

Monthly News Letter

Feb-March, 2021

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❖ NOTIFICATIONS AND CIRCULARS

1. Notification No. 03/2021-Central Tax dated 23.02.2021

Ministry of Finance vide Notification No. 03/2021-Central Tax dated 23.02.2021 Seeks to notify persons to whom provisions of sub-section (6B) or sub-section (6C) of section 25 of CGST Act will not apply.

Notification No. 3/2021-CT dated 23.02.2021 exempts certain class of persons from requirements of section 25 (6B, 6C) for the purpose of GST registration.

This Notification supersedes the Notification No. 17/2020-CT dated 23.03.2020. This notification says that the provisions of sub-section (6B) or sub-section (6C) of section 25 of CGST Act will not apply to a person who is:

- a. Not a citizen of India; or
- b. A department or establishment of Central Government or State Government; or
- c. A local authority; or
- d. A statutory body; or

- e. A public sector undertaking; or
- f. A person applying for registration under provisions of sub-section (9) of section 25 of the act.

2. Notification No. 04/2021-CT dated 28.02.2021

Ministry of Finance, CBIC vide Notification No. 04/2021-CT dated 28.02.2021 has extended the due date for furnishing of GSTR-9 and GSTR-9C for the financial year 2019-20 to 31.03.2021 with the approval of Election Commission of India. The due date for furnishing of the Annual returns (GSTR-9 and GSTR-9C) specified under section 44 of the CGST Act read with Rule 80 of the CGST Rules for the financial year 2019-20 was earlier extended from 31.12.2020 to 28.02.2021 vide Notification No. 95/2020- Central Tax dated 30.12.2020. Central Government (MOF) has further extended the due date for furnishing of GSTR-9 and GSTR-9C for the financial year 2019-20 to 31.03.2021 with the approval of Election Commission of India. This is the second extension of due dates for financial year 2019-20.

3. Circular No. 146/02/2021-GST dated 23.02.2021

- a. CBIC has issued clarifications for applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of [Notification No. 14/2020-CT dated 21.03.2020](#) which requires Dynamic QR Code on B2C invoice

- issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 01.12.2020.
- b. Vide [Notification No. 89/2020-Central Tax, dated 29th November 2020](#), penalty has been waived for non-compliance of the provisions of [Notification No. 14/2020 – Central Tax](#) for the period from 01st December, 2020 to 31st March, 2021, subject to the condition that the said person complies with the provisions of the said Notification from 01st April, 2021.
- c. [Notification No. 14/2020-CT dated 21.03.2020](#) is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards.
- d. In case of export invoices, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, as per [Notification No. 13/2020-Central Tax, dated 21st March, 2020](#) treating them as Business to Business (B2B) supplies, [Notification No. 14/2020 – Central Tax](#), dated 21st March, 2020 will not be applicable to export invoices.
- e. Dynamic QR Code should contain the following information :
- (i) Supplier GSTIN number
 - (ii) Supplier UPI ID
 - (iii) Payee's Bank A/C number and IFSC
 - (iv) Invoice number & invoice date,
 - (v) Total Invoice Value and
 - (vi) GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc.
- f. Dynamic QR Code should be such that it can be scanned to make a digital payment.
- g. If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements. In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice:
- (i) Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice ; or
 - (ii) In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash, along with date of such payment on the invoice, the said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code.
- h. In case where the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, in such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the

requirement of Dynamic QR Code. However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

- i. If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.
- j. The provisions of the [Notification No. 14/2020-CT](#) shall apply to each supplier/registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the Ecommerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

4. Notification No. 05/2021-Central Tax dated 08.03.2021

This Notification seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 50 Cr from 01st April 2021.

This notification hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), [No. 13/2020 – Central Tax, dated the 21st March, 2020;](#)

In the said notification, in the first paragraph, with effect from the 1st day of April, 2021, for the words **“one hundred crore rupees”**, the words **“fifty crore rupees”** shall be substituted.

That means now the taxpayers having turnover more than 500 Crores will have to generate e-invoices with effect from April 01, 2021.

5. Notification No. 06/2021-CT dated 30th March, 2021

This notification Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020. Notifications hereby makes the following amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 89/2020 – Central Tax, dated the 29th November, 2020, published in the Gazette of India namely:–

In the said notification, –

- (i) in the first paragraph, for the figures, letters and words, “31st day of March”, the figures, letters and words “30th day of June”, shall be substituted;
- (ii) in the first paragraph, for the figures, letters and words, “01st day of April”, the figures, letters and words “1st day of July”, shall be substituted.

