

GST BULLETIN

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Notifications & Circulars

Reverse charge mechanism deferred till September 2019

Notification 22/2018-Central Tax (Rate); dated 6 August 2018

Govt. issued Notifications, amending notification Nos. 8/2017-Central Tax (Rate), 8/2017-Union Territory Tax (Rate), and 32/2017-Integrated Tax (Rate) respectively, notifying exemption from payment of GST on reverse charge basis u/s 9(4) of CGST Act, 9(4) of UTGST Act and 5(4) of IGST Act, until September 30, 2019.

Government prescribes special procedure for completing migration

Notification no. 31/2018-Central Tax dated: August 6, 2018

Central Govt., vide notification no. 31/2018-Central Tax (Rate), laid down special procedure for completing migration of taxpayers who received provisional IDs but could not complete the migration process till December 31, 2017. Upon approval of application by proper officers, taxpayers are required to furnish new GSTIN, Access Token for new GSTIN, ARN of new application and old GSTIN (PID) to GSTN by September 30, 2018. Such taxpayers shall be deemed to have been registered w.e.f. July 1, 2017.

Due dates for filing of GSTR-1, GSTR-3B notified

Notification Nos. 32/2018-Central Tax, 33/2018-Central Tax and 34/2018-Central Tax all dated August 10, 2018

CBIC extended time limit for filing Form GSTR-1 viz. outward supplies details by registered persons having aggregate turnover of more than Rs. 1.5 Cr. in preceding FY or current FY, for each month from July 2018 to March 2019, till 11th day of succeeding month.

Registered persons having aggregate turnover of up to Rs. 1.5 Cr. shall file GSTR-1 on quarterly basis as follows – (i) for July to September 2018, by October 31, 2018, (ii) for October to December 2018, by January 31, 2019, and (iii) for January to March 2019, by April 30, 2019. Time limit for furnishing details of inward supplies for months of July to March shall be notified subsequently. Return in Form GSTR-3B for each of the months from July 2018 to March 2019 shall be furnished electronically on or before 20th day of succeeding month. Liability towards tax, interest, penalty, fees or any other amount payable, shall be discharged not later than last date specified for filing GSTR-3B.

Applicability of GST rates on various goods and services

Circular No. 52/2018-GST dated August 9, 2018

Finance Ministry (TRU) issued clarification in respect of applicable GST rates on 11 items such as fortified toned milk, drinking water, marine engine, bus body building, disc brake pad and plasma products. It was stated that fortified toned milk (with vitamins A & D) attracts Nil rate of GST under HSN Code 0401 in terms of Explanatory Notes. Also it was clarified that supply of drinking water for public purposes, if not supplied in a sealed container, is exempt from GST by virtue of Sr. No. 99 of Notification No. 2/2017-Central Tax (Rate). As regards appropriate classification of baby wipes, facial tissues and other similar products, TRU stated that such wipes are classifiable under heading 3307 or 3401 depending upon their constituents and therefore, baby wipes impregnated with perfumes or cosmetics would fall under HSN Code 3307 attracting 18% GST and similarly, if they are coated with soap or detergent, then they would also be liable to 18% under HSN Code 3401. Where bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus, supply would attract GST at 28%, but where bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work), supply would merit classification as 'service' attracting 18% GST. Further it was clarified that Disc Brake Pad for automobiles is appropriately classifiable under heading 8708 of Customs Tariff Act with 28% GST.

Applicability of GST on petroleum gases retained for the manufacture of petrochemical and chemical products.

Circular No. 53/2018-GST dated August 9, 2018

Clarifications were issued regarding applicability of GST on petroleum gases retained for manufacture of petrochemical and chemical products and it was stated that GST will be payable by the refinery only on net quantity of petroleum gases retained by recipient manufacturer for manufacture of petrochemical and chemical products. Though, refinery would be liable to pay GST on such returned quantity of petroleum gases when the same is supplied by it to any other person. It was reiterated that this clarification would be applicable mutatis mutandis on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned to the supplier, and net billing is done on the amount retained by the recipient.

Comments - This clarification is applicable in the context of GST law only and past issues, if any, will be dealt in accordance with law prevailing at material time.

Fertilizers used in manufacture of other fertilizers taxable at 5% GST.

Circular No. 54/2018-GST dated August 9, 2018

It was clarified that simple fertilizers (classified under Chapter 31) supplied for direct use as fertilizers, or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract 5% GST. In GST regime, tax structure on fertilizers has been prescribed on lines of pre-GST tax incidence. While fertilizers falling under heading 3102, 3103, 3104 and 3105, other than those which are clearly not to be used as fertilizers, attract 5% GST, items which are clearly not to be used as fertilizers attract 18%. Phrase "other than clearly to be used as fertilizers" would not cover such fertilizers that are used for making complex fertilizers for use as soil or crop fertilizers.

Comments - The intention has been to provide concessional rate of GST to the fertilizers which are used directly as fertilizers or which are used in the manufacturing of complex fertilizers which are further used as soil or crop fertilizers.

Taxability of services provided by Industrial Training Institutes (ITI).

Circular No. 55/018-GST dated August 10, 2018

CBIC issued clarification on taxability of services provided by Industrial Training Institutes (ITI) under GST stating that vocational training provided by private ITIs in respect of designated trades notified under Apprenticeship Act are exempt from GST under Sr. No. 66 of Notification No. 12/2017–Central Tax (Rate). Similarly, in case of designated trades, services provided by a private ITI by way of conduct of entrance examination against consideration in form of entrance fee and services relating to admission to such institutions, will also be exempt from GST. However, as a corollary, services provided by private ITI in respect of other than designated trades would be liable to GST, including conduct of examination and services relating to admission to such institutions; Insofar as Govt. ITIs are concerned, services provided to individual trainees / students are exempt under Sr. No. 6 of Notification No. 12/2017-Central Tax (Rate) and the exemption would cover both – vocational training and examinations conducted by these Govt. ITIs.

