**Monthly News Letter**

November, 2020

# CONTENTS:

# Notifications and Circulars

# Case laws/ Advance Rulings

**NOTIFICATIONS AND CIRCULARS**

1. ***New provision of section 39 of the CGST Act, 2017 will be implemented-Notification No. 81/2020–Central Tax/S.O. 4043(E)***

 Ministry of Finance, CBIC vide Notification No. 81 of 2020-Central tax dated 10th of November, 2020 has notified that amendment to section 39 will be effective from 10th day of November, 2020. Furnishing of Return (GSTR-3) [Section 39 of CGST Act]

 As per sec. 39 of the CGST Act, 2017, the taxable persons other than ISD/TCS/TDS/Non-resident and composition levy tax persons shall for every calendar month or part thereof, furnish GSTR-3 Return electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as prescribed under GSTR 3 return format on or before the 20th day of the month succeeding the tax period (the month for which return is filed). GSTR 3 Consists of two parts Part A and Part B.

 Part A of the GSTR 3 shall be electronically generated on the basis of information furnished through Form GSTR- 1, Form GSTR-2 and based on other liabilities of preceding tax periods.

 Every registered person furnishing the GSTR 3, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger or electronic credit ledger and feed such details in Part B of the return in Form GSTR-3.

 The registered person, shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

 A registered person, claiming refund of any balance in the electronic cash ledger in accordance with land may claim such refund in Part B of the return in Form GSTR-3 and such return shall be deemed to be an application filed under section 54.

 Where the time limit for furnishing of details in Form GSTR-1 under section 37 and in Form GSTR-2 under section 38 has been extended, return in Form GSTR-3B, in lieu of Form GSTR-3, may be furnished in such manner as may be notified by the Commissioner.

 A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

The registered person, on discovery of any error or omission or inaccurate particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, shall rectify the error or the omission in the return to be furnished for the month or quarter during which omission or incorrect particulars are noticed. However, no such rectification of error or omission as specified above shall be allowed after furnishing GSTR 3 section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

1. ***Seeks to make the Thirteenth amendment (2020) to the CGST Rules.201–Notification No. 82/2020-Central Tax dated 10.11.2020***

Ministry of Finance, CBIC vide Notification No. 82 of 2020-Central tax dated 10th November, 2020 CBIC has released the Thirteenth Amendment Rules, 2020. In the amendment rules, CBIC also notifies new rules for Inward/Outward Supplies, GST Returns & New GST Form-2B.

1. ***Seeks to extend the due date for FORM GSTR-1-Notification 83/2020- Central Tax -10.11.2020***

Ministry of Finance, CBIC vide Notification No. 83 of 2020-Central tax dated 10th November, 2020 CBIC hereby extends the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017(hereafter in this notification referred to as the said rules), for each of the tax periods, till the eleventh day of the month succeeding such tax period:

Provided that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the class of registered persons required to furnish return for every quarter under proviso to sub-section (1) of section 39 of the said Act, shall be extended till the thirteenth day of the month succeeding such tax period. This notification shall come into force with effect from the 1st day of January, 2021.

1. ***Seeks to notify class of persons under proviso to section 39(1).-Notification No. 84/2020- Central Tax dated 10.11.2020***

The Ministry of Finance vide the notification no. 84/2020-Central Tax dated 10.11.2020 hereby notifies the registered persons, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), having an aggregate turnover of up to five crore rupees in the preceding financial year, and who have opted to furnish a return for every quarter, under sub-rule (1) of rule 61A of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules) as the class of persons who shall, subject to certain conditions and restrictions, furnish a return for every quarter from January, 2021 onwards, and pay the tax due every month in accordance with the proviso to sub-section (7) of section 39 of the said Act.

X

1. ***Seeks to notify special procedure for making payment of 35% as tax liability in first two months-Notification No. 85/2020 dated 10.11.2020***

The Ministry of Finance vide the notification no. 85/2020-Central Tax dated 10.11.2020 hereby notifies the registered persons, notified under proviso to sub-section (1) of section 39 of the said Act, who have opted to furnish a return for every quarter or part thereof, as the class of persons who may, in first month or second month or both months of the quarter, follow the special procedure such that the said persons may pay the tax due under proviso to sub-section (7) of section 39 of the said Act, by way of making a deposit of an amount in the electronic cash ledger equivalent to, -

(i) thirty five per cent. of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or

(ii) the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly:

Provided that no such amount may be required to be deposited-

(a) for the first month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability ;

(b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability:

Provided further that registered person shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period preceding such month.

Explanation- For the purpose of this notification, the expression “a complete tax period” means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period. This notification shall come into force with effect from the 1st day of January, 2021.

1. ***CBIC rescinds Notification 76/2020-Central tax dated 15.10.2020-Notification No. 86/2020 \_central Tax dated 10.11.2020***

The Ministry of Finance vide the notification no. 86/2020-Central Tax dated 10.11.2020 CBIC rescinded Notification No. 76/2020 w.r.t due dates of filing GSTR-3B for October 20 to March 21.

1. ***CBIC extended the due date ITC-04 for period July- September 2020 till 30th November, 2020-Notification No. 87/2020-Central Tax-10.11.2020.***

Ministry of Finance vide the Notification no. 87/2020-Central Tax dated 10.11.2020, hereby extends the time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2020 to September, 2020 till the 30th day of November, 2020.

