

# GST NEWSLETTER

BHASIN SETHI & ASSOCIATES

01/04/2019

VOLUME II, ISSUE IV

## CONTENTS

### NOTIFICATIONS AND CIRCULARS

- Treatment of sales promotion schemes under GST; Free samples not 'supply'.
- Inter-bank Priority Sector Lending Certificates trading is a supply of goods, liable to IGST.
- Clarification issued on manner of transfer of ITC in case of death of sole proprietor.
- Instructions to exercise of due caution while processing the application for new registration.
- Clarification on claiming refund of accumulated ITC on account of inverted duty structure.
- CBIC notified increase in threshold, due dates for GSTR-3B and GSTR-1 for April - June.
- Due date for filing of GST ITC-04 extended upto June 30.

### CASE LAWS

- Ruling on tax rate applicable to various services offered to members of club.
- Inputs for Section 143(1) include 'intermediate goods', return of galvanised goods from job-worker not 'supply'.

### NOTIFICATIONS AND CIRCULARS

**Treatment of sales promotion schemes under GST; Free samples not 'supply'.**

**Circular No. 92/2019-Central Tax, dated 7th March 2019.**

CBIC issued clarification on treatment of sales promotion schemes under GST. Samples supplied free of cost would not qualify as 'supply', further ITC would not be available in relation thereto except where activity fall within the ambit of Schedule I of CGST Act. Also, discounts offered by the suppliers to customers (including staggered discount under 'Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down u/s 15(3) of CGST Act. Also, treatment in respect of '**Buy one get one free**' offers and **secondary discounts** which are not known at the time of supply or are offered after the supply is already over and for which credit notes are issued subsequently.

**Inter-bank Priority Sector Lending Certificates trading is a supply of goods, liable to IGST.**

**Circular No. 93/2019-Central Tax, dated 8th March 2019**

CBIC clarified that supply of Priority Sector Lending Certificates (PSLCs) between banks will be treated as a supply of goods in course of inter-State trade or commerce. Accordingly, IGST is payable on supply of PSLC traded over e-Kuber portal of RBI for the period i.e. July 1, 2017 to May 27, 2018 and May 28, 2018 onwards. However,

IGST shall not be required to be paid by the bank to the extent of CGST/SGST/UTGST already paid towards such supply.

**Clarification issued on manner of transfer of ITC in case of death of sole proprietor.**

**Circular No. 96/2019-Central Tax, dated 28th March 2019.**

CBIC clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor. Consequently, ITC which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee in the prescribed manner where the business is continued by any person being transferee or successor. Transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor. While filing application in FORM GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as “death of the proprietor” and GSTIN of transferee is also required to be mentioned to link the GSTIN of transferor with the GSTIN of transferee. FORM GST ITC-02 is required to be filed by transferee/successor before filing application for cancellation of registration and upon acceptance, the un-utilized ITC specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

**Instructions to exercise of due caution while processing the application for new registration.**

**Circular No. 95/2019-Central Tax, dated 28th March 2019.**

CBIC provided instructions for verification of applications of new registrations to cater instances where some persons, who continue to carry on business and are required to have registration under GST, are not applying for revocation of cancellation of registration. Proper officer is instructed to exercise caution and compare the information pertaining to the registrations while processing the application for registration, when the applicant is seeking another registration in the same State although

having an existing registration/ earlier registration cancelled. Not applying for revocation of cancellation of registration along with the continuance of the conditions specified in clauses (b) and (c) of sub-section (2) of sec 29 shall be deemed to be a “deficiency” within the meaning of sub-rule (2) of rule 9. Where the applicant fails to furnish sufficient convincing justification or the proper officer is not satisfied with clarification, information or documents furnished, application for fresh registration may be considered for rejection.

**Clarification on claiming refund of accumulated ITC on account of inverted duty structure.**

**Circular No. 94/2019-Central Tax, dated 28th March 2019.**

Vide the Circular, CBIC provided that refund of accumulated ITC on account of inverted tax structure for period in which there is reversal of ITC required to be lapsed in terms of notification No. 20/2018- Central Tax (Rate) is to be claimed under the category “any other” in FORM GST RFD-01A. The proper officer upon scrutinizing the application for completeness and eligibility, if satisfied that whole or any part of the amount claimed is payable as refund, shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. All those registered persons required to make the reversal in terms of said notification and who have not yet done so, may reverse said amount through FORM GST DRC-03 instead of through FORM GSTR-3B. However, refund application for subsequent period shall be filed in FORM GST RFD-01A under the category “refund of unutilized ITC on account of accumulation due to inverted tax structure”. Refund of accumulated ITC by merchant exporter under rule 89(4B) where the supplier has availed benefit of notification No. 40/2017-Central Tax (Rate) shall be applied under the category “any other” instead of under the category “refund of unutilized ITC on account of exports without payment of tax”.

