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GST council revises rates on few services and goods and approves rules for e-way bills in its 20th meeting

The Goods and Services Tax (GST) Council in its 20th meeting on Saturday decided to cut the tax rate for job work for the entire value chain of textiles sector to 5 per cent along with reduction in rate for tractor parts to 18 per cent from 28 per cent. Also, the Council gave in-principle approval to the e-way bill rules, which envisage a technology-driven tracking of movement of goods worth more than Rs 50,000 and for sale beyond 10 km in distance. The e-way bill rules are likely to come into force from October 1. following are key takeaways from the decisions taken by GST council -

- GST on Job-work services in respect of textiles and textile products changed from 18%/5% to 5%.
- In case of Rent-a-cab service, Govt. allows an option of 12% GST with full ITC, while 5% with no ITC will also continue.
- In case of GST, Govt. has provided an option (to be exercised at FY beginning) of 12% GST with full ITC under forward charge, 5% GST with no ITC will also continue.
- Works contract services provided to Government, local authority or governmental authority and in respect of post-harvest storage infrastructure for agricultural produce, mechanized food grain handling system liable to GST at 12%, instead of 18%.
- Council has clarified that legal services by LLP are also covered under reverse charge in addition to legal services (including representational services) provided by an individual advocate or senior advocate or firm of advocates provided to business entity.
- Liability of GST on E-Commerce Operators In case of small house-keeping service providers (plumbers/carpenters).

Comments: these decisions have taken by the GST council after analyzing the progress of the industry in GST regime and also the various representations made by the industries.

GST council authorizes increase in compensation cess from 15 % to 25% on luxury cars

In its 20th meeting held on August 5, GST Council considered the issue of cess leviable on motor vehicles and recommended that Government may move legislative amendment required for increasing the maximum ceiling of cess leviable for luxury cars. However, the decision on when to raise the actual cess leviable on the same will be taken by the GST Council in due course.

Comment: The would be a huge blow for automobile industry which positive impact after the rollout of GST.

IGST applicable on high sea sales during customs clearing

Circular-33 /2017-Cus **dated - August 1, 2017**

Ministry of Finance released a circular clarifying the Leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods and point of collection. As per the circular IGST on high seas sale(s) transactions, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for clearance purposes for the first time. Further, Value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. Importer (last buyer in the chain) would be required to furnish the entire chain of documents such as original invoice, high seas sales contract, and details of service charges / commission paid, to establish the link between first contracted price of goods and last transaction. In case of doubt regarding accuracy of declared value, Dept. can determine the price of imported goods in accordance with Customs Valuation Rules.

Comments:

Government amends CGST Rules

Notification - 17/2017 –CT **Date– July 27, 2017**

The Government vide notification 17/2017 –CT has made a few changes in CGST rules. Few of the important amendments are as follows-

- Deadline has been extended upto September 30, 2017, for submitting FORM GST REG-29, which pertains to cancellation of registration.
- Rule 34 of the CGST Rules, 2017 has been substituted. The substituted rule stipulates that rate of exchange for determination of value of goods shall be as per the rate of exchange notified by the board under Section 14 of Customs Act. Moreover, the rate of exchange for determination of value of taxable services shall be the rate of exchange determined as per the generally accepted accounting principles.
- Amount for ITC reversal in respect of inputs or capital goods in stock, where persons opts for composition scheme / supplies exempt goods or services / whose registration has been cancelled, shall be calculated separately for central tax, State tax, Union territory tax and integrated tax, in terms of Rule 44 w.e.f July 1.
- Amends 3rd proviso to Rule 46 to provide endorsement of supplies to SEZ unit / developer on the invoice.
- Amends Forms GST TRAN-1 & TRAN-2 to provide for “applicable HSN Codes”.
- Amends Rule 61 to provide for e-filing of Form GSTR-3B, and where said Return is furnished after the due date for furnishing details in Form GSTR-2 (inward supplies) – (a) Part A of Form GSTR-3 shall be generated electronically on the basis of Forms

GSTR-1, GSTR-2 and other liabilities of preceding tax periods, while Part B thereof, on the basis of return in Form GSTR-3B, (b) Part B of Form GSTR-3 can be modified based on discrepancies if any, between Form GSTR-3B and GSTR-3 and accordingly tax liabilities shall be discharged, (c) where ITC amount in Form GSTR-3 exceeds that in Form GSTR-3B, the additional amount shall be credited to electronic credit ledger.

Comments: These are rectifications made after the rollout of GST to ease the transition and business functioning.

