

# GST NEWSLETTER

BHASIN SETHI & ASSOCIATES

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### NOTIFICATIONS AND CIRCULARS

**Due date for April's GSTR-1 and GSTR-3B extended for taxpayers in Odisha.**

**Notifications No. 23/2019-Central Tax; 24/2019-Central Tax; dated 11<sup>th</sup> May 2019.**

CBIC extended due date for furnishing of FORM GSTR-1 and GSTR-3B for the month of April for registered persons whose principal place of business is in the districts of Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha. Due date for GSTR-1 is extended to June 10 and GSTR-3B is extended to June 20.

**Last date for exercising the option by promoters to pay tax at the old rates extended.**

**Notification No. 10/2019-Central Tax (Rate) dated 10<sup>th</sup> May 2019**

Government amended notification No. 11/ 2017-Central Tax (Rate) so as to extend the last date for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC to 20<sup>th</sup> May 2019.

### CASE LAWS AND OTHER UPDATES

**Flat-buyer's profiteering claim against developer for not passing additional ITC benefit: NAA.**

In the matter of Director General of Anti-Profitteering vs. Salarpuria Real Estate Pvt. Ltd., NAA upheld case of profiteering against Respondent-Developer for not passing additional benefit of ITC to the flat buyers in his project 'East

Crest' u/s 171 of CGST Act, 2017. It was found that, additional ITC benefit of 1.45% of taxable turnover (i.e difference between pre-GST ( 3.06% ) and post-GST (4.51%) ratio) should be passed on to all home buyers who booked flats prior to July 1, 2017 but made payments after said date. It was stated that, profiteered amount is determined at Rs. 20 lacs (approx.) including GST @12% on base profiteered amount while directing Respondent to reduce the price to be realized from the buyers of flats commensurate to ITC benefit availed and pay interest @ 18% to all those 51 home buyers to whom net ITC benefit has already been paid. DGAP was required to investigate the ITC benefit to be passed on for balance flats sold by Respondent and 42 flats sold by land owner and submit its report accordingly. Noting that Respondent despite being aware, has not passed entire benefit till investigation completion by DGAP, the said act was held as deliberate and conscious violation of provisions of CGST Act, 2017, making it liable to imposition of penalty, however, proposal to impose penalty u/s 122-127 r/w Rule 133 of CGST Rules, 2017 and cancellation of registration is unsustainable absent specific allegation in respect of violation of provisions of said Sections.

**Works contract service to Inland Waterways Authority of India, taxable at 12%..**

In the matter of ITD Cementation India Ltd., West Bengal AAAR modified AAR order and held that works contract service provided to Inland Waterways Authority of India (IWAI) for construction of a multi-modal IWT terminal on EPC basis shall attract concessional GST of 12% under Sr.No 3(vi) of Notification No. 11/2017-Central Tax (Rate). Taking into account the applicant's nature of project, AAAR found that appellant creates infrastructure for commercial utilization of the national highway. Further, though the Multi-modal IWT Terminal will facilitate commerce and business in and around West Bengal, its creation is not for propagating any business or commercial interests of IWAI but facilitating the vision of Government of India's "Jal Marg Vikas project", for creating infrastructure for economic development of the country. It was stated that user fees collected by IWAI are credited to Consolidated Fund of India, therefore, the remittances by IWAI to Ministry of Shipping are part of Government revenue and not part of

business proceeds. It was concluded that, it is evident that appellant is supplying works contract services to IWAI, a government entity, for an original work that is meant for infrastructural development of waterways of India and is not meant for commerce and business, thereby satisfying the conditions laid under serial No. 3 (vi)(a) of the Notification.

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