Tax Talk
GST GST
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## Editorial...

Happy Diwali!! We wish for your eternal happiness, peace, prosperity, good fortune and best of the blessings from Lord Ganesha and Goddess Laxmi. Hope, the beautiful festival of light brightens our lives and spread happiness all around. The month of October was an eventful month of fun along with tedious task of statutory compliances.

The working of GST Council has ushered in a New Phase of Cooperative Federalism where the Central and the State Government work together to take collective decisions on all issues relating to Indirect Tax regime of the country. Till date, the Goods and Services Tax (GST) Council has met 30 times, taken 918 decisions related to GST laws, rules, rates, compensation and taxation threshold within a span of just two years. More than 96% of the decisions have already been implemented through 294 Notifications issued by the Central Government and the remaining is under various stages of implementation.

The GST Council in January 2017 decided that both the central and state tax administration would have the power to take intelligence-based enforcement action. Recently on 5th October 2018, The Central Board of Indirect Taxes and Customs, in a communication to field formations, had said that "intelligence-based enforcement action" against a taxpayer can be initiated by Central and State officials even if the assessee does not fall under the official's jurisdiction. Accordingly, both Central and State GST authorities can investigate assessees under each other's jurisdiction.

In the absence of Appellate Authority for Advance Rulings AAAR, it is not possible for aggrieved entities to contest the verdict passed by the Authority for Advance Rulings (AAR). The AARs in different states have so far passed more than 200 orders. The GST Council Secretariat has asked six states, including Delhi, Madhya Pradesh and Punjab, and the Union Territory of Puducherry, to expeditiously set up appellate authorities to enable aggrieved entities to file appeals against order of AAR.

The Finance Ministry extended the due date for filing GSTR-3B for the month of September, 2018 by five days to 25th October, 2018. The extension came on 21st October, 2018 i.e. after the due date. This extension of five days provided some sigh of relief to the taxpayers who were struggling to avail the input tax credit benefit for the July 2017 - March 2018 period by 20th October, 2018. Since there is no facility for amendment of the return, this extension did not really help those taxpayers who had already filed their returns by working overtime. A clarification has also been provided by CBIC for the taxpayers who have migrated from erstwhile tax regime to GST regime in the month of August, 2018 that such taxpayers can avail Input tax credit for the period from July, 2017 to March, 2018 till 31st December, 2018 or the date of filing of annual return whichever is earlier.

Taxpayers whose registration has been cancelled by the proper officer on or before September 30, 2018, shall be required to furnish the final return in Form GSTR-10 till December 31, 2018. Due date of GST ITC-04 for the period of July 2017 to September 2018 extended till 31st December 2018. Further, taxpayers who have opted to pay tax under the composition levy is not required to furnish the data in serial number 4A of Table 4 of FORM GSTR-4. The required changes in this respect would be notified.

The GST refunds have been granted to large number of exporters while few claims are still pending on account of deficiencies. The overall disposal of GST refunds is approx Rs. 71,000 crore till October month. The board has issued various circulars to clarify various issues and notifications to amend various provisions of the CGST Rules. The recent notifications and circulars have been compiled on Page – 2 to 4 of this issue.

We hope this newsletter will add some value and prove to be beneficial to the readers. We highly solicit suggestion/ opinions of the readers. Please feel free to convey your views at gst@goyalstax.com. You may refer all earlier issues of Tax Talk at www.gstpeople.com.

CA Sushil Kr Goyal

### DUE DATES

| Particulars | Return | Period | Due date |
|---|---|---|---|
| Regular Taxpayers | GSTR-3B | October, 2018 | 20th Nov, 2018 |
| Regular Taxpayers (annual turnover > Rs 1.5 crore ) | GSTR-1 | October, 2018 | 11th Nov, 2018 |

# GST UPDATES

## Cancellation of Registration

CBIC has clarified on various issues in relation to processing of the applications for cancellation of registration filed by taxpayers in Form GST REG-16 as detailed hereunder:

**Application for cancellation of registration:** A taxpayer can apply for cancellatin of registration on the common portal within a period of 30 days of the "occurrence of the event warranting the cancellation" in the following cases-

- Discontinuance of business or closure of business;
- Transfer of business on account of amalgamation, merger, de-merger, sale, lease or otherwise;
- Change in constitution of business leading to change in PAN;
- Taxable person (including those who have taken voluntary registration) is no longer liable to be registered under GST;
- Death of sole proprietor;
- Any other reason (to be specified in the application)

In order to reduce the difficulty in identifying the day on which above mentioned event occurs, it is being clarified that application filed by the taxpayer may not be rejected due to violation of the 30 day deadline and the 30 day deadline may be liberally interpreted. The taxpayers need to carefully fill in all the mandatory details while filing the application so that the cancellation application is successfully submitted.

