

# GST BULLETIN

Bhasin Sethi & Associates

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### Notifications & Circulars

#### **CBIC notified CGST rates of various services as recommended by GST Council**

#### **Notification 13/2018-Central Tax (Rate); dated July 26, 2018**

Govt. issued Notifications amending notification No. 11/2017- Central Tax (Rate). CGST at the rate 2.5% is notified for service of supply of food / any article for human consumption / any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of Rs. 7,500/- and above per unit per day or equivalent; supply of food / any article for human consumption / any drink by the Indian Railways or IRCTC Ltd. or their licensees, whether in trains or at platforms; supply consisting only of e-book; 9% in case of supply of food / any article for human consumption / any drink, provided at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature; Telecommunications, broadcasting and information supply services and a rate of 6% for Multimodal transportation of goods.

#### **Certain services exempted as recommended by GST Council in its 28th meeting**

#### **Notification no. 14/2018-Central Tax (Rate), dated: July 26, 2018**

CBIC, vide notification no. 14/2018-Central Ta (Rate), made amendments to notification No. 12/2017-Central Tax (Rate) in order to exempt certain services - Services provided by Coal Mines provident fund organisation to the PF subscribers, Services provided by Old age home run by state government / central

government to the citizens aged more than 60 years upto Rs. 25000, Administrative fee collected by National Pension System Trust, Services provided by an unincorporated body or non-profit entity registered under any law to own members upto Rs. 1000 per year of membership fees, Services by way of artificial insemination of livestock (other than horses), Services provided by FSSAI to food businesses, Services provided by way of warehousing minor forest produce, Services provided by the installation and commissioning by DISCOMS for extending electricity distribution network for agricultural use, Reinsurance services provided to insurance scheme such as Pradhan Mantri Rashtriya Swasthya Suraksha Mission, Guarantees given by central/state government to their undertakings/PSUs, Services provided by government to ERCC by assigning the right to collect royalty to mining lease holders, Import of services by Foreign diplomatic missions/UN other international organizations. In addition, GST rate slabs will apply on the actual rate for hotel services instead of declared tariff.

#### **Services supplied by individual Direct Selling Agents (DSAs) to be taxed under RCM**

##### **Notification No. 15/2018-Central Tax (Rate), dated: July 26, 2018**

Vide Notification No. 27/2018-Central Tax, the Central Government notified that services supplied by individual Direct Selling Agents (DSAs) to banks/ non-banking financial company (NBFCs) are to be taxed under Reverse Charge Mechanism (RCM). Further, in the explanation, "renting of immovable property" is explained as allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

#### **Services in relation to a function entrusted to a municipality under Article 243W to be treated neither as a supply of good nor a service**

##### **Notification No. 16/2018-Central Tax (Rate), dated: July 26, 2018**

Vide notification 16/2018, CBIC notified that services by way of any activity in relation to a function entrusted to a municipality under Article 243W shall be treated neither as a supply of good nor a service.

#### **CBIC notified recent GST rate changes for certain goods.**

##### **Notification No. 18/2018-Central Tax (Rate), Notification No. 19/2018-Central Tax (Rate), Notification No. 21/2018-Central Tax (Rate); dated July 26, 2018**

CBIC has amended Notification No. 01/2017-Central Tax (Rate) and Notification No. 02/2017-Central Tax (Rate) to notify certain changes in GST rates for some goods – NIL GST rate would be applicable on Rakhi (other than that of precious or semi-precious material), Sanitary Napkins, Circulation and commemorative coins, Raw material for broom, Stone/Marble/Wood Deities, Sal leaves and its products, Khali dona, Coir pith Compost. A rate of 5% would be applicable on Chenille fabrics and other fabrics under 5801, Handloom dari, Phosphoric Acid (fertilizer grade only), Handmade Carpets, Textile Floor, Coverings, Knitted cap/topi having retails sale value exceeding Rs. 1000, Kota Stones and Similar Stones (other than polished), Ethanol for sale to oil marketing companies for blending with fuel, Solid Bio fuel pellets and Marine Engine. Bamboo Flooring, Hand Operated Rubber Roller, Brass Kerosene Pressure Stove, Zip and Slide Fastener, Handicrafts (Excluding handmade), Handbags including pouches and purses; jewellery box and Fuel Cell vehicle would be charged at 12% GST. Whereas Televisions upto 68 cm, Glaziers' putty, grafting putty, resin cements, Refrigerators, freezers, water cooler, milk coolers, ice cream freezer, Washing Machines, Food Grinders & mixer, Vacuum Cleaners, Paints and Varnishes (including enamels and lacquers), Shavers, Hair Clippers, Hair Cleaners, Storage water heaters, Immersion heaters, Hair Dryers, Hand Dryers, Electric Smoothing irons, Scent Sprays, Toilet Sprays, Pads for application of cosmetics or toilet preparations, Lithium-ion batteries, Powder Puffs, Special purpose motor vehicles, Work Trucks (Self-propelled, not fitted with lifting or handling equipment) and Trailers & Semi trailers will be charged at 18% GST. In addition, Fortified Milk has been exempted from GST.