Clarification on removal of restriction on refund of accumulated Input Tax Credit on fabrics

Circular No. 56/018-GST dated August 24, 2018

CBIC issued clarification regarding removal of restriction of refund of accumulated input tax credit (ITC) on fabrics vide Notification No. 20/2018 – Central Tax (Rate) dated July 26, 2018, clarifies that said restriction was applicable only in respect of inputs, and not input services and capital goods. Thus, ITC refundable on account of inverted duty structure in terms of Section 54 of CGST Act for period prior to July 31 but for restriction imposed vide Notification No. 5/2017 – Central Tax (Rate), lying unutilized after making GST payment upto month of July 2018, shall only lapse, without affecting ITC availed on input services and capital goods. Formula prescribed in Rule 89(5) of CGST Rules shall apply as it applies for determination of refundable amount for inverted duty structure, while explaining that such amount shall be determined for the period July 2017 to July 2018 and accumulated ITC balance lying unutilized in balance after making July 2018 GST payment shall lapse; As regards, closing stock of finished goods and inputs as on July 31, 2018, ITC on inputs contained in such stock (including inputs lying as such) may be excluded for determination of net ITC for the purposes of applying said formula; Cotton, silk, other natural fibre fabrics which do not suffer inverted duty structure are not subject to said lapsing provision while ITC on zero-rated supplies shall also not lapse, further such lapsed

accumulated ITC shall be disclosed in column 4B (2) of GSTR-3B return and detailed calculation shall be furnished at time of filing of first refund claim.

Case Laws

Gujarat HC issues notice in writ challenging 'intermediary' related 'place of supply' provision

Gujarat HC admitted writ petition challenging constitutional validity of Section 13(8)(b) of IGST Act, 2017 which deems place of supply for 'intermediary' as 'location of supplier of service'. The petitioner has contended that said section seeks to create an artificial deeming fiction to tax 'export of service', which is ultra vires Articles 265 & 286 of Constitution of India. HC issues notice to Centre, CBIC & GST Council, while posting the matter for hearing on October 9.

Writ petition has been filed before Gujarat HC challenging the constitutional validity of Section 13(8)(b) of the IGST Act, 2017 which deems 'place of supply' for 'intermediary' services to be 'location of supplier'.

Stating that these provisions are inherently arbitrary and violative of Article 14 and Article 19(1)(g) of the Constitution, petitioner has challenged the provisions based on arbitrariness and absence of intelligible differentia with a hope that GST Council will come out with a pragmatic solution to the problem.

Accordingly, the petitioner's prayer is:

- to declare Section 13(8)(b) as null, void and ultra vires Article 14, 19, 265 and 286 of the Constitution of India;
- stay the implementation of the provision; and
- direct Revenue to refund IGST paid on services provided by it to clients located outside India.

Comments: HC has issued notice to the Centre, CBIC & GST Council and posted the matter for hearing on October 9

Removing brand names from packages sold at exclusive stores, doesn't entail 'unbranded' supply.

Maharashtra Appellate Authority for Advance Ruling (AAAR) found no infirmity in AAR order and held that mere removal of registered brand name logos viz. 'MORE' and 'Aditya Birla Retail' from product packages while keeping the surrounding environment intact to take advantage of said brands, does not render the goods 'unbranded'. Accordingly, benefit of GST exemption cannot be extended to appellant in terms of

Notification No. 2/2017-Central Tax (Rate). It was observed that there is no bar on the name of the manufacturer to be a brand name as long as it is used in relation to such specified goods for the purpose of indicating a connection in the course of trade between such specified goods and the person using such name. Citing the example of 'Patanjali' products, AAAR stated that mere mention of manufacturer's name on the product as required under different statutes may not necessarily result in consideration of that product as branded. In the present case, consumers identify the goods by 'MORE' brand and also as those manufactured by Aditya Birla Group Company, and a lot of value is attached to such brands which hire some part of customer's mind to differentiate the goods from rival manufacturers / brands. Distinguishing inter alia Apex Court decision in Tarai Food Ltd., AAAR stated while appellant has proposed to remove the two trade marks from present packing of goods, it would keep the environment of sale of goods intact, i.e. goods will continue to be sold through exclusive 'MORE' stores, the style, colour and nature of packing will also remain unchanged, and even the sale bills issued to customers

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would continue to bear the registered trade mark 'MORE'. This gives satisfaction to customer that said goods, even without showing brand names on packages, still enjoy the benefit of the brand. As regards appellant's proposal to retain common / generic terms such as 'CHOICE', 'VALUE' or 'SUPERIOR' on some of its goods, AAAR held that use of said words would be construed as 'brand name' for the purpose of exemption Notification, inasmuch as they clearly establish the connection between the store brand 'MORE' owned by 'Aditya Birla Group' and said goods. SC rulings in Australian Foods India (P) Ltd. and Astra Pharmaceuticals (P) Ltd. were relied on to substantiate its decision, while observing that Circular Nos. 1031/19/2016-CX and 947/8/2011-CX are not relevant in the present matter.

Comments: But if the name of manufacturer mentioned on the product clearly establishes a link with the manufacturer and the product, then it surely amounts to be a brand name, as brand name includes any name as per explanation provided under the exemption notification.

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