

GST Monthly News Letter

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Notifications & Circulars

Disputed or blocked transitional credit would be recoverable

Circular No.33/07/2018-GST **dated: February 23, 2018**

Finmin vide circular no. 33/07/2018 dated February 23, 2018, has clarified that the credit carried forward pertaining to which a show cause notice was issued under Rule 14 of the CENVAT Credit Rules, 2004, and pertaining to which the last adjudication order or last order in appeal, as it existed on July 1, 2017, held that such CENVAT credit is not admissible, then such CENVAT credit shall not be utilized by a registered person. Further, it was also clarified that a registered person shall not carry forward the blocked credit as per Section 17(5) of the CGST Act. In this regard, it was clarified that the disputed credit or blocked credit which is carried forward and utilized by the registered person would be eligible to recovery along penalty and interest.

Comments: The transitional credit which is carried forward shall be utilized as per the above directions

Alternative mechanism for refund IGST paid on exports prescribed

Circular No. 05/2018-Customs **dated February 23, 2018**

CBEC prescribed an alternative mechanism with officer interface to facilitate refund of IGST on exports, thereby giving exporters opportunity to rectify 'invoice mismatch' errors in the initial stages. Analysis of data post October 2017 indicated that while the quantum of errors is decreasing significantly, exporters are still committing mistakes in information furnished to (i) GSTN while filing Form GSTR-1 / Table 6A or GSTR-3B and (ii) Customs EDI system while filing Shipping Bill. The invoice mismatch' error is most prevalent, in view of the fact that exporters are using two sets of invoices, one for GST and another for Customs which is resulting in mismatch of invoice numbers including mismatch in taxable value and IGST paid in those invoices. Through such officer interface, a Customs officer can verify the information furnished in GSTN and Customs EDI system and sanction refund in those cases where invoice details provided in GSTR-1 / Table 6A are correct though said details in Shipping bill were at variance. CBEC clarified that refund claims would be processed in

only those cases where error code is mentioned as SB005 and all refunds shall continue to be credited electronically through PFMS system, no manual payment / cheque shall be issued. Explaining the procedure for processing of IGST refund claims in these cases, CBEC requires exporter to provide a concordance table indicating mapping between GST invoices and corresponding Shipping Bill invoices; However, clarifies that this procedure is available only for Shipping Bills filed till December 31, 2017 while stating, "It is again emphasized that Board is taking all possible steps to alleviate the difficulties associated with IGST refunds. However, ultimately it is the responsibility of the exporters to ensure careful and correct filing of returns for hassle free sanction of IGST refunds."

Comments: These is a positive step to ensure timely refund to the exporters

Telangana & Nagaland notify e-way bill rules for intra state movement

Telangana & Nagaland governments on February 9 and 10, 2018 respectively, notified e-way bill rules for the intra state movement of goods. The implementation e-way bill rules for the interstate movement of the goods stands differed as per the notification dated February 2, 2018.

Comments: The nationwide e-way bill implementation still has its challenges. However, the satewise implementation would be a proper step to get the industry acquainted with the procedure.

CBEC prescribes monetary limit for issuing SCN & order by various officers

Circular No. 31/05/2018 – GST dated February 9, 2018

CBEC vide Circular No. 31/05/2018 dated February 9, 2018, prescribed monetary limit for purpose of issuance of show cause notice (SCN) and passing of orders by different level of central tax officers. CBEC provided that SCN shall be issued by Central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (DGGSTI) and the same shall be adjudicated by competent central tax officer of Executive Commissionerate in whose jurisdiction the noticee is registered. SCN shall be adjudicated by the competent central tax officer in whose jurisdiction noticee from whom the highest demand has been made falls in case there are more than one noticees falling in multiple

Commissionerates. Moreover, adjudication shall be done by an officer of the rank of Additional Director/Commissioner (not on strength of DGGSTI and working there) where principal places of business of noticees fall in multiple Commissionerates and amount of central tax and IGST (including cess) exceeds Rs. 5 crores. Further, CBEC amended Circular No. 3/3/2017-GST to empower Superintendent of Central Tax to issue show cause notices/orders, thus, assigning all officers up to rank of Additional/Joint Commissioner of Central Tax as 'proper officer' in terms of Section 73 and 74 of CGST Act and Section 3 r/w 20 of IGST Act.

Comments: The government will slowly take steps to audit the assesseees under GST regime.

Tyre retreading and bus body building constitute "Composite Supply": Finmin

Govt. issued clarifications vide Circular no. Circular No. 34/8/2018-GST dated March 1, 2018, regarding GST in respect of certain services upon approval of Fitment Committee to the GST Council, inter alia explains that classification of composite service of bus body building as 'supply of goods' or 'supply of service', would depend on principal supply which shall be determined on the basis of facts and circumstances of each case. Retreading of tyres is also a composite supply, predominant element of which is process of retreating - a 'supply of service', while rubber used thereof is an ancillary supply, moreover, supply of retreaded tyres where the old tyres belong to supplier is a 'supply of goods' taxable at 28%. Govt. further clarified that trading in Priority Sector Lending Certificates (PSLCs) shall be liable to GST at standard rate of 18%, and such GST paid would be available as ITC to the bank buying said Certificates. While service by way of electricity transmission / distribution is exempt, other services provided by Distribution Companies (DISCOMS) such as application fee for electricity connection, metering equipment rentals / testing fee, labour charges from customers for shifting meters / service lines, duplicate bill charges would be taxable. Service provided by Central /State Govt. to any business entity including PSUs by way of guaranteeing loans taken by them from financial institutions against consideration in any form, including Guarantee Commission, shall be subject to GST.