**Acceptance of application:** It is further clarified that the proper officer should accept application of cancellation within a period of 30 days from the date of filing the application and issue order for cancellation in Form GST REG-19, except in the following circumstances::

- The application in Form GST REG-16 is incomplete;
- In case of transfer, merger or amalgamation of business, the new entity in which the applicant proposes to amalgamate or merge has not got registered with the tax authority before submission of the application for cancellation.

In respect of above circumstances, proper officer is required to inform the applicant in writing about the nature of the discrepancy and give a time period of seven working days to the taxpayer to reply and if reply on examination is found satisfactory, the proper officer may approve the application for cancellation and issue an order in Form GST REG-19. If reply received is not found to be satisfactory or if no reply is received , then proper officer may reject the application after giving the applicant an opportunity to be heard. Where the reply is received and found to be satisfactory, the proper officer shall approve the application and proceed to cancel the registration by issuing the order in Form GST REG-19 with the effective date of cancellation.

**Final Return:** Every registered person whose registration is cancelled needs to file a final return in GSTR-10 within three months of the effective date of cancellation or the date of order of cancellation, whichever is later. The purpose of the final return is to ensure that the taxpayer discharges any liability that taxpayer may have incurred. It is also clarified that the requirement of debit the electronic credit and/or cash ledger by amount in case of payment against input tax contained in stock of inputs, semi-finished goods, finished goods and capital goods immediately preceding the date of cancellation of registration should not be a pre-requisite for applying for cancellation of registration. This requirement can be fulfilled at the time of submission of final return in Form GSTR-10.

In case the final return in FORM GSTR-10 is not filed within the stipulated date, then notice in FORM GSTR-3A has to be issued to the taxpayer. If the taxpayer still fails to file the final return within 15 days of the receipt of notice in FORM GSTR-3A, then an assessment order( BEST JUDGMENT BASIS) in FORM GST ASMT-13 shall have to be issued to determine the liability of the taxpayer. If the taxpayer files the final return within 30 days of the date of service of the order in FORM GST ASMT-13, then the said order shall be deemed to have been withdrawn. However, the liability for payment of interest and late fee shall continue.

*(Circular No. 69/2018-GST)*

## GST on Charitable and Religious Trust

CBIC has clarified abount the taxability of the services of religious and charitable trusts by way of residential programmes or camps meant for advancement of religion, spirituality or yoga. The fee or consideration charged from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga by entity registered under Section 12AA of the Income Tax Act, 1961 shall be exempt. It is clarified that residential programme or camp where the fees charged includes cost of lodging and boarding meant for advancement of religion, spirituality or yoga shall also be exempt under GST as long as primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga. If charitable or religious trusts merely or primarily provide services of accommodation or serve food and drinks or holding of fitness camps or classes such as aerobic, dance, music against consideration in any form including donation, then such activities will be taxable. Therefore, the taxability of such services shall be decided accordingly.

*(Circular No. 66/2018-GST)*

## Refund of Compensation Cess

A clarification was issued stating that, the UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein, having being specified under section 55 of the CGST Act, 2017, are entitled to a refund of Compensation Cess payable on intra and inter-state supply of goods or services or both received by them subjects to certain conditions and restrictions.

*(Circular No. 68/2018-GST)*

# GST UPDATES

## Refund

**Status of refund claim after issuance of deficiency memo and re-credit of electronic credit ledger:**

CBIC had earlier clarified regarding cases where a deficiency memo is issued in relation to refund claim. Where a refund application is not re-submitted after issuance of a deficiency memo, show cause notice is not required to be issued by the officer and consequently, no order is required. Also, the amount of ITC debited is required to be re-credited to the electronic credit ledger of the applicant and the taxpayer is expected to file a fresh refund application. Presently, the common portal does not allow a taxpayer to file a fresh refund application. Hence, it is clarified that till the facility is developed on the pportal, the taxpayers would be required to submit the rectified refund application under the existing ARN. Once a deficiency memo has been issued against an application for refund, the ITC, which is debited at the time of application of refund relating to ITC, is not required to be re-credited to the electronic credit ledger by using FORM GST RFD-01B and the rectified refund application would be accepted by the jurisdictional tax authorities with the earlier ARN itself and government will issue suitable clarification for cases in which such re-credit has already been carried out.

**Allowing exporters who have received capital goods under EPCG to claim refund of IGST paid on exports:**

The Central Goods and Services Tax Rules, 2017 restricts exporters from availing the facility of claiming refund of IGST paid on exports in certain scenarios. It was intended that exporters availing benefit of certain notifications would not be eligible to avail the facility of such refund. However, representations have been received requesting that exporters who have received capital goods under the Export Promotion Capital Goods Scheme (hereinafter referred to as “EPCG Scheme”), should be allowed to avail the facility of claiming refund of the IGST paid on exports.

It is clarified that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs shall be eligible to claim refund of the IGST paid on exports till the date of the issuance of the notification No. 54/2018 – Central Tax.

After the issuance of notification No. 54/2018 – Central Tax, exporters who are importing goods in terms of notification Nos. 78/2017- Customs and 79/2017-Customs would not be eligible for refund of IGST paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs or through domestic procurement in terms of notification No. 48/2017-Central Tax, shall continue to be eligible to claim refund of IGST paid on exports.

*(Circular No. 70/2018-GST)*

## Return of Goods

CBIC has clarified regarding procedure in respect of time expired medicines or drugs under the GST laws. This clarification is also applicable for all the other goods returned on account of reasons other than the date of expiry. The below mentioned two procedures can be followed for return of time expired goods.

- **Return of time expired goods to be treated as fresh supply:**

A registered person may return the said goods by treating them is as a fresh supply and thereby issuing an invoice for the same. The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail ITC of the tax levied on the said return supply subject to the fulfilment of the conditions specified for availment of ITC.

In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply. In case the person returning the time expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.

Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he is required to reverse the ITC availed on the return supply. It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

- **Return of time expired goods by issuing Credit Note:**

A supplier can issue a credit note where the goods are returned back by the recipient. Thus, the manufacturer or the wholesaler who has supplied the goods to the wholesaler or retailer, as the case may be, has the option to issue a credit note in relation to the time expired goods returned by the wholesaler or retailer. There is no time limit for the issuance of credit note but if the credit note is issued within the time limit specified in GST law, the tax liability may be adjusted by the supplier, subject to the condition that the person returning the time expired goods has either not availed the ITC or if availed has reversed the ITC so availed against the goods being returned.

However, if the time limit has lapsed, a credit note may still be issued by supplier for such return of goods but the tax liability cannot be adjusted by him in his hands. In case time expired goods are returned beyond the time period as per GST law and a credit note is issued consequently, there is no requirement to declare such credit note on the common portal by the supplier (i.e. by the person who has issued the credit note) as tax liability cannot be adjusted in this case.

Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he is required to reverse the ITC attributable to the manufacture of such goods.

*(Circular No. 72/2018-GST)*

# GST UPDATES

## CASUAL TAXABLE PERSON

**Advance Tax by CTP:** Casual Taxable Person(CTP) while applying for registration are required to deposit amount as advance tax equivalent to estimated tax liability for the period for which the registration is sought. Doubt has been raised, because few officers demanded entire tax to be deposited without taking input tax credit. The CBIC has clarified that amount of advance tax payable by the casual taxable person should be calculated after considering the due eligible input tax credit available to such taxable person.

**Extention of further period to CTP:** Certificate of registration issued to casual Taxable Person(CTP) remains valid for a period of 90 days from the effective date of registration and CTP can apply for extention for a further period not exceeding 90 day before the expiry of validity of certificate of registration granted to him. The CBIC has clarified that where casual taxable person apply for extension of vailidity of certificate of registration beyond the period of 180 days, then such person can not be treated as casual taxable person and would need to obtain registration as a normal taxable person without making any payment of advance tax for the purpose of registration.

*(Circular No. 71/2018-GST)*

## INPUT SERVICE DISTRIBUTOR

CBIC has clarified regarding the manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in the Central Goods and Services Tax Act, 2017. Where the Input Service Distributor(ISD) while distributing credit, distributes the credit in contravention of the provisions which results in distribution of excess credit to one or more recipients of credit, the excess credit so distributed shall be recovered from the recipient along with interest and penalty.

In the above case, the recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using FORM GST DRC-03. Proceedings may be initiated against the said unit(s) under the provisions of CGST Act if the recipient unit(s) does not come forward voluntarily. FORM GST DRC-07 can be used by the tax authorities for making the necessary proceedings against the recipients. It is further clarified that the ISD would also be liable to a general penalty. The general penalty as per the provisions of the CGST Act is of ten thousand rupees or an amount equivalent to the tax distributed irregularly, which ever is higher.

*(Circular No. 71/2018-GST)*





**BOOK POST**


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