#### **Refund of unutilized ITC because of inverted duty structure in respect of certain specified goods.**

##### **Notification No. 20/2018-Central Tax (Rate), dated: July 26, 2018**

Vide Notification No. 20/2018, notification no. 5/2017-Central Tax (Rate) was amended in order to insert a proviso to the notification. The original notification specified certain goods in respect of which no refund of

unutilised ITC would be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of the goods. Whereas by the way of amendment notification, refund of unutilized credit because of inverted duty structure in respect of certain specified woven fabrics of silk, cotton, wool w.e.f. August 2018 will be granted while balance of unutilized ITC lying as on July 31, 2018 would lapse.

#### **Form GSTR-6 return deadline for Input Service Distributors extended to September 30**

**Notification No. 30/2018-Central Tax, dated: July 30, 2018**

Govt. has extended the due date for filing Form GSTR-6 return by Input Service Distributors for the period July 2017 to August 2018, to September 30, 2018. Further, Notification No. 25/2018-Central Tax which fixed July 31 deadline was rescinded.

### **Case Laws**

#### **Post supply 'transaction value' deduction towards 'rate difference'/'special discount' on cement disallowed**

Maharashtra AAR in the case of Ultratech Cement Ltd. held that amount paid to authorized dealers towards "rate difference" and "special discount" after supply of goods viz. cement / clinker to them, cannot be allowed as deduction from transaction value as 'discount' absent compliance with Section 15(3)(b)(i) of CGST Act. In terms of said Section, 'discount' is required to be excluded from value of supply, if "such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices". Perusing the sample agreements, AAR found that there is no pre-fixed criteria, basis or rationale for arriving at quantum of such discounts as compared to cash discount, price equalization, shoppee discount, quantity discount and annual discount. Accordingly, AAR observed that mention of bare word 'discount' in the agreement without any parameters / criteria would not fulfil requirement of Section 15(3)(b)(i) as "word 'discount' if left open ended or without any qualifications or criteria attached can mean there can be any percentage of discount".

Such abnormal discounts without any criteria or basis cannot be considered fair and an arm's length business transaction and "no taxation statute can be construed to be having open ended discount with legislative intent".

**Comments:** It was elucidated that wordings of Section 15(3)(b)(i) clearly state that quantum of discount given after the supply of goods has taken place has to be there in the terms of such agreement i.e. it cannot be open ended not based on any criteria.

#### **Transportation under EPC contract for solar plant, taxable as composite 'works contract' supply.**

Authority for Advance Ruling (AAR) in the matter of Dinesh Kumar Agarwal held that AAR holds that transportation charges received by applicant as part of Engineering, Procurement and Construction (EPC) contract for setting up of solar power plant, would be liable to GST as works contract. Applicant's claim, that since he is fully responsible for loading, transportation, delivery to the project site and unloading of equipment as well as required to bear transit insurance cost, there exists a standalone contract for transportation of equipment for which separate consideration is received, was rejected. It was observed that clauses of proposed draft agreement cannot be read in isolation or out of context, it is necessary to read the contract as a whole to ascertain the true / correct nature of transaction. Resultantly, applicant's contention that since he is not GTA in as much as he is not issuing any consignment note, no tax is payable on transportation by road services by virtue of Notification No. 12/2017-Central Tax (Rate) was rejected. Referring to SC decisions in T.T.G. Industries Ltd. and Solid and Correct Engineering Works the AAR observed that the intent of the person at the time of erecting and operationalizing a structure / plant is to be seen and if the intent is to establish it as an immovable property at the time of setting up, then it is to be treated as an immovable property even if later on due to some exigency it is required to be dismantled or removed.

**Comments:** As such this agreement for Engineering Procurement and Construction of Solar Power plant constitutes composite supply in the nature of Works Contract.

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