Comments: There was certain amount of confusion on these specific supplies.

J&K notifies budgetary support

J&K Government notified scheme for providing budgetary support to manufacturing units to come into operation from July 8, 2017, till the last date of Industrial Policy 2016. The budgetary scheme will be limited to reimbursement of tax which accrues to State Govt. under J&K GST Act (i.e. SGST) after adjustment of input tax credit of SGST and IGST on supply of finished goods by manufacturing units. As per the definitions clause, "eligible unit" would mean a manufacturing unit registered as on July 7, 2017 under J&K VAT Act and also formally registered with Dept. of Industries and Commerce / Directorate of Handicrafts Handloom except units manufacturing specified goods (Annexure A) and units eligible for reimbursement under SRO 519 dated December 21, 2017. However, benefit of reimbursement shall not be extended to industrial units who are procuring inputs exclusively from composition dealers or from any unregistered persons, and to those who make supply of services or interstate supplies of finished goods either directly or indirectly or through intermediaries or proxies. Reimbursement shall be worked out on quarterly basis for which, claims would also require to be filed by 15th of succeeding month after end of quarter. As per Annexure A, the scheme shall apply to 17 goods such as repacked goods, bricks & tiles, soft drinks, TVs, ACs, Refrigerators and Washing Machines when sold under brand name of other products, tobacco and its products, and arms & ammunition including accessories thereof. Scheme also lays down the manner of budgetary support, provides for inspection of eligible unit, repayment by claimant / recovery and dispute resolution

Comments: This budgetary scheme would be hugely beneficial for the industries in J&k. As it would resort the benefits the industry had prior to the implementation of GST.

Case laws

Detention of goods for procedural infraction wherein supply was non-taxable, quashed by HC

HC is case of Indus Towers Ltd. vs. The Assistant State Tax Officer, Ernakulam & Anr quashed the detention of goods u/s 129 of CGST Act / Kerala GST Act for non-compliance with Rule 55 and Rule 138 of Kerala GST Rules, where transaction did not constitute 'taxable supply'. Further, HC noted that consignment of batteries procured inter-state upon IGST payment by assessee, engaged in establishment and maintenance of towers for telecom service providers, was

intercepted and detained by Dept. for absence of declaration in Form KER-1. HC accepted assessee's contention that without any dispute over the correctness of delivery challan, detention was not justified since said declaration was uploaded immediately and made available to Revenue upon receipt of notice, and that transaction did not involve a 'taxable supply'. Further, HC held that "mere infraction of the procedural Rules cannot result in detention of goods, though they may result in imposition of penalty". As per Section 130, confiscation of goods is contemplated only when a 'taxable supply' is made contrary to statutory provisions with an intent to evade tax, observes HC and accordingly, directs release of goods.

Comments: HC was of the opinion that the detention of goods was without a proper authority or reason as the supply was not a taxable supply and there were not findings against the correctness of the delivery challan issued.

HC Directs reopening of GSTN portal for submission of revised TRAN-1

Chhattisgarh HC allowed writ petition of Bharat Aluminium Company Ltd. (BALCO) challenging the denial of transitional credit on account of non-filing of revised Form TRAN-1 due to GSTN system errors. Following Allahabad HC order in Continental India Private Limited, HC directed the Dept. to either reopen the GSTN portal so as to allow refiling of revised TRAN-1, or in the alternative, treat the manual copy of revised Form TRAN-1 filed by petitioner as compliance with relevant provisions under CGST Act and allow transitional credit availed therein. HC also observed that petitioner's case is on a stronger footing as compared to Continental India Private Limited inasmuch as petitioner had manually filed the revised Form long before the due date

Comments: There were a lot of issues in filing a revised Tran-1 and system errors as well. HC was opinion that where the assessee was not able to submit the revised copy of Tran-1 due to system error, they should be allowed to resubmit the same by opening the GST portal or by accepting the manual copy of the form.

HC admits challenge to GST on renting services to Customs Warehouse

Madras HC in case of Flamingo Duty Free Shops Pvt. Ltd. vs. Union of India & Ors admitted writ petition challenging imposition of GST on services rendered to Customs Bonded Warehouse. Petitioner has challenged levy of CGST & SGST by Airport Authority of India on

consideration paid towards renting of immovable property, inter alia raising issues w.r.t location of service recipient, applicability of Section 13(4) of IGST Act and taxability of said transaction. HC granted interim injunction while posting the matter for final hearing on March 21

Comment: One of the important issues in the industry in the GST regime.

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