

# GST NEWSLETTER

BHASIN SETHI & ASSOCIATES

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### NOTIFICATIONS AND CIRCULARS

**Supplies by retail outlet at international airport to outgoing tourist exempt.**

**Notifications No. 11/2019-Central Tax (Rate); dated 29<sup>th</sup> June 2019.**

Government issued notification exempting any supply of goods by a retail outlet established in the departure area of an international airport, beyond the immigration counters, to an outgoing international tourist, from IGST/CGST/UTGST & Compensation Cess. It was specified that retail outlets, making tax free supply of goods to an outgoing international tourist, shall be entitled to claim refund of applicable central tax paid on inward supply of such goods, subject to the conditions specified in rule 95A of CGST Rules, 2017. "Outgoing international tourist" was defined as a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

**Due date for furnishing Annual Return extended.**

**Order No. 6/2019-Central Tax dated June 28, 2019**

CBIC issued order extending due date for filing annual return (Form 9, 9A and 9C) for the period from the July 1, 2017 to March 31, 2018 to be filed by every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person upto August 31, 2019.

**Extension of E-way bill blocking/un-blocking facility under Rule 138-E.**

**Notification No. 25/2019 - Central Tax dated June 21, 2019.**

CBIC notified extension in the facility of blocking and unblocking of e-way bill as per the provision of Rule 138E of CGST Rules, 2017 upto August 21, 2019.

**Due dates for filing of various returns pursuant to Council meeting decisions.**

**Notification No. 26/2019 - Central Tax, 27/2019 - Central Tax, 28/2019 - Central Tax, 29/2019 - Central Tax, 30/2019 - Central Tax and 32/2019 - Central Tax; all dated 28 June, 2019.**

CBIC issued notifications to give effect to GST Council's recommendations made during its 35th meeting. Due date for furnishing of FORM GSTR-7 for the months of October, 2018 to July, 2019 was extended upto August 31, 2019. Further due date for filing of FORM GSTR-1 for small taxpayers for the quarter July –September, 2019 was notified as October 31, 2019. Due date was prescribed for filing FORM GSTR-1 for registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, till the 11th day of the month succeeding such month for each of the months from July, 2019 to September, 2019. GSTR-3B for each of the months from July, 2019 to September, 2019 to be furnished on or before the 20th of the month succeeding such month. It was clarified that persons registered under section 24 of the said Act read with rule 14 of said Rules, supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person as the class of registered persons who shall follow the special procedure shall not be required to furnish annual return in FORM GSTR-9 and reconciliation statement in FORM GSTR-9C. Further due date for filing of FORM GST ITC-04 for the period July, 2017 to June, 2019 was extended upto August 31, 2019.

**CBIC prescribed 'value' for Kerala Flood Cess levy,**

**refund on sales from 'international airport'.**

**Notification No. 31/2019 - Central Tax dated June 28, 2019.**

CBIC notified CGST (14th Amendment) Rules, 2017. Rule 32A was inserted prescribing that value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act, but shall not include the said cess. Rule 95A was inserted providing that retail outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods. The said refund shall be available subject to conditions i.e. (a) the inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice, (b) the said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax (c) name and Goods and Services Tax Identification Number of the retail outlet is mentioned in the tax invoice for the inward supply and (d) such other restrictions or conditions, as may be specified. The order of NAA shall be passed within 6 months from report of DGAP while providing for interest at 18% on deposit of amount in CWF.

**Clarification regarding applicability of GST on additional/penal interest.**

**Circular No. 102/21/2019-GST dated June 28, 2019.**

CBIC issued clarification regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalment ('EMI'). The amount of penal interest shall be included in the value of supply where the contract between buyer and seller provides that penal interest would be charged for delay. Further, GST shall be charged irrespective of the manner of invoicing. Further it was clarified that transaction of levy of additional/penal interest does not fall within the

ambit of entry 5(e) of Schedule II of the CGST Act i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”. Moreover, any service fee/charge or any other charge levied in respect of the transaction related to extending deposits, loans or advances does not qualify to interest and will not be exempt from GST.

**Clarification regarding determination of place of supply in certain cases.**

**Circular No. 103/22/2019-GST dated June 28, 2019.**

CBIC clarified that place of supply in case of services provided by the port authorities to its clients in relation to cargo handling are ancillary to or related to cargo handling services and are not related to immovable property'. Accordingly, the place of supply of such services will be determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services. Place of supply in case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.

**Clarification on processing of refund applications wrongly mapped on the common portal.**

**Circular No. 104/23/2019-GST dated June 28, 2019.**

CBIC issued clarification in respect of the processing of a refund application by a jurisdictional tax authority (either Centre or State) to whom the application has been electronically transferred by the common portal in cases where the said tax authority is not the one to which the taxpayer has been administratively assigned. It was clarified that where reassignment of refund application to the correct jurisdictional tax authority is not possible on the common portal, the processing of the refund claim should not be

held up and it should be processed by the tax authority to whom the refund application has been electronically transferred by the common portal. After the processing of the refund application is complete, the refund processing authority may inform the common portal about the incorrect mapping with a request to update it suitably on the common portal so that all subsequent refund applications are transferred to the correct jurisdictional tax authority.

