BSA Bhasin Sethi & Associates
Advocates and Consultants

GST NEWSLETTER

BHASIN SETHI & ASSOCIATES 01/08/2019 VOLUME II, ISSUE VIII

CONTENTS

NOTIFICATIONS AND CIRCULARS

Due date for due date for filing FORM CMP-08 extended.

Notification No. 35/2019-Central Tax; dated 29th July 2019.

CBIC extended due date for filing of FORM CMP-08 by composition taxpayers for the quarter April - June upto August 31, 2019. Proviso to para 2 of Notification No. 21/2019-dated April 23 was inserted.

Reduction in tax rate on Electronic Vehicles and Chargers, exemption on Electric Buses hiring.

Notifications No. 12/2019-Central Tax (Rate) and 13/2019-Central Tax (Rate); dated 31st July 2019.

CBIC notified reduction in tax rate on Electronic vehicles (EVs) from 12% to 5% and on EV chargers from 18% to 5% pursuant to recommendations of the Council in its 36th Meeting held on July 27, 2019. Further, exemption from GST was notified on hiring of Electric Buses by local authorities; Defines "Electrically operated vehicle" for relevant entries inserted in the Rate Schedule. The Notification came into force on the 1st August, 2019.

Clarification on treatment of secondary or post-sales discounts under GST.

Circular No. 105/2019-Central Tax dated July 28, 2019

CBIC issued clarification in respect of tax treatment in cases of secondary discounts or post

sales discount. It was explained that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation, then the post sales discount won't be included in the value of supply and will be related to the original supply of goods. However, if the additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc., then such transaction would be a separate transaction. In such a case, dealer, being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, will be eligible to claim ITC of the GST so charged by the dealer. Further, it was clarified that if the additional discount is given by the supplier of goods to the dealer to offer a special reduced price by the dealer to the customer to augment the sales volume, then such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by the dealer to the customer. It was explained that dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial / commercial credit notes by the supplier of goods "as long as the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial / commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier".

Clarification on supply of Information Technology enabled Services (ITeS) services to overseas entities

Circular No. 107/2019 - Central Tax dated July 18, 2019.

CBIC issued clarification on issues related to supply of Information Technology enabled Services (ITeS services) such as call center, business process outsourcing services, etc. and Intermediaries to overseas entities under GST law. It was explained that, ITeS services though not defined under the GST law, have been defined under the sub-rule (e) of rule 10 TA of the Income-tax Rules, 1962 which pertains to Safe Harbour Rules for international transactions. It was clarified that, where the supplier of ITeS services supplies back end services, the supplier will not fall under the ambit of intermediary under sub-section (13) of section 2 of the IGST Act where services are provided on own account. Even where a supplier supplies ITeS services to customers of his clients on clients' behalf, but actually supplies these services on his own account, the supplier will not be categorized as intermediary. However, where the supplier of backend services located in India arranges or facilitates the supply of goods or services or both during pre-delivery, delivery and post-delivery of supply by the client located abroad to the customers of client, the supplier of such services will fall under the ambit of 'intermediary'. In case supplier of ITeS services supplies back end services, on his own account along with arranging or facilitating the supply of various support services, whether the supplier of such services would fall under the ambit of intermediary will depend on the facts and circumstances of each case. It was explained that supplier of ITeS services, who is not an intermediary can avail benefit of export of services subject to satisfaction of the criteria mentioned in sub-section (6) of section 2 of the IGST Act.

Clarification in respect of goods sent/taken out of India for exhibition/consignment basis.

Circular No. 108/2019 - Central Tax, dated 18 July, 2019.