1. ***CBIC notified E-invoicing for the taxpayers having aggregate turnover exceeding Rs. 100 Cr from 01st Jan 2021-Notification No. 88/2020-Central Tax-10.11.2020***

Ministry of Finance vide the Notification no. 88/2020-Central Tax dated 10.11.2020 hereby makes the following further amendments 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, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

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

1. *Notification No. 89/2020 – Central Tax-29.11.2020*

CBIC waives the amount of penalty payable by a registered person u/s 125 of CGST Act for non-compliance of provisions of dynamic QR code in B2C invoices prescribed vide Notification No.14/2020 – Central Tax, dated March 21, 2020 between the period from the December 1, 2020 to March 31, 2021, subject to the condition that said person complies with provisions of said notification w.e.f. April 1, 2021.

1. E-Way Bill : Blocking of EWB generation facility for all taxpayers from December, 2020

In terms of Rule 138E (a) and (b) of the CGST Rules, 2017, the E-Way Bill (EWB) generation facility of a taxpayer is liable to be restricted, in case the taxpayer fails to file their FORM GSTR-3B returns / Statement in FORM GST CMP-08, for tax periods of two or more.

From 1st December, 2020, onwards, the blocking of EWB generation facility would be made applicable to all the taxpayers (irrespective of their Aggregate Annual Turnover (AATO)) In terms of Rule 138 E (a) and (b) of the CGST Rules, 2017, on the EWB Portal.

On 1st December 2020, the System will check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08, for the class of taxpayers to whom it applies, and restrict the generation of EWB in case of:

Non filing of two or more returns in Form GSTR-3B for the months up to October, 2020; and

Non filing of 02 or more statements in Form GST CMP-08 for the quarters up to July to September, 2020

This blocking will take place periodically from 1st December’ 2020 onwards.

**CIRCULAR**

* **Circular No. 143/13/2020- GST**

CBIC explains Quarterly Return Monthly Payment Scheme (QRMP)

The GST Council in its 42nd meeting held on 05.10.2020, had recommended that registered person having aggregate turnover up to five (5) crore rupees may be allowed to furnish return on quarterly basis along with monthly payment of tax, with effect from 01.01.2021. Government has issued Notification No. 81/2020; 82/2020; 84/2020; 85/2020 – Central Tax, dated 10.11.2020 to implement the scheme.

 **CASE LAWS/ ADVANCE RULING**

* **In the matter Agarwal Foundries Private Ltd. vs Union Of India [**TS-962-HC-2020(AP)-NT**]**

*“GST-Department cannot resort to ‘physical violence or torture’ against persons suspected of tax- evasion”*

Telangana HC observes that officials belonging to GST Intelligence Department cannot resort to physical violence while conducting interrogation of Petitioners and their employees in connection with inquiry proceedings; States that “Merely because the authorities under the CGST Act, 2017 are not to be treated as police officials, they cannot claim any immunity if they indulge in acts of physical violence against persons they suspect of being guilty of tax evasion” .Relying upon SC ruling in D.K. Basu v. State of W.B, right to life and liberty enshrined in Constitution of India & Protection of Human Rights Act, 1993, claims that “In view of this statutory regime already in place, it would be futile for the respondents to claim any liberty to torture or use physical violence during the course of search, investigation or interrogation under the CGST Act, 2017 against persons suspected of tax evasion like the petitioners or their employees”;

* **AAR: No GST on consideration towards sale of flats received under JDA with Developer post CC-issuance-In the matter of Sri. B.R. Sridhar.**

Karnataka AAR holds that the amounts received by the Applicant (Property-Owner) in respect of sale of its share of flats consequent to a Joint Development Agreement (JDA) with Developer, are not exigible to GST if and only if the entire consideration relating to such sale is received after issuance of completion certificate (CC); Infers that the said activities are treated neither supply of goods nor supply of service in terms of Entry no. 5 of Schedule III of CGST Act

* + - * **Notification prescribing output-tax payment before GSTR-3B due date challenged before Telangana HC-in the matter of *S.B. Organics Ltd. vs. Superintendent of Central Tax***

**Telangana HC issues notice in writ challenging vires of Notifications issued u/s 168 of CGST Act r/w Rule 61(5) of CGST Rules prescribing time limit & conditions for payment of output tax before due date for GSTR-3B.**

* + - * **Apsara Co-operative Housing Society Ltd.-** **MAH/AAAR/RS-SK/28/2020-21 dated 05.11.2020**

**The Maharasthra Appellate Authority for Advance Ruling upheld the Ruling passed by the Maharashtra Advance Ruling Authority, vide their Order No. GST-ARA-21/2019-20/B-34 dated 17.03.2020 and stated that the activities carried out by the Appellant would amount to supply in terms of Section 7(1)(a) of the CGST Act, 2017, and the same would be liable for GST subject to the condition that the monthly subscription/contribution charged by the society from its members is more than Rs. 7500/- per month per member and the annual aggregate turnover of the society by way of supplying of services and goods is also Rs. 20 lakhs or more. Further, their second question regarding correctness of the GST liability on the basis of the illustrative invoices cannot be answered on account of the above stated reasons.**

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