The CBIC vide this notification has amended **Notification No. 89/2020 – Central Tax dated November 29, 2020** to extend the waiver of penalty leviable under Section 125 of the **CGST Act, 2017** (i.e. general penalty) for non-compliance of provisions of Notification No. 14/2020–Central Tax dated March 21, 2020 (Provisions of Capturing of Dynamic QR Code in GST Invoices) between the period from December 1, 2020 to June 30, 2021, subject to the condition that the said person complies with the provisions of the said notification from July 1, 2021.

CASE LAWS

- A. The Applicant sought advance ruling on (i) whether capital subsidy (90% of Project Capital Expenditure) received from Odisha Government for the construction of green field public street lighting system in terms of supply installation and maintenance agreement and escrow agreement is leviable to Tax (ii) whether the Applicant is eligible for concessional rate of tax in terms of Notification No. 11/2017-Central Tax (R) dated June 28, 2017 (Notification No. 11/2017) for the balance 10% of the amount received as Annuity Fees over a period of seven years?

The Hon'ble Authority for Advance Rulings (the AAR) held that capital subsidy received by the Applicant is the actual cost incurred on the project. It is not a subsidy which generally means grant/grant-in-aid or a benefit given to an individual, business or institution, usually by the Government to remove some type of burden and to promote a social good or an economic policy for overall interest of the public. Thus, 'capital subsidy' cannot be treated as a 'subsidy', rather the same is a consideration as defined in Section 2(31) of the Central Goods and Services Tax Act, 2017 (the CGST Act) and liable to be included in the transaction value for the purpose of computation of Tax.

Further since major part of the contract is supply of goods without which services cannot be supplied by the Applicant, hence, such supply squarely falls under the definition of "composite supply" where the principal supply is 'supply of goods'. Thus, question of applicability of Notification No. 11/2017 does not arise and Tax would be payable on the goods at applicable rate specified under appropriate heading.

CRUX: Capital Subsidy for public street lightening system included in transaction value for GST.

[M/s Surya Roshni LED Lighting Projects Limited, Order No. 05/ODISHA-AAR/2020-21 dated January 20, 2021 (Odisha AAR)]

- B. The Applicant is engaged in conducting clinical research services for determining safety and effectiveness of medications, devices, diagnostic products and treatment regimens for human use.

The Applicant sought advance ruling on (i) classification of services related to clinical research services (ii) whether services supplied by the Applicant is exempt from payment of Tax (iii) whether the Applicant is eligible to avail Input Tax Credit (ITC) of Tax paid or deemed to be paid?

The Hon'ble AAR held that the services provided by the Applicant is not in connection with diagnosis or treatment or care for illness covered under heading 9993 (healthcare services) but related to support services for research covered under heading 998599 (Other Support Services). Thus, such services not being covered under healthcare services are not exempt in terms of entry 74 of Notification No. 12/2017-CT (R) dated June 28, 2017. Accordingly, the Applicant is eligible to claim ITC of tax paid in terms of Section 16 of the CGST Act.

CRUX: Activities in relation to conducting and facilitating clinical

research services covered under 'Other Support Services' and not 'Healthcare Services'.

[M/s Vevaan Ventures Advance Ruling No. KAR ADRG 05/2021, Order dated January 29, 2021 (Karnataka AAR)]

- C. The Applicant is providing two types of services - (1) consultancy services in diagnosis and treatment of illness to the Hospitals, Laboratories and Biobank companies (Consultancy Services) and (2) Business Promotion Services by way of organising collaborative projects, histopathological consulting and business development (Business Promotion Services) between the foreign company and the clinical centres located in India.

The Applicant sought advance ruling on whether Tax is applicable on Consultancy Services and Business Promotion Services?

The Hon'ble AAR held that Consultancy services provided by the Applicant is exempt in terms of entry No. 74(a) (Healthcare services) of Notification No. 12/2017-CT (R) dated June 30, 2017.

Further, with respect to business promotion services, the Hon'ble AAR observed that the Applicant is facilitating services in relation to clinical centres in India on behalf of the foreign company as its agent and not providing any services on its own account. Therefore, the services are squarely covered under intermediary services and liable to Tax @18% under heading 9983 (other professional, technical and business services).

CRUX: Service provided in relation to facilitating establishment of clinical centres in India on behalf of a foreign company covered under 'intermediary services'.

[Dr. H. B. Govardhan, Advance Ruling No. KAR ADRG 04/2020 dated January 29, 2021 (Karnataka AAR)]

SERVICE TAX

- D. The Appellant availed Cenvat credit on Service Tax paid on Rent a Cab service under reverse charge mechanism and claimed refund on account of unutilized amount in the Cenvat credit account.

