Tax Talk 84

A Monthly Goods & Services Tax Bulletin

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Editorial...

We wish all our readers a safe and prosperous Holi. May this festival spread peace, prosperity, happiness and good health in your life. With this issue, our monthly tax bulletin has completed seventh year of its publication. We admit the fact that this accomplishment couldn't have been possible without the support of our wonderful readers and associates connected with our publication. Again, we realize the sense of responsibility and commitment to provide you with the latest updates in the GST arena and bring some value addition with every issue. The month of March, which is known for pinching the nerves of taxpayers, is here again. It is time to gear up for closing the books of account while following all the compliances.

The 33rd GST Council meeting was to be held on 20th February 2019, but was adjourned without taking any decisions. The GST Council only extended the GSTR-3B due date for the month of January, 2019. The agenda of the 33rd GST Council meeting covered 'Under-Construction Housing' sector and 'Private Lottery Distribution'. The GST Council on 24th February, 2019 announced a rate cut for the under-construction properties covering the residential segment. GST rate for non-affordable housing reduced to 5% and for affordable housing slashed to 1% without the benefit of the Input tax credit (ITC). Affordable Housing has been redefined under the GST law.

Government also planned to exempt intermediate tax on Transfer Development Rights (TDR) / Joint Development Agreement (JDA), long term lease (premium), Floor Space Index (FSI) for such residential properties on which GST is payable. These recommendations would be given effect through Gazette notifications/ circulars which shall have force of law. No decisions were taken for rate cuts on Cement and also for lottery distribution.

The Central Board of Indirect Taxes and Customs (CBIC) has constituted three Working Groups to study and recommend measures to facilitate trade, promote exports and improve compliance. The Groups will consult stakeholders, including export promotion councils and submit their report within a period of two months. The recommendations would further enhance the ease of doing business and export competitiveness.

Despite various tax relief measures implemented by the GST Council to lower the tax burden on the consumers, there is a splendid hike in the collections. The total gross GST revenue collected in the month of January, 2019 is Rs 1,02,503 crore which is a significant increase from the collection in December. It is for the third time that GST Revenue collection has crossed One Lakh Crore. Keeping in view the implementation of the amendments made in the GST has taken place from 1st Feb 2019, we have covered all the points in a simplