

# GST BULLETIN

Bhasin Sethi & Associates

6/1/2018

Volume I, Issue V

## Contents

### Notifications & Circulars

- Due date for filing of FORM GSTR-3B for the month of April, 2018 extended.
- NACIN has been notified as the authority for conducting the examination for GST Practitioners under rule 83 (3) of the CGST Rules, 2017.
- Due date for filing of FORM GSTR-6 for the months from July, 2017 till June, 2018 extended.
- Levy of Priority Sector Lending Certificate (PSLC) notified under Reverse Charge Mechanism (RCM).
- Transfer of tenancy rights to be taxable as “services”
- Clarification on refund related issue.

### Case Laws

- Printing photos for customers is considered as supply of service
- Transportation services naturally bundled with supply of goods is taxable as composite supply.

### Notifications & Circulars

#### **Due date for filing of FORM GSTR-3B for the month of April, 2018 extended.**

**Notification no. 23/2018-Central Tax, dated: 18 May 2018**

The Central Government, by making the amendment in the Notification No. 16/2018- Central Tax, dated the 23rd March, 2018, extended the date for filing of FORM GSTR-3B for the month of April 2018 from 20 May 2018 to 22 May 2018.

**Comments:** This was done on account of “emergency maintenance” being carried out on the system in the wake of technical issues being faced by the taxpayers during the filing of Form GSTR-3B.

#### **NACIN has been notified as the authority for conducting the examination for GST Practitioners**

**Notification No. 24/2018-Central Tax, dated: 28 May 2018**

Vide Notification No. 24/2018-Central Tax, NACIN has been notified as the authority for conducting the examination for GST Practitioners under rule 83 (3) of the CGST Rules, 2017

**Comments:** Once registered as a GST practitioner, an individual can file various forms on behalf of clients, make deposits for credit into the electronic cash ledger and appear as an authorized representative.

#### **Due date for filing of FORM GSTR-6 for the months from July, 2017 till June, 2018 extended**

**Notification No. 25/2018-Central Tax, dated: 31 May 2018**

In suppression of Notification No. 19/2018-Central Tax, dated the 28th March, 2018, the time limit for furnishing the return by an Input Service Distributor in

FORM GSTR-6 for the months of July, 2017 to June, 2018, has been extended till the 31<sup>st</sup> day of July, 2018.

**Comments:** GSTR 6 contains details of the documents issued for distribution of ITC, the manner of distribution of credit and tax invoice on which credit is received.

### **Levy of Priority Sector Lending Certificate (PSLC) notified under Reverse Charge Mechanism (RCM).**

#### **Notification No. 11/2018-Central Tax (Rate), dated: 28 May 2018**

The Central Government, by making the amendment in the Notification No. 4/2017- Central Tax (Rate), dated the 28 June, 2017, notified levy of Priority Sector Lending Certificate (PSLC) under Reverse Charge Mechanism (RCM).

**Comments:** The central tax shall be paid on reverse charge basis by the recipient of the intra-state supply of such goods.

### **Transfer of tenancy rights to be taxable as “services”**

#### **Circular No. 44/18/2018-CGST dated May 2, 2018**

Finance Ministry (TRU) issued a clarification on taxability of ‘tenancy rights’ under GST stating that the activity against consideration in the form of tenancy premium constitutes a “supply of service” which is liable to GST, even though stamp duty and registration charges on transfer of tenancy rights are levied. It was explained that it is a form of lease/renting of property which is specifically declared to be a service in Para 2 of Schedule II, i.e. any lease, tenancy, easement, license to occupy land is a supply of service. Transfer of tenancy rights is not treated as sale of land/building (which is neither a supply of goods nor of services in Schedule III). However, grant of tenancy rights in a residential dwelling for use as residence against tenancy premium or period rent is exempt in terms of Notification No. 12/2017-Central Tax (Rate). Also, services provided by outgoing tenant by way of surrendering tenancy rights against consideration in form of a portion of tenancy premium are also liable to GST.

**Comments:** Tenancy rights are squarely covered under the scope of supply and are taxable. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.

