

## GST Monthly News Letter

May, 2018

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## Notifications & Circulars

### E-way bill not required for movement within Union Territories

#### **Notification Nos.2/3/4/5/6/2018-Union Territory Tax dated: March 31, 2018**

Government vide aforementioned notifications notified that no E-way bill is required on movement of goods within union territories, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, and Lakshadweep

**Comments:** E-way bill is already a compliance burden. This would ease the burden to a certain extent.

### CBIC issues advisory for IGST refund

#### **Circular No. 08/2018- Customs dated March 23, 2018**

CBIC vide circular no. 08/2018-Customs dated March 23, 2018, issues advisory to address problems encountered in sanction of IGST refund on account of non-transmission of data from GSTN to Customs EDI system. Explains that as there is no separate column for declaration of Cess amount, some exporters have declared total IGST and Cess amount in Table 6A of Form GSTR-1, thereby leading to mismatch in such figures vis-a-vis figures of Table 3.1(b) of Form GSTR-3B and said matter has already been taken up with GSTN and Principal CCA for resorting to system based solution. In some cases, export supplies have been declared as ‘domestic supplies’ in Form GSTR-3B, accordingly GST field officers need to be deputed in Customs House in order to specifically scrutinize returns and seek necessary clarification from exporters and send data to Customs system for further processing, where it is established that mistake only pertains to feeding details. Reconciled data will be sent to Customs system in prescribed format, officers need to ensure that revised values submitted by exporters in Table 6A of Form GSTR-1 are less than or equal to those in Table 3.1(b) of GSTR-3B and such documents should be preserved for future investigation, moreover letter from exporter explaining error and CA certificate stating that IGST had been paid on export of goods may also be taken.

CBIC also extended alternative mechanism with officer interface to resolve invoice mismatch issues, to those shipping bills filed till February 28, 2018, while allowing, as a one-time exception, to allow refund of

IGST where exporter has wrongly declared no payment of IGST for a shipment despite having paid the same.

**Comments:** This would further help the refunds process in dispatching.

### Physical document not required for submission of LUTs & ARN generation will be deemed acceptance

**Circular No. 40/14/2018-GST dated- April 6, 2018**

CBIC issued clarification on acceptance of LUTs submitted online in Form GST RFD-11, in view of representations that such LUTs on common portal are not visible to jurisdictional officers. Accordingly, partially modified Circular No. 8/8/2017-GST to provide that an LUT shall be deemed to be accepted as soon as acknowledgement thereof, bearing Application Reference Number (ARN), is generated online. No document needs to be physically submitted to the jurisdictional office for acceptance of LUT. If it is discovered that an exporter whose LUT has been accepted, was ineligible to furnish same in place of bond as per Notification No. 37/2017-Central Tax, then exporter's LUT will be liable for deduction. In case of rejection, LUT shall be deemed to have been rejected ab initio.

**Comments:** This process will provide relief to the exporters.

### Catering services provided in trains and platforms taxable at 5% GST

CBIC clarifies that GST rate on supply of food and / or drinks by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms (static units) will be 5% without ITC. The clarification has been issued pursuant to anomaly arising from difference in rates for same food being supplied via mobile or static catering, as also variance in mobile catering viz. pre-paid (without option), pre-paid (with option) or post-paid

**Comments :** This clarification has been issued pursuant to anomaly arising from difference in rates for same food being supplied via mobile or static catering, as also variance in mobile catering

### Only one E-way bill required for "bill to ship to" supplies

CBIC issued clarification in relation to requirement of e-Way Bill for 'Bill To Ship To' model of supplies. States that where movement takes place from 'B' to 'C' on behalf of 'A', e-Way Bill can be generated either by 'A' or 'B' in terms of CGST Rules, but only one e-Way Bill is required. Where e-Way Bill is generated by 'B', Part A of GST Form EWB-01 will contain – (i) details of 'A' in "Bill To" field, (ii) details of 'C' in "Ship To" field, and (iii) details of Invoice raised by 'B' to 'A'. Where e-Way Bill is generated in by 'A' - (i) "Dispatch From" field will contain details of principal or additional place of business of 'B', (ii) "Bill To" and "Ship To" fields will be filled with details of 'C', and (iii) details of Invoice raised by 'A' to 'C' shall be filled in Part A of EWB-01

**Comments:** This was an important issue and the same has been addressed.

## Case laws

### Recovery of canteen expenses from employees taxable

Authority of Advance Ruling (AAR) in the matter of Caltech Polymers Pvt. Ltd clarified that recovery of food expenses from employees for canteen services provided by company is liable to GST as 'outward supply' in terms of Section 2(83) of CGST Act, 2017. It was notes assessee's plea that it is only facilitating the supply of food to employees, which is a statutory requirement in terms of the Factories Act, and recovers only the actual expenditure incurred in connection therewith without making any profit. AAR also observed, while it is true that in the pre-GST period, such service by canteen maintained in factory covered under Factories Act was exempted from service tax, there is no similar provision under the GST laws. On a plain reading of definition of "business" u/s 2(17) of CGST Act, it can safely be concluded that supply of food by applicant to its employees would definitely fall under clause (b) as a transaction incidental or ancillary to main business, rules AAR.

AAR held that, even though there is no profit as claimed by the applicant on supply of food, there is "supply" as contemplated u/s 7(1)(a) of CGST Act and the applicant would come under the definition of "supplier" as provided in Section 2(105). Moreover, since the applicant recovers the cost of food from its

employees, there is consideration as defined in Section 2(31) of CGST Act.

**Comments:** The interpretation of consideration in the above ruling is disputable as the assessee is just recovering the food expenses incurred by them from the employees.

#### **No IGST on overseas trading if goods are not imported into India**

AAR in the matter of Synthite Industries Limited ruled out applicability of IGST where goods are procured from supplier in China and directly supplied to customer in USA, and where goods are warehoused in Netherlands after procuring from China and supplied to overseas customers, absent importation into India. On combined reading of provisions of IGST Act, Customs Tariff Act and Customs Act, AAR held that goods are liable to IGST when they are imported into India.

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Observes, "...integrated tax on goods imported into India shall be levied and collected at the point, when duties of customs are levied on the goods under Section 12 of the Customs Act, 1962 i.e.- on the date determined as per provisions of Section 15 of the Customs Act, 1962...". States that CBEC Circular No. 33/2017-Cus which clarified that IGST on high seas sales transactions would be applicable once, during customs clearance, is mutatis mutandis applicable in case of applicant

**Comments:** When the goods are imported into India, their will be applicability of IGST. The Governments clarification of applicability of IGST on high sea sales will also in this particular case.

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