Tax Talk

GST GST

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Editorial...

Warm Greetings for a Happy Winter to all..!! The season of celebration is here once again and we all are gearing ourselves to welcome the New Year 2019 with positive energy as well as with the fresh mood. This winter we shall witness the cold yet steaming challenges to be faced in filing the first GST Annual Return and GST Audit compliance.

December 31 is the last date for filing Annual Returns and the taxpayers are preparing for filing GST Annual Return, but till now its utility has not come on the Common Portal. GSTN, however once enabled the Annual Return tab which gave hope to the taxpayers that the filing facility will be started soon. It will be a challenging time for both the taxpayers and professionals to comply with GST Audit and regular returns within such a short span of time. The provisions of Annual Return and GST Audit have been discussed on Page -3 & 4 of this issue.

There may be end of freebies provided by banks such as issuing cheque books, additional credit cards, ATM usage, refund of fuel surcharge, etc. over the past two months, the tax department has issued preliminary notices to banks seeking to levy goods and services tax on services such as issuing cheque books, additional credit cards, ATM usage and refund of fuel surcharge. The tax department claims that customers maintaining a minimum balance in their accounts get some free services that have a "deemed value" and are taxable. So, it may be possible that banks might start charging GST on free services.

It is high time that the GST Council should become proactive and examine the impact of various advance rulings and immediately clarify the position on them. In the case of solar panels, for instance, while the Maharashtra AAR says they must pay a GST of 18%, the Uttarakhand AAR has ruled that a 5% would be payable. The industry has knocked at the doors of the government seeking clarity on the matter. Due to the ambiguity, provisions were being interpreted differently by different industry. AAR ruling does not apply to other companies as it is applicable only to the assessee to whom it is given. Various AAR rulings have only added to the confusion, prompting to represent before the government asking it to clarify specifically on the issues.

In October, Andhra Pradesh and Tamil Nadu were at the forefront of the 'Titli' and 'Gaza' cyclone respectively. In light of the disturbances caused to the daily life of the people, the government has extended the due dates for filing various GST returns. Due date for filing of Form GSTR-7 has also been extended for the months of October, 2018 to December, 2018 till 31st January, 2019.

Goods and Services tax (GST) collections crossed the Rs 1 lakh Crore mark for the second time in the year 2018-19 which had previously touched in the month of April. GST Refund filing process has now become smooth, and exporters are filing GSTR 1 and GSTR 3B returns with requisite information required for claiming refunds, resulting in no letup in the sanction of GST refunds. Refund claims without any deficiency are being cleared. Total GST refunds to the tune of Rs. 82,775 Crore have been disposed out of the total refund claims of Rs. 88,175 Crore received so far, improving the disposal rate consistently. The board has issued various circulars to clarify various issues and notifications to amend various provisions of the CGST Rules. The recent notifications, circulars and updates have been compiled on Page – 2 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.

Sushil Goyal.

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DUE DATES

Particulars	Return	Period	Due date
Regular Taxpayers	GSTR-3B	November, 2018	20th Dec, 2018
Regular Taxpayers (annual turnover > Rs 1.5 crore)	GSTR-1	November, 2018	11th Dec, 2018
Input Service Distributors	GSTR-6	November, 2018	13th Dec, 2018
TCS Collector	GSTR-8	November, 2018	10th Dec, 2018

GST UPDATES

TDS under GST

The government has exempted Public Sector Undertaking (PSU) from the applicability of TDS provision on supply of goods or services or both to another PSU, whether or not a distinct person, with effect from 1st October 2018.

However, PSU will continue to be liable to deduct TDS from the payment made or credited to any person i.e. supplier other than PSU on supply of taxable goods or service or both where the total value of such supply under a contract exceed Rs. 2.5 lakhs.

(Notification No. 61/2018-CT dated 06.11.2018)

Collection of Tax at Source by Tea Board of India

Clarification was sought regarding the Collection of Tax at source by Tea Board from the sellers of tea board and from the auctioneers of tea or from both. CBIC has clarified that Tea Board of India falls under the category of electronic commerce operator as trading of tea across the country including collection and settlement of payments is done through electronic auction system by Tea Board. Thus, Tea Board is liable to collect tax at source (TCS) in accordance with the provisions of the Central Goods and Service Tax Act, 2017.