CBIC clarified that activity of sending/taking goods out of India for exhibition or on consignment basis for export promotion is not a supply. It was clarified that supply would be deemed to have taken place on the expiry of 6 months from the date of removal if the specified goods are neither sold abroad nor brought back within the said period. If the specified goods are sold abroad, fully or partially, within the specified period of 6 months, the supply is effected, in respect of quantity so sold, on the date of such sale. Registered person dealing in specified goods is required to maintain a record of such goods as per

the specified format and the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in Rule 55. The said activity is in the nature of "sale on approval basis" wherein the goods are sent / taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. Since the activity of sending / taking specified goods out of India is not a zero-rated supply, there is no requirement for execution of a bond or LUT. Further sender of goods cannot prefer any refund claim, however, the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained u/s 54(3) of CGST Act read with sub-rule (4) of rule 89 of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice.

Clarification regarding GST on monthly subscription/contribution charged by a Residential Welfare Association.

Circular No. 109/2019 - Central Tax dated July 22, 2019.

CBIC clarified that contribution up to an amount of Rs. 7500 per month per member in respect of services provided by RWA in a housing society or a residential complex is exempt from GST. RWA shall be required to pay GST on entire amount of monthly subscription/ contribution only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA is exceeding Rs. 20 lacs in a financial year. It was clarified that ceiling of Rs. 7500 shall be applicable separately for each residential apartment where a person owns more than one residential apartment in a society. RWA can claim ITC of GST on capital goods, goods and input services.

CASE LAWS AND OTHER UPDATES

HC allowed assessee's writ directing payment of interest on delayed IGST refund @ 9% p.a.

In the matter of Saraf Natural Stone vs. Union of India, Gujarat HC upheld claim for interest towards the substantial delay in making payment of IGST refund paid on export of goods in terms of Section 16 of IGST Act, 2017 r/w Section 54 of CGST Act and Rules made thereunder. Revenue's plea that in the absence of a specific provision providing for the entitlement of interest on refund, no interest would be available was rejected. It was asserted that "provisions relating to an interest of delayed payment of refund have been consistently held as beneficial and non-discriminatory. It is true that in the taxing statute the principles of equity may have little role to play, but at the same time, any statute in taxation matter should also meet with the test of constitutional provision". It was found that Revenue had not explained in any manner the issue of delay as raised by the writ applicants by filing any reply. Consequently, Revenue was directed to pay simple interest at 9% per annum from the date of filing of the GSTR-03 on aggregate amount of refund.

HC quashed proceedings u/s 73 for recovery of ineligible credit transitioned but 'not utilized'.

In the matter of Commercial Steel Engineering Corporation vs. The State of Bihar, Patna HC quashed proceedings initiated u/s 73 of Bihar GST Act, 2017 (BGST Act) in respect of recovery of ineligible credit transitioned but not utilized. Revenue's plea that act of reflection on the electronic credit ledger is a confirmation of a wrong availment, liable for proceeding was rejected. It was noted that assessee filed an application in terms of Section 140 of BGST Act to take credit of the surplus VAT and Entry Tax and to carry forward the same in his electronic ledger in form TRAN-1 which was rejected and demand was raised u/s 73. It was explained that, "A plain reading of Section 73 would confirm that it is only on such availment or utilization of credit to reduce tax liability, which is recoverable under section 73(1) read alongside the other provisions present thereunder". It was found that the Assistant Commissioner of State Taxes somewhere got confused to treat the transitional credit claimed by the dealer as an availment of credit when "in fact an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or

utilization". It was remarked that "provisions underlying Section 73 is self-eloquent and it is only if such availment is for reducing a tax liability that it vests jurisdiction in the assessing authority to recover such tax together with levy of interest and penalty under section 50 but until such time that the statutory authority is able to demonstrate that any tax was recoverable from the petitioner, a reflection in the electronic credit ledger cannot be treated as an 'availment'". It was concluded that, "legislative intent reflected from a purposeful reading of the provisions underlying section 140 alongside the provisions of section 73 and Rules 117 and 121 is that even a wrongly reflected transitional credit in an electronic ledger on its own is not sufficient to draw penal proceedings until the same or any portion thereof, is put to use so as to become recoverable".