST Act

Comments - GST is to be paid on entire value of works contract, including supply of materials, transportation, in-transit insurance, erection, commissioning etc.

Composite 'works contract' for Govt. Department taxable at NIL till goods value does not exceed 25%

In the matter of Kailash Chandra, Rajasthan AAR held that activity of O&M of Fluoride Control Project on ESCO model and O&M work is a 'works contract' undertaken for a Government Department, exempt from tax if value of goods supplied under the contract is up to 25% of the total value of composite supply. Further, if during the duration of contract, the applicant crosses the benchmark of 25% of the total value of

goods, then rate of tax shall be 12%. It was noted that activities under ESCO model and O&M contract are so closely linked in a manner that they form a single indivisible supply and that the given work is a contract for improvement of pumping system under the Fluoride control project, wherein transfer of property in goods in the form of new pumping machinery and mechanical/ electrical equipment would be involved in the execution of the contract. Noting that works contract in itself is a 'composite supply' under which supply of goods & services together is compulsory under GST regime, AAR referred to Entry 3A of Notification No. 12/2017-CT (Rate) which provides that no GST is applicable in case of 'composite supply', if the value of supply of goods does not exceed 25% of total value of supply where service is provided to State Govt./ local authority by way of an activity in relation to functions entrusted to Municipality under Article 243W of Constitution.

Comments: Observing that activity of ESCO plant re-development is in relation to clean drinking water facility to the citizens (falling under point no 5 of Article 243W), it was concluded that "it is easily ascertained that the applicant is engaged in a Work Contract (composite supply) to a Governmental Authority".

Disclaimer: Information in this newsletter is for educational purpose only. Bhasin Sethi & Associates assumes no responsibility of any mistakes which, despite of all precautions, may be found therein. The material contained in this document does not constitute any professional advice that may be required before acting on any matter