

# GST BULLETIN

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### NOTIFICATIONS AND CIRCULARS

#### Clarification on re-filing of refund application where 'NIL' claim was opted inadvertently.

##### **Circular No. 110/2019 dated 3<sup>rd</sup> October 2019.**

CBIC clarified on eligibility for persons who opted for 'NIL' refund claim inadvertently while filing claim in Form GST RFD-01A/RFD-01 in spite of the fact that they had a genuine refund claim for that period under the said category. Two conditions for persons applying for re-filing of refund claim are, (i) registered person must have filed a NIL refund claim for a certain period under a particular category and (ii) no refund claim must have been filed by the registered person under the same category for any subsequent period. Condition (ii) will apply only to refund of unutilized ITC on account of exports without payment of tax, supplies made to SEZ Unit / SEZ Developer without payment of tax and inverted duty structure and not for other cases. Refund claim may be filed with supporting documents under "Any Other" category instead of the category under which the 'NIL' refund claim has already been filed. The proper officer, on receipt of the claim, should calculate the amount in terms of Circular No.59/33/2018-GST dated 04 September, 2018, refund application is to be scrutinized for completeness and eligibility, debiting the amount in Form GST DRC-03, receiving proof of debit and sanctioning of refund in Form GST RFD-06 followed by payment order in Form GST RFD-05.

**Clarification regarding procedure for claiming refund subsequent to favourable order in appeal.**

**Circular No. 111/2019 dated 3<sup>rd</sup> October 2019.**

CBIC clarified on the procedure to claim refund in FORM GST RFD-01 subsequent to favourable order in appeal or any other forum. Appeals against rejection of refund claims are being disposed offline as electronic module for the same is yet to be made operational. Accordingly, the registered person would file a fresh refund application under the category "Refund on account of assessment/provisional assessment/appeal/any other order" and furnish requisite details. Further, since the amount debited, if any, at the time of filing of the refund application was not re-credited, the registered person shall not be required to debit the said amount again from electronic credit ledger at the time of filing of the fresh refund application. The proper officers are empowered to sanction the amount of refund as allowed in appeal or in subsequent forum which was originally rejected and to ensure re-credit such rejected amount.

**Withdrawal of clarification issued on treatment of secondary or post-sales discounts.**

**Circular No. 112/2019-Central Tax, dated 1<sup>st</sup> October 2019.**

CBIC withdrew Circular No. 105/24/2019-GST wherein certain clarifications were given in relation to various doubts related to treatment of secondary or post-sales discounts under GST. The circular has been withdrawn in view of numerous representations received expressing apprehensions on implications of same and to ensure uniformity in implementation of provisions of law across field formations.

**Passenger Service Fee and User Development Fee, charged by airport operators, liable to GST.**

**Circular No. 115/2019-Central Tax, dated 11<sup>th</sup> October 2019**

Vide the Circular, clarification was issued on levy of GST on Airport levies, explains that Passenger Service Fee (PSF) and User Development Fee (UDF) charged by airport operators qualifies

consideration for providing the services to passengers, liable to GST. The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines and the airline shall not be liable to pay GST same provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of CGST Rules. Airline acting as pure agent of the passenger are required to separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued to its passengers. Moreover, the collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc.) and airlines shall be liable to pay GST on the same under forward charge while ITC of the same will be available with the airport operator.

**Display of donor's name in charitable organisation's premises is not liable to GST.**

**Circular No. 116/2019-Central Tax, dated 11<sup>th</sup> October 2019**

Vide the Circular, CBIC issued clarifications as to levy of GST on the display of name/placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors. The same is an act of expressing gratitude towards the donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business. There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service), therefore, there is no GST liability on such consideration. Upon satisfaction of 3 conditions namely, i) gift or donation is made to a charitable organization, ii) payment has the character of gift or donation, and iii) purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

**"Maritime Institutions" qualify as "educational institutions".**

**Circular No. 117/2019-Central Tax, dated 11<sup>th</sup> October 2019**

Clarification has been issued as to applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India. The Director General of Shipping

is empowered under Merchant Shipping (Standards of Training, Certification and Watch-Keeping for Seafarers) Rules, 2014 to approve (i) the training course, (ii) training, examination and assessment programme, and (iii) approved training institute etc. Maritime Institutes are “educational institutions” under GST Law and the courses conducted by them are exempt from levy of GST. Further, the exemption is subject to the conditions specified at Sl. No. 66 of the Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017 and the provisions would apply mutatis mutandis, to corresponding entries of respective IGST, UTGST, SGST exemption notifications.

#### **Clarification regarding taxability of lending of securities.**

##### **Circular No. 119/2019-Central Tax, dated 11<sup>th</sup> October 2019**

Clarification was issued on taxability of supply of securities under Securities Lending Scheme, 1997 (SLS) by the lender thereby specifying that activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. Explanation added to the definition of services w.e.f. February 1, 2019 i.e. “includes facilitating or arranging transactions in securities”, is merely clarificatory in nature and has no bearing on lending of securities in the past (i.e. since July 01, 2017). The clause 4 of para 4 relating to the Scheme SLS doesn’t treat lending of securities as disposal of securities and therefore is not excluded from the definition of services. Lending fee charged from borrowers of securities has the character of consideration, therefore, taxable under GST under heading 997119, leviable to GST @ 18% under Sl. No. 15(vii) of Notification No. 11/2017- Central Tax (Rate) dated June 28, 2017 as amended. For the past period i.e. July 1, 2017 to September 30, 2019, IGST shall be paid under forward charge by the lender and SEBI shall disclose the information about borrower for discharging GST under forward charge; W.e.f.. October 1, 2019, the borrower of securities shall be liable to discharge GST under reverse-charge as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate).

#### **Scope of place of supply in case of software/design services.**

##### **Circular No. 118/2019-Central Tax, dated 11<sup>th</sup>**

##### **October 2019**

Clarification was issued regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry. The place of supply of software/design by supplier located in taxable territory to service-recipient located in non-taxable territory by using sample prototype hardware/test kits in a composite supply where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of IGST Act. The entire activity needs to be viewed as one supply and treated accordingly for the purposes of taxation and artificial vivisection of the contract of a composite supply is not provided in law. The provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

#### **Due dates for GSTR-3B, GSTR-1 for Oct-Mar 2020.**

##### **Notifications no. 44/2019-Central Tax; 45/2019-Central Tax; 46/2019-Central Tax; 47/2019-Central Tax and 48/2019-Central Tax, all dated 9<sup>th</sup> October 2019**

The due date for furnishing of return in FORM GSTR-3B for the months of October, 2019 to March, 2020 is 20th day of the month succeeding such month. CBIC notified due date for filing of FORM GSTR-1 for registered persons having aggregate turnover of up to 1.5 crore rupees to be January 31, 2020 for the quarter Oct-Dec 2019 and April 20, 2019 for the quarter Jan-Mar 2020. Further, registered persons having aggregate turnover of more than 1.5 crore rupees shall furnish FORM GSTR-1 till the 11th day of the month succeeding such month for each of the months from October, 2019 to March, 2020. An option is provided to furnish the annual return u/s 44(1) of the CGST Act, 2017 read with Rule 80(1) of CGST Rules, 2017 to those registered persons whose aggregate turnover in a financial year does not exceed Rs. 2 crore and who have not furnished such annual return.

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