The Department alleged that Cenvat credit availed on Rent-a-Cab service by the Appellant is not input service in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 since vehicles taken on rent by the Appellant is not registered in the name of service provider. Therefore, Department denied the amount of refund claim for the unutilized amount in the Cenvat credit account.

The Hon'ble CESTAT held that it is not in dispute that the Appellant is not entitled to Cenvat credit on such Rent-a-Cab services at the time of availment of the Cenvat credit. Therefore, Department cannot deny refund claim and raise the issue of admissibility of the Cenvat credit.

CRUX: Admissibility of the Cenvat credit cannot be raised while deciding on refund claim.

[M/S CNS Comnet Solution Pvt Ltd Vs CST Final Order nos. 60489-60491/2021 dated February 3, 2021]

- E. The Appellant availed Cenvat credit for Service Tax paid on construction of pipelines used in business of transporting gas through pipeline for its customers.

The Department alleged that the Cenvat credit taken by the Appellant is in relation to services rendered by EPC contractors to construct the pipeline system which remains permanently embedded under earth over a long distance and constitutes 'immovable property, which is neither 'goods' nor 'service' and therefore, not eligible to avail Cenvat credit thereon.

The Hon'ble CESTAT held that the Appellant is engaged in the business of

transporting gas through pipelines for which laying of pipelines between their different station is essential. Service Tax paid by the Appellant was not on the pipeline system but on the services provided for constructing such system. Hence, it cannot be said that the service for construction of pipeline is not used for providing output service. Thus, the Appellant is entitled to Cenvat credit in respect of service of laying of pipeline received directly from their contractors.

CRUX: CENVAT credit allowed on services for construction of pipelines used for transportation of gases.

[Gujarat State Petronet Ltd Vs CST Final Order No. A/10348/2021 dated February 2, 2021]

INDIAN CUSTOMS HIGHLIGHTS

- a. Surety required to be furnished by an independent legal entity in relation to B-17 bond executed by export oriented unit (EOU). [Circular No. 3/2021-Cus dated February 03, 2021]
- b. Chartered Accountant (CA) evidencing no discrepancy between refund claimed on Integrated Goods and Services Tax (IGST) and actual IGST paid on export of goods for the period April 2019 to March 2020 and April 2019 to March 2021 required to be furnished till March 31, 2021 and October 30, 2021 respectively. [Circular No. 4/2021-Cus dated February 16, 2021]
- c. Exporters given option to avail facility of correction of invoice mis-match errors with respect to past shipping bills irrespective of its date of filing, subject to payment of fees of INR 1,000. [Circular No. 5/2021-Cus dated February 17, 2021]
- d. Guidelines issued for setting up of Inland Container Depots (ICDs), Container Freight Stations (CFSs) and Air Freight Stations (AFSSs). [Circular No. 6/2021-Cus dated February 22, 2021]
- e. Clarification issued regarding payment of Agriculture Infrastructure and Development Cess (AIDC) by EOU.

- [Circular No. 7/2021-Cus dated February 22, 2021]
- f. The Customs Tariff (Identification and Assessment of Safeguard Duty) Amendment Rules, 2021 notified. [Notification No. 12/2021-Cus (N.T.) dated February 01, 2021]
 - g. The Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Amendment Rules, 2021 notified. [Notification No. 11/2021-Cus (N.T.) dated February 01, 2021]
 - h. The Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Amendment Rules, 2021 notified. [Notification No. 10/2021-Cus (N.T.) dated February 01, 2021]
 - i. The Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021 notified. [Notification No. 09/2021-Cus (N.T.) dated February 01, 2021]
 - j. Changes in rate of Duty on specified goods proposed in the Union Budget 2021. [Notification No. 02/2021-Cus to Notification No. 15/2021-Cus, all dated February 01, 2021]
 - k. Circular No. 08/2021 dated 29-03-2021-Clarifications on the legislative changes in Section 46 of Customs Act, 1962–reg.

These changes facilitate pre-arrival processing and assessment of Bills of Entry (BE) by mandating their advance filing thus leading to significant decrease in the Customs clearance time. The amended Section 46 requires an importer to file a BE before the end of the day (including holidays) preceding the day of arrival of the vessel/aircraft/vehicle carrying the imported goods at a Customs port/station at which such goods are to be cleared for home consumption or warehousing. However, Board is empowered to prescribe different time limits for such filing in certain cases, but by not later than the end of the day of arrival of the vessel/aircraft/vehicle at the Customs port/station.

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