

GST BULLETIN

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Notifications & Circulars

CBIC released format of annual return for July 2017 to March 2018

Notification 39/2018-Central Tax; dated 4 September 2018

CBIC notified format of Annual Return for regular taxpayers (FORM GSTR-9) and composite taxpayers (FORM GSTR-9A) for the period July 2017 to March 2018. Detailed instructions are also provided to be followed while filling Part II of the said FORM which contains details of all outward supplies & advances received during the financial year. FORM GST ITC-04, relating to goods/capital goods sent to job worker and received back, was also substituted.

Government extended due date for furnishing of FORM GSTR 1

Notifications no. 43/2018-Central Tax, 44/2018-Central Tax, 45/2018-Central Tax, 46/2018-Central Tax, 47/2018-Central Tax, all dated: September 10, 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 Date for furnishing FORM GSTR-1 for the period from July 2017 to September 2018 has been extended till October 31, 2018 for all registered persons having the aggregate turnover above Rs 1.5 crores. This includes registered persons in Kerala, or whose principal place of business is in Kodagu (Karnataka) and Mahe (Puducherry). Taxpayers having aggregate turnover up to Rs 1.5 crores, the due date for furnishing FORM GSTR-1 for the Quarters from July 2017 to September 2018 has also been extended till October 31, 2018. Registered

persons having aggregate turnover upto Rs 1.5 crores in Kerala, or whose principal place of business is in Kodagu (Karnataka) & Mahe (Puducherry), the due date for furnishing FORM GSTR-1 for the Quarter July 2018 to September 2018 would continue to remain as November 15, 2018. Taxpayers who will now be migrating to GST as per Notification dated August 6, 2018, the last date for furnishing details of outward supplies of goods or services or both in FORM GSTR-1 & for filing the return in FORM GSTR-3B for July 2017 to Nov. 2018 has been extended till December 31, 2018.

CBIC notified applicability of TDS and TCS provisions w.e.f. 1 October 2018

Notification Nos. 50/2018-Central Tax and 51/2018-Central Tax all dated September 13, 2018

Govt. notified applicability of Section 51 of the CGST Act relating to tax deduction at source w.e.f. October 01, 2018 for following class of persons as specified under Clauses (a),(b),(c) and (d) of sub-section 1 of the said section. The mentioned class of persons include authority or a board or any other body set up by an Act of Parliament or a State Legislature or established by any Government, with fifty-one per cent or more participation by way of equity or control to carry out any function, society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 and public sector undertakings. Further, the applicability of provisions of Section 52 relating to tax collection at source w.e.f. October 01, 2018 was notified.

Govt. notified TCS rate for E-commerce operators.

Notification No. 52/2018-Central Tax dated 20 September, 2018

Govt. notified rate of 1% to be collected by every electronic commerce operator, not being an agent for supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator.

CBIC clarification on refund related issues.

Circular No. 59/2018-GST dated 4 September 2018

CBIC issued clarification on various refund related issues inter-alia prescribing that refund claim shall be accompanied by a print-out of FORM GSTR-2A of claimant for relevant period for which refund is claimed. Proper officer shall not insist on submission of

an invoice (either original or duplicate), however, may call for hard copies of invoices for the examination of refund claim where FORM GSTR-2A do not contain invoice details, further details of invoices on which ITC had been availed shall be submitted manually along with refund application. While refundable amount of unutilized ITC is to be debited from electronic credit ledger of claimant in following order: (a) Integrated tax, (b) Central tax and State tax/Union Territory tax equally to the extent of balance available, however, absent availability of such procedure on common portal, taxpayers shall follow said order for all refund applications whereas no adverse view shall be taken by tax authorities in respect of pending applications on ground of non-adherence to said order. It was clarified that restriction under rule 96(10) of CGST Rules vide Notification No. 39/2018-Central Tax shall be applicable only in respect of purchasers/importers directly purchasing/importing supplies on which benefit of specified notifications has been availed. State/Central tax authorities cannot refuse to disburse amount sanctioned by counterpart tax authority and remedy for correction of an incorrect or erroneous sanction order lies in filing an appeal against such order.

Processing of CSD refund applications.

Circular No. 60/2018-GST dated 4 September 2018

CBIC prescribed the manner and procedure for filing and processing of refund applications of Canteen Stores Department (CSD) which are entitled to claim refund of 50% of applicable central tax, integrated tax and Union territory tax paid on all inward supplies of goods received. It was explained that, refund to be granted is not for accumulated ITC but based on invoices of inward supplies of goods received. CSD can apply for refund manually by filing an application in FORM GST RFD-10A to the jurisdictional tax office till the time the online utility is made available on the common portal, while refund sanction/rejection order shall be issued manually along with the manual payment advice for each tax head separately. While CSD will apply for refund with jurisdictional Central tax/State tax authority to whom the CSD has been assigned, payment of sanctioned refund amount in relation to central tax / integrated tax shall be made by Central tax authority and that of State Tax/Union Territory Tax shall be made by State tax/Union Territory tax authority.