Finance Ministry issues clarification regarding applicability of Compensation Cess on “zero rated supplies”

Circular - 1/1/ 2017

Date– July 30, 2017

Fin Min has issued clarification through circular 1/1/2017. As per the circular provisions Section 16 of IGST Act relating to zero rated supply will apply mutatis mutandis for purpose Compensation Cess . Hence , exporter will be eligible for refund of Cess paid on goods exported by him, on similar lines as refund of IGST. Further, No Compensation Cess will be charged on goods exported under bond and exporter will be eligible for refund of ITC of Cess relating thereto. Moreover, circular states that while exports being inter-state supplies will be liable to Compensation Cess, “This however will not be in line with the principle that no taxes be exported, and exports have to be zero rated.

Comments: The circular clarifies that since exports are considered as inter state supply the compensation cess would leviable. However, the exporter will eligible for refund of ITC.

Textile Ministry has issued guidance notes

Textile Ministry has issued guidance notes on various issues pertaining to textile industry and also requested Fin Min to consider various problems faced by the industry. Following are features of the guidance notes -

- Cotton sector which was exempted from central taxes and leviable to VAT at the fibre and yarn stage only, has been brought into the GST net, with a low rate of 5%. This will ensure availability of Input Credit to all.
- The GST rate structure is fibre neutral at the fabric stage with 5% GST on both Cotton and Synthetic/Man-made fabric, thus eliminating the inefficiencies arising out of the varied duty structures on different fibres.
- Job work charges which were exempted from service tax provided the Principal is paying Excise Duty upon clearance of goods are now leviable to GST. This will allow job-workers to avail ITC on inputs, consumables and input services.
- Wool, raw silk, silk waste, Khadi yarn, raw jute and processed jute except jute yarn have been exempted from GST.

Suggestions for legal issues:

- Clear definition of ‘unregistered’ person’ should be provided in the Act

- In view of variations in the GST rate on job charges in respect of yarn (except MMF) & fabric (9998821) and Wearing apparels (9998822), clarity is needed as to when will services in relation to yarn & fabric end and services in relation to wearing apparel begin.
- Classification norms for blended yarn need to be explicitly provided if the different rate structure on natural fibres and man made fibres is to continue.
- There is a need to find a suitable mechanism such that the ITC of such GST paid by the Buying Houses is allowed to the exporter/manufacturer.
- An appropriate Exemption mechanism needs to be created for temporary removal of goods for display and participation in an Exhibition in India and abroad may be for a period of 60 days on the condition that if such goods are not brought back to the original premises within the stipulated period of 60 days then the supplier will be liable to discharge relevant GST.
- Certain articles like hand woven carpets hitherto exempted from Central taxes but have now been brought within the ambit of GST. Since the transitional provisions in the CGST Act and the Rules provides only 6 return cycles for claiming any deemed credit, in case of hand woven carpets such deemed credit would be difficult to avail as 6 months may not be sufficient time for the carpets to be woven and brought back to the premise of the principal. Law Committee may consider this issue for appropriate solution
- As the textiles sector has been out of tax net since long, a request has been made to allow transitional credit on deemed basis to manufacturers also since large number of manufacturers (weavers, RMG manufacturers etc.) have been buying goods from traders only.

Comments: The textile industry has been hit adversely by GST and the same has been considered by GST council and accordingly the job work GST rate on textiles has been reduced.

CBEC releases sector wise FAQs

CBEC has release FAQs pertaining various sector such as exports, MEME industry, Food processing industry, E– Commerce, Drugs and Pharmaceuticals, Mining and Handicraft.

Few of the important FAQs are as under.

Exports

1Q. The supplies to a SEZ unit or SEZ developer are treated as zero

rated supplies in the GST Law. Then why there is no specific mention in the GST Law about not charging of tax in respect of supplies from DTA unit to a SEZ unit or SEZ developer?

Ans- Yes, supplies made to an SEZ unit or a SEZ developer are zero rated. The supplies made to an SEZ unit or a SEZ developer can be made in the same manner as supplies made for export i.e either on payment of IGST under claim of refund; or under bond or LUT without payment of any IGST.

2Q. Will export of goods to Nepal and Bhutan treated as zero rated and thereby qualify for all the benefits available to zero rated supplies under the GST regime?

Ans- Export of goods to Nepal or Bhutan fulfils the condition of GST Law regarding taking goods out of India. Hence, export of goods to Nepal and Bhutan will be treated as zero rated and consequently will also qualify for all the benefits available to zero rated supplies under the GST regime. However, the definition of 'export of services' in the GST Law requires that the payment for such services should have been received by the supplier of services in convertible foreign exchange.