**Clarification on treatment of secondary or post-sales discounts under GST.**

**Circular No. 105/24/2019-GST dated June 28, 2019.**

CBIC issued clarification in respect of tax treatment in cases of secondary discounts or post sales discount. It was explained that if the post-sale discount is given by the supplier of goods to the dealer without any further obligation, then the post sales discount won't be included in the value of supply and will be related to the original supply of goods. However, if the additional discount given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc., then such transaction would be a separate transaction. In such a case, dealer, being supplier of services, would be required to charge applicable GST on the value of such additional discount and the supplier of goods, being recipient of services, will be eligible to claim ITC of the GST so charged by the dealer. Further, it was clarified that if the additional discount is given by the supplier of goods to the dealer to offer a special reduced price by the dealer to the customer to augment the sales volume, then such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by the dealer to the customer. It was explained that dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial / commercial credit notes by the supplier of goods “as long as the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount

in terms of financial / commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier”.

#### **Procedure for refund claim processing by retail outlets at airports.**

#### **Circular No. 106/25/2019-GST dated June 29, 2019.**

CBIC issued Circular specifying the conditions, manner and procedure for filing and processing of refund claims of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport. It was explained that the refund to be granted to retail outlets is not on account of the accumulated ITC but is a refund based on the invoices of inward supplies of indigenous goods received by them while clarifying that no refund of tax paid on input services will be granted to the retail outlets. Since there is no special procedure for procurement of indigenous goods for sale by Duty Free Shops (DFS) or Duty Paid Shops (DPS) under GST regime, all indigenous goods would have to be procured by DFS or DPS on payment of applicable tax and same needs to be supplied without collecting any taxes from the eligible passenger. Till the time the online utility for filing the refund claim is made available on the common portal, these retail outlets shall apply for refund by filing an application manually to the jurisdictional proper office, further said retail outlets will be required to prominently display a notice that international tourists are eligible for purchase of goods without payment of domestic taxes. The scheme shall be effective from July 01, 2019 and would be applicable in respect of all supplies made to eligible passengers after the said date.

#### **CASE LAWS AND OTHER UPDATES**

#### **Application alleging profiteering finding no ITC availment post GST dismissed: NAA.**

In the matter of Director General of Anti-Profiteering vs. Vatika Ltd., National Anti-Profiteering Authority dismissed application alleging profiteering under Section 171 finding that no ITC has been availed by the Respondent in

the post-GST period. Therefore, it was held that there was no additional benefit of ITC which had been accrued to the Respondent post-GST as compared to pre-GST period. It was noted that applicant's contentions that the Respondent has not completed construction before the GST, payment was made after GST and benefit of ITC was not passed on. It was concluded that none of the contentions fall under the ambit of Anti-Profiteering provisions of Section 171 of CGST Act, 2017 as allegation of not passing on the benefit of ITC is not established and even the charging of GST @ 18% in post-GST regime is not within scope of Section 171 of CGST Act, 2017.

#### **Hydraulic Kit', not part of motor vehicle, classifiable under Heading 8412, taxable at 18%.**

In the matter of Hyva India Pvt. Ltd., Maharashtra AAR held that 'Hydraulic Kits' containing Hydraulic cylinder and wet kit (with or without pump) are classifiable under heading 8412 as 'other engines and motors' in view of Explanatory Note to heading 8412 and Note 4 to Section XVI, taxable at 9% CGST. It was clarified that 'Hydraulic Kits' would not merit classification as part of motor vehicle even though it is fitted to a motor vehicle in view of exclusions provided in Explanatory notes to Section XVII and heading 8708, 8714 and 8716 which relate to classification of parts of different kinds of motor vehicles which comply with 3 conditions [(a) They must not be excluded by Note 2 to Section XVII; (b) They must be suitable for use solely or principally with motor vehicles; and (c) They must not be more specifically included elsewhere in the nomenclature]. Observing that the Hydraulic Kit is used on bodies/ platform, detaching sides, tipper bodies, trailers, remarks that "Hydraulic Kit is not suitable for use solely or principally with the motor vehicles" therefore it does not satisfy condition (b); Further, opines that "hydraulic cylinders/ hydraulic kits is squarely/ specifically covered under Heading No. 84.12" and hence condition (a) stand not satisfied and lastly, "Hydraulic Kit is more specifically included in Heading No. 84.12 and is more specifically covered under said heading" thereby does not satisfy condition (c). It was accordingly concluded that as all 3 conditions mentioned in Heading No. 8708, 8714 and 8716 are not satisfied, the product in question will not be covered under any of these headings.

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