Scope of principal-agent relationship.

Circular No. 57/0218-GST dated 4 September 2018

CBIC clarified the scope of Principal-agent relationship as contemplated under Schedule I of CGST Act while clarifying that not all activities between Principal and agent and vice versa fall within scope of said entry. Referring to definition of 'agent' contained u/s 2(5) of CGST Act, it was explained that "crucial component for covering a person within the ambit of the term "agent" under the CGST Act is corresponding to the representative character identified in the definition of "agent" under the Indian Contract Act, 1872". Accordingly, key ingredient for determining relationship would be whether invoice for further supply of goods on Principal's behalf is issued by agent or not and hence, any provision of goods from Principal to agent would fall within fold of said entry where invoice for further supply is issued by agent in his name. However, where the invoice is issued by agent to customer in the Principal's name, such agent shall not fall within the ambit of Schedule I. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered.

CBIC modified procedure of interception of conveyances for inspection of goods in movement

Circular No. 64/2018-GST dated September 14, 2018

CBIC modified procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified vide Circular Nos. 41/15/2018-GST and 49/23/2018-GST. It was clarified that in case a consignment of goods is accompanied by an invoice or other specified document and not an e-way bill, proceedings u/s 129 of CGST Act may be initiated. However, proceedings may not be initiated in certain situations such as spelling mistakes in consignor's or consignee's name but GSTIN is correct, incorrect pin code, error in one or two digits of the document number mentioned in the e-way bill, error in 4 or 6 digit level of HSN but 2 digits are correct and rate of tax is correct, etc. It was stated that, for such cases, penalty to the tune of Rs. 500/- each under CGST and respective State GST Act (Rs.1000/- under the IGST Act) may be imposed; A record of all such consignments where proceedings u/s 129 of the CGST Act have not been invoked in view of these situations shall be sent

by the proper officer to his controlling officer on a weekly basis.

Case Laws

AAR denied concessional 12% rate on construction of electricity distribution lines by Govt. entity for business purpose

In the matter of Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Ltd., AAR held that applicant, a wholly owned subsidiary of M.P. Power Management Co. Ltd. engaged in construction of electricity distribution lines, sub-stations and other infrastructure for sale of electricity, liable to tax at 18% (CGST + SGST). Applicant undertakes projects of Govt. relating to strengthening of power distribution network and rural electrification for public welfare, ADB funding project, scheme for strengthening of Transmission and Distribution systems projects, feeder separation project, etc. with help of contractor. Observing that, holding company is wholly owned by Govt. of M.P., AAR stated that since Govt. of M.P. possess full control over the applicant, applicant is covered under definition of Govt. entity. However, perusing the Memorandum of Association, it was observed that projects under various Govt. schemes are carried out for business purpose, hence, benefit of concessional 12% GST rate (CGST+SGST) shall not be available under Notification No. 24/2017 – Central Tax (Rate) r/w Notification No. 31/2017.

Comments - Noting that said projects includes both supply of material and erection of same, it was held that said contract qualify as 'works contract' and is taxable under Sr. No. 3 of Notification No. 11/2017 – Central Tax (Rate)

Food supplies at Snack Bar/food court in mall/multiplex taxable at 5%.

In the matter of Jabalpur Entertainment Complexes P. Ltd., Madhya Pradesh AAR held that food, soft drinks and snacks supplied in Snack Bar and Food Court at Mall/Multiplex shall be classifiable under SAC 9963 chargeable to 5% GST subject to conditions under Notification No. 11/2017- Central Tax (Rate) as amended by Notification No. 46/2017- Central Tax (Rate). It was explained that such supply cannot be treated as 'outdoor catering' by any stretch of imagination considering the common parlance meaning of outdoor catering and its definition. Moreover, it was held applicant eligible for ITC of tax paid on Movie Distributor Revenue Sharing Bill,

Projector Rental Bill and Advertising Bill for providing declared services. However, it was stated that ITC proportionate to exempt outward supplies shall be required to be reversed in terms of Section 17(5) of CGST Act. Further, it was stated that “Mere statement that expenditure is not capitalized cannot come to the rescue of the Applicant”

Comments: ITC of GST paid on goods purchased viz. vitrified tiles, marble granite etc. and works contract services for purpose of maintenance of mall building was disallowed in terms of Section 17(5) of CGST Act.

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