3Q. What will be exemptions available for various authorizations/ scrips which have been issued prior to 1.7.2017 and remain unutilized on 1.7.2017?

Ans: No exemption under GST Law is provided. The EXIM scrips under the export incentive schemes of chapter 3 of FTP (for example MEIS and SEIS) can be utilised only for payment of Customs duties or additional duties of Customs, on items not covered by GST, at the time of import. The scrips cannot be utilized for payment of Integrated Tax and Compensation Cess. Similarly, scrips cannot be used for payment of CGST, SGST or IGST for domestic procurements.

4Q. Will duty Drawback scheme continue under GST regime? If yes, what will be the rates of Drawback?

Ans: Yes. Duty Drawback scheme with certain modifications will continue under the GST regime. The changes in the said scheme are as follows:

The Drawback shall be available only of Customs duties on imported inputs and Central Excise duty on items specified in the Fourth Schedule to the Central Excise Act 1944 (specified petroleum products, tobacco etc.) used as inputs or fuel for captive power generation.

As an export facilitation measure, for the transition period of 3 months, from July to September, 2017, Drawback at higher composite rates will continue to be granted subject to certain safeguards i.e. for claiming the higher rate of drawback, the exporter has to make a declaration and certificate is required that no Input Tax Credit (ITC) of CGST/IGST is claimed, no refund of IGST paid on export goods is claimed and no CENVAT credit is carried forward.

In absence of such certification, drawback will be restricted to the customs portion of drawback.

MSME

6Q. In case a person has registration in multiple States, can he opt for payment of tax under composition levy only in one State and not in other States?

Ans: No. An intimation that composition scheme has been availed in one State shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number in other States.

7Q. Can a person paying tax under composition scheme make exports or supply goods to SEZ?

Ans: No, because exports and supplies to SEZ from Domestic Tariff Area are treated as inter-State supply. A person paying tax under composition scheme cannot make inter-State outward supply of goods.

8Q. Is an agriculturist liable to registration?

Ans: No. An agriculturist, to the extent of supply of produce out of cultivation of land, is not liable to registration.

Food Processing

9Q. A registered person is sending semi-cooked food from his manufacturing unit at Gurgaon to his branch in Delhi. Is he required to pay any tax?

Answer: In accordance with the provisions of section 25(4) of the CGST Act, 2017, branches in different States are considered as distinct persons. Further, as per Schedule I, this constitutes supply made in the course or furtherance of business between distinct persons even if made without consideration. As it is an inter-State supply, the registered person is required to pay IGST.

10Q. A registered person is supplying manufactured food products to another person. Transportation charges are required to be paid by the supplier but are actually paid by the recipient. Whether this transportation charges would be added in the supply value?

Ans: If the supplier is liable to pay any amount in relation to a supply, such amount would be a part of transaction value, even if the same has been paid by the recipient. In this case, the transportation charges shall be added to the value of supply.

11Q. The supplier has sold machinery for hotel industry on 28-06-2017. The purchaser has received the invoice and machinery on 05-07-2017. Whether ITC of Duty / VAT paid (under the existing law) on machinery can be allowed to be claimed ?

Ans: No. Such credit is not admissible in case of machinery, being capital goods. As per Section 140(5) of the CGST Act, 2017, credit of eligible duties and taxes in respect of only inputs / input services in transit during transition from Pre-GST to Post-GST is allowable. This is subject to the condition that the tax on such supply is paid under the existing law and the recipient records this receipt in his books of accounts within thirty days of the appointed day.

E-Commerce

12Q. What is the concept of matching in e-commerce provisions and how it is going to work?

Answer: The details of supplies furnished by every operator in his statement for the month will be matched with the corresponding details of outward supplies furnished by the concerned supplier in his valid return for the same month or any preceding month. Where the details of outward supplies declared by the operator in his statement do not match with the corresponding details declared by the supplier, the discrepancy shall be communicated to both persons. (Refer to Section 52(8) and Section 52(9) of the CGST Act, 2017).

13Q. What will happen if the details remain mismatched?

Ans: The amount in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated shall be added to the output liability of the said supplier in his return for the month succeeding the month in which the discrepancy is communicated. The concerned supplier in whose output tax liability any amount has been added, shall be liable to pay the tax payable in respect of such supply along with interest on the amount so added from the date such tax was due till the date of its payment. (Refer to Section 52(10) and Section 52(11) of the CGST Act, 2017).

14Q. Do travel agents providing services through digital or electronic platform qualify as ECOs? Will they be required to collect tax at source as per the provisions of Section 52 of the GST Act?

Ans: Online travel agents providing services through digital or electronic platform will fall under the category of ECOs liable to deduct TCS under Section 52 of the CGST Act, 2017.

15Q. We purchase goods from different vendors and are selling them on our website under our own billing. Is TCS required to be collected on such supplies?

Ans: No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions – where you purchase the goods from the vendors, and where you sell it through your website. For the first transaction, GST is leviable, and will need to be paid to your vendor, on which credit is available for you. The second transaction is a supply on your own account, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

Drugs and Pharmaceuticals

16Q. Whether formulations cleared have to be assessed to GST under transfer price mechanism or on the basis of MRP printed on them?

Ans: The assessment of drugs and formulations under GST would be on the basis of transaction value at each level of supply with end to end ITC chain for neutralizing the GST paid at the procure-

17Q. What are the requirements for clearance of physician samples distributed free of cost?

Ans: In case of clearance of physician samples distributed free of cost, the ITC availed on the said samples has to be reversed in view of the provisions under Section 17(5)(h) of the CGST Act, 2017. No tax is payable on clearance of physician samples distributed free of cost as the value of supply is zero and no credit has been availed.

18Q. What is the procedure for movement of time expired medicines from the retail outlets to the manufacturer for destruction?

Answer: In such cases, the manufacturer may issue a credit note within the time specified in sub-section (2) of section 34 of the CGST Act, 2017 subject to the condition that the person returning the expired medicines reduces his ITC. Subsequently, when the time expired goods are destroyed, the manufacturer has to reverse his ITC on account of goods being destroyed. Where the goods are returned after the time limit specified in section 34(2) of the CGST Act, 2017, the registered person returning the goods shall issue a tax invoice, as it is a supply within the meaning of Section 7 of the CGST Act, 2017.

Mining

19Q. Whether GST is payable on royalty (to be paid to Government) for Mining Lease granted by State Govt.?

Ans: Yes, on royalty GST will apply under reverse charge mechanism. Further, such payment of GST under reverse charge mechanism would be eligible as ITC in the hands of the recipient of supply for payment of GST.

20Q. Will the mining companies be eligible to take ITC for construction of townships, hospitals and schools?

Ans: No. Mining companies will not be eligible for ITC on such activities even if used in course or furtherance of business. In this connection, the provisions contained in section 17(5) (c) of the CGST Act, 2017 refer.

21Q. Can supplies of coal under a particular order or under FSA (Fuel Supply Agreement) be eligible under the definition of 'continuous supply of goods'?

Ans: Such supplies are in the nature of continuous supply as the invoices are raised periodically. The individual dispatches may be covered under delivery challans and invoice may be issued for the supplies made during a period as per the contract.

22Q. Will ITC be available on steel, timber and sometimes cement which are used in the underground mines to provide a protective device for security purpose?

Ans: Credit will not be available if these goods are supplied for construction of an immovable property. But if these are temporarily placed for protective purposes, credit will be available.

23Q. Whether Railway siding in mining industry exclusively utilized for effecting dispatch of taxable goods viz. coal (i.e. directly used in the course or furtherance of business) will be treated as Plant and Machinery and ITC under GST will be allowed or treated as civil structure and ITC will be denied?

Ans: ITC will not be available as railway siding is not plant and machinery as defined in section 17 of the CGST Act, 2017.

Handicraft

24Q. Will drawback at higher rate be available to handicraft exporters who do not avail Input Tax Credit (ITC) like presently available to those who do not avail CENVAT credit?

Ans: No. There will be no difference in rate of Drawback for exporters not availing ITC in GST regime. In GST regime, drawback will be admissible only at lower rate determined on the basis of customs duties paid on imported materials used in the manufacture of export goods. However, as an export facilitation measure, for the transition period of 3 months from July to September, 2017, drawback at higher composite rates will continue to be granted subject to the condition that no input tax credit of CGST/IGST is claimed, no refund of IGST paid on export goods is claimed and no CENVAT credit is carried forward.

25Q. Would GST be payable on goods not intended to be sold, taken out for participation in overseas exhibitions and trade fairs and brought back into India as these goods are meant for exhibition only?

Ans: GST is not payable in such cases. Exporters will need exhibition participation letter and no foreign exchange involved letter from the concerned bank for the purpose of exchange control requirements. At the time of re-import, identity of goods imported with export goods needs to be established to seek exemption from import duty in accordance with Customs provisions. IGST will be exempted at the time of re-import in view of exemptions granted

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