**CBIC notified increase in threshold, due dates for GSTR-3B and GSTR-1 for April – June.**

**Notifications No. 10/2019-Central Tax; 11/2019-Central Tax; 12/2019-Central Tax; 13/2019-Central Tax; 14/2019-Central Tax, all dated 1<sup>st</sup> January 2019**

CBIC notified increase in threshold upto 40 Lakhs for registration with some exceptions. Further, due date for filing GSTR 3B & payment of taxes for discharge of tax liability from April 2019 to June 2019 upto 20th of the month succeeding such month was also notified. Due date for filing GSTR 1 for the registered taxpayer with turnover more than 1.5 crore for the period April 2019 to June 2019 upto 11th of succeeding month and for turnover upto 1.5 crore till July 31, 2019 was notified. Additionally, registered tax payers with aggregate turnover upto 1.5 crores & turnover upto 75 lakhs (Special category states / North Eastern states) may opt to pay an amount of tax as prescribed under Rule 7 of CGST Act 2017. Further, tax rate for small service providers on the Intra-state supply of goods or services up to an aggregate turnover of 50 lakhs made on or after April 1st in any FY shall be levied at 6% ( 3% CGST + 3% SGST).

**Due date for filing of GST ITC-04 extended upto June 30.**

**Notification no. 15/2019-Central Tax dated 15<sup>th</sup> March 2019.**

CBIC extended due date for filing of FORM GST ITC-04 upto June 30, 2019 in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to March, 2019.

## **CASE LAWS AND FAQs**

### **Ruling on tax rate applicable to various services offered to members of club.**

In the matter of The Bengal Rowing Club, West Bengal AAR ruled on rate of tax applicable in case of various services provided to members of a club such as supply of food at its restaurant or social events organized in club premises and other services which are not bundled with supply of food. It was clarified that 'Supply of Food, by way of or as part of any service or in any other manner whatsoever, from applicant's restaurant' shall be taxable under SAC 9963, under Sl. No. 7(i) or 7(iii) of the Notification No. 11/2017-CT (Rate) depending upon the criteria mentioned. In case

food is supplied by way of or as part of services associated with organizing social events at club premises, together with renting of such premises it will be classifiable under SAC 9963 and taxable under Sl No. 7(vii). All other services offered by the applicant being services of a membership organization such as swimming and other facilities and services that are not bundled with the supply of food and charged separately, shall be classifiable under SAC 9995, taxable under Sl No. 33 of Rate Notification. As regards availment of ITC, it was explained that the applicant should apply provisions of Section 17(2) & (6) of CGST Act, r/w Rule 42 and 43 of CGST Rules, for reversal of ITC, treating supplies, taxable under Sl No. 7(i) as exempt supplies.

### **Inputs for Section 143(1) include 'intermediate goods', return of galvanised goods from job-worker not 'supply'.**

In the matter of Ratan Projects & Engineering Co. Private Limited, West Bengal AAR held that return of galvanized goods from the job worker to the applicant satisfy the condition of receiving back 'inputs' u/s 143(1)(a) of CGST Act and should not be treated as 'supply' in terms of section 143(3), provided they are entirely used up in the process of galvanizing. It was held that, "zinc, furnace oil or nickel exhausted in the process of galvanising need not be physically returned" and "If the galvanised structures are returned that will be sufficient compliance of section 143(1)(a)". It was noted that, applicant sends steel structures to a job-worker for the process of galvanising which is an intermediate stage in the applicant's manufacturing activity, expounds that, 'inputs' as defined u/s 143(1)(a) include such intermediate goods. "Clearly, the idea that what has been used up must be physically returned does not find favor with the judiciary" stated AAR, while referring to CESTAT ruling in Rahee Infratech Ltd. The goods that are used up in the galvanising process cannot be separated from the galvanised goods and Explanation to Section 143 "expands the meaning of 'inputs' to the intermediate goods that include, as embedded, attached or consumed, the inputs that are exhausted in the process of manufacturing the intermediate goods".

**Disclaimer:** Information in this newsletter is for educational purpose only. Bhasin Sethi & Associates assumes no responsibility of any mistakes which, despite of all precautions, may be found therein. The material contained in this document does not constitute any professional advice that may be required before acting on any matter