The participants in the said auction are the tea producers (Sellers) and auctioneers who carry out the auction on behalf of such sellers and buyers.

An escrow account is maintained by the Tea Board. The buyers in the said auction make payment towards the value of the tea, selling and buying brokerage charged by the auctioneers to the escrow account. Also, this amount includes the charges by the Tea Board from sellers, auctioneers and buyers. Thereafter, Out of escrow account, Tea Board makes the payment to the sellers (i.e. tea producers), for the supply of goods made by them (i.e. tea) and to the auctioneers for the supply of services made by them (i.e. brokerage).

It is hereby clarified that TCS shall be collected by Tea Board respectively from:

- the sellers on the net value of supply of tea and
- auctioneers on the net value of supply of services (i.e. brokerage).

(Circular No. 74/2018-GST)

Principal and Del-Credere Agent Relationship

In commercial trade parlance, a del-credere agent (hereinafter referred to as "DCA") is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier.

CBIC has clarified the scope and ambit of principal agent relationship under GST in the context of DCA, explaining clearly when del-credere agent (here-in-after referred to as 'DCA') would fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depending on the following possible scenario:

- In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent.
- In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.

It has also been clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act and had extended the temporary short-term transaction based loan to the buyer, interest charged by DCA will be regarded as independent supply and will not form part of the value of supply of goods supplied (to the buyer) by the supplier. Further, tax will also not be payable as services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempted.

In cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit provided by DCA to the buyer will no longer retains its character of an independent supply and will be subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient.

(Circular No. 73/2018-GST)

Annual Return and GST Audit

Ever since the implementation of GST from 1st July 2017 there were several rumours and anticipation for GST Annual return and reconciliation of GST Annual return with GST Audit. Government through Notification number 39/2018-CT dated 04.09.2018 and Notification number 49/2018 -CT dated 13.09.2018 have notified GSTR 9 & 9A (GST Annual Return for Regular & Composite dealer) and GSTR 9C (GST Audit Form), respectively.

Persons liable for filing Annual Return and for Audit:

Every registered taxpayer has to file annual return electronically in Form GSTR-9 once a year on or before 31st December following the end of the financial year.

Every registered person whose turnover during the financial year exceeds Rs. 2 crores are liable to get their accounts audited by a Chartered Accountant or a Cost Accountant and will have to submit annual audited accounts, a reconciliation statement along with auditor's certificate in Form GSTR-9C.

Persons who are not required to file GSTR 9:

All the registered taxable persons under GST must file GSTR 9 form. However, the following persons are not required to file GSTR 9:

i) Input Service Distributor

ii) Person paying tax under section 51 i.e. TDS deductor

iii) Non-resident taxable person

iv) Casual Taxable Person

Different forms of Annual Return and its applicability:

There are 3 different forms for annual returns applicable to different categories of taxpayers:

i) **GSTR-9:** This form is applicable for normal taxpayers who have been filing their monthly return in GSTR-3B.

ii) **GSTR-9A:** This annual return form is applicable for taxpayers registered under composition scheme anytime during the financial year for which the return is to be filed.

iii) **GSTR-9B:** This return is applicable for taxpayers who are required to collect and pay tax under Section 52 of the Central Goods and Services Tax Act,2017 i.e. TCS Collector. Such taxpayers will not be required to file the annual return for the FY 2017-18 as the provisions of section 52 were made applicable only from 1st October, 2018.

Relevant Period:

The relevant period for filing the annual return will be July, 2017 to March, 2018 i.e. transactions pertaining to that period will only be shown in the annual return. The details of transactions from April-June, 2017 will not form part of the annual return.

However, for determining the turnover for applicability of GST audit, turnover of the entire financial year i.e. April, 2017 to March, 2018 will be considered. The turnover will not only be considered for a particular state/union territory but will be Pan India basis. Thus, if a taxable entity having multiple GSTIN has aggregate turnover exceeding Rs.2 crore as per its Annual Financial Statement, separate Reconciliation Statement and Audit Report is required from each branch/division/factory even if aggregate turnover of such branch/division/factory is less than Rs. 2 crores per annum.