### **Clarification on refund related issue**

#### **Circular No. 45/18/2018-CGST dated May 30, 2018**

CBIC issued clarifications on a few refund related issues and explained that the restriction imposed, regarding non-availment of benefit of certain specified Notifications, is to make sure that the exporter does not utilize the ITC availed on other domestic supplies received for making the payment of IGST on export of goods, but the same is not applicable to an exporter who - (a) procures goods from suppliers who have not availed the benefits of the specified Notifications, (b) procures goods from suppliers who have, in turn, received goods from registered persons availing benefit of Notifications, in as much as the exporter does not directly procure these goods without payment of tax/at reduced rate. The restriction is also not applicable where goods procured by exporter are manufactured using capital goods imported under Notification Nos. 78/2017-Cus or 79/2017-Cus. Further, the refund application for the period July 1, 2017 to March 31, 2018 can be filed in Form GST RFD-01A on common portal in respect of IGST / Compensation Cess paid on export of services or supplies to SEZ developer/unit, subject to the condition that refund amount claimed does not exceed the aggregate amount of Tax/Cess mentioned in Table under columns 3.1(a), (b) and (c) of Form GSTR-3B of corresponding tax period. The refund of unutilized credit of Compensation Cess paid on inputs will be available on making zero-rated supplies under bond/LUT, however, the refund will not be allowed against supplies made on payment of IGST in view of embargo contained in Section 11(2) of GST (Compensation to States) Act. Also, no LUT / bond is required in case of refunds arising on account of export of non-GST and exempted goods without payment of IGST, but such persons shall comply with the requirements prescribed under Central Excise Act or State VAT law or Customs Act. Return in Form GSTR-4, GSTR-5, GSTR-6 filed by a composition taxpayer, non-resident taxable person and ISD respectively shall suffice for claiming refund of balance in electronic cash ledger and filing of details in Form GSTR-1 / GSTR-3B is not mandatory.

**Comments:** The clarification has cleared numerous doubts pertaining to refunds.

### **Case Laws**

**Printing photos for customers is considered as supply of service**

Authority for Advance Ruling (AAR) in the matter of Photo Products Company Pvt. Ltd. held that printing content supplied by customers through media on photographic paper would constitute as “supply of service”, taxable at 12% and classifiable under SAC 9989. The AAR viewed that supply of printed pictures and photographs and similar items reproduced with the aid of computer or any other device, is classifiable under Heading 4911 of First Schedule to Customs Tariff Act which is aligned to GST Act for purpose of classification. Whereas the applicant contended that neither is the matter pre-printed nor does it have any ownership to content at any point of time so as to transfer title of such printed matters, to qualify as “supply of goods”. The AAR referred to SC decision in Rainbow Colour Lab wherein it was held that dominant intention of photo lab is providing service of printing where supply of paper and chemicals is purely incidental, while holding that said activity of applicant is taxable at 12% under Sr. No. 27(i) of Notification No. 11/2017-Central Tax (Rate).

**Comments:** Even though the matter not pre-printed nor does the supplier have any ownership to content at any point of time, printing photographs for customers qualifies as “supply of goods”.

**Transportation services naturally bundled with supply of goods is taxable as composite supply.**

Authority for Advance Ruling (AAR) in the matter of IAC Electricals Pvt. Ltd. held that services of transportation, in-transit insurance and loading / unloading in relation to separate contract for supply of materials at ex-factory price, is liable to GST at rate applicable to supply of goods. It was also noted that supply of goods under First Contract cannot be executed independent of Second Contract providing for transportation as the First Contract does not include the provision and cost of transportation and delivery. In addition, the two contracts are linked by a cross fall breach clause that specifies that breach of one contract will be deemed to be a breach of other contract, and thereby turn them into a single source responsibility contract. It was consequently observed that the promises of supply of goods and their transportation to contractee’s site are not separately enforceable, the supplies of goods and services are naturally bundled, which are construed Composite Supply with supply of goods as the principal supply and services like transportation, in-transit insurance etc ancillary or incidental to the principal supply.

**Comments:** The price components of both contracts including that for transportation, in-transit insurance etc. should be clubbed together to arrive at value of composite supply of works contract, as defined u/s 2(119) of CGST Act, and taxed at 18% in terms of Sl. No. 3(ii) of Notification No. 11/2017-Central Tax (Rate).

**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**