Separate Annual Return for each GSTIN:

Every registered person is required to file annual return. This implies that where a person has more than one registration in a single state or more than one state against a single PAN, GSTR-9 and GSTR 9C shall be required to be filed for each registration separately since they will be treated as distinct persons. Hence, GSTR-9 is not filed at entity level but GSTIN wise.

NIL Annual Return required even if no turnover in July 2017 to March 2018:

Persons have to file Nil Annual return if they are not paying GST, as long they are registered under GST.

Audit is required even in cases where registered person is exclusively engaged in providing exempted goods or service, if turnover exceeds Rs. 2 crores:

Every registered person is required to get his account audited if the aggregate turnover exceeds Rs. 2 crore. Aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Therefore, even the person who are providing only exempted supplies will be liable for audit if registered and aggregate turnover exceeds Rs. 2 crore.

Annual Return is not to be used to disclose Turnover or claim Input Tax Credit:

The Annual Return is only a summary of Turnover, Input Tax Credit (ITC) availed, Tax Payable and Tax Paid. Annual Return cannot be used to disclose turnover or claim ITC for 2017-18. Such disclosure is required to be made in GSTR-3B and GSTR-1 returns filed during April 2018 to September, 2018 for the period July 2017 to March 2018.

Rectification of mistake in returns filed during July 2017 to March 2018 can be made in subsequent returns and not through annual return:

If any taxable person after furnishing a return discovers any omission or incorrect particulars therein, he can rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed. Interest is payable where applicable.

Annual Return and GST Audit

Such rectification cannot be done if mistake or short payment was found during scrutiny, audit, inspection or enforcement activity by the tax authorities. Such rectification is not allowed after the due date for filing of return for the month of September or second quarter, as the case may be, following the end of the financial year to which such details pertain, or the actual date of filing of relevant annual return, whichever is earlier. Thus, rectification can be done only through subsequent GSTR-1 and GSTR-3B returns and not through Annual Return.

Annual Return is broadly summary of GSTR 3B, GSTR-4 AND GSTR 1 filed:

Many of the columns in GSTR-9 and GSTR-9A are parallel to GSTR-3B, GSTR-1 and GSTR-4 returns filed during the period July 2017 to March 2018. The Annual Return is summary of these monthly/quarterly returns. In addition, amendments made during the period April 2018 to September 2018 in respect of prior period of July 2017 to March 2018 are required to be incorporated.

No provision in GSTR-9 or GSTR-9A to add comments or clarification:

There is no provision in GSTR-9 or GSTR-9A Annual Return forms to add any comment, explanation, declaration or clarification. Thus, if taxable person intends to add any comment, explanation, declaration or clarification, the only alternative is to write separate letter to jurisdictional tax authorities.

However, Auditor in his Audit report and reconciliation statement can state his comments and reservations.

GSTR 9 and GSTR 9A both to be filed where taxpayer during the period July, 2017 to March, 2018 had opted out of composition scheme:

If taxpayer was earlier registered as composition taxpayer but later he switched over from composition scheme and his status as on 31st March 2018 is a regular taxpayer, he shall be required to file GSTR-9A for the period he was registered as composition taxpayer and for the remaining financial year, he shall be required to file GSTR-9.

Registration cancelled before 31st March, 2018 or Application of registration pending before 31st March, 2018:

Every registered person shall be required to file GSTR-9. Hence, even if the status of taxpayer is not registered as on 31st March 2018 but he was registered between July-17 to March-18, he shall be required to file GSTR-9 providing details for the period during which he was registered.

Similarly, if a taxpayer had applied for cancellation of registration but the application was pending as on 31st March 2018, he shall be required to file GSTR.

Late Fees for delay in filing return:

The due date of filing annual return is 31st December following the financial year for which return is to be filed. Where any taxpayer has not filed the return within due date, late fees of Rs. 200 per day subject to a maximum of 0.5% of turnover has to be paid by the taxpayer.

Whether Annual Return can be revised: At present, there is no specific provision in GST law to revise the annual return.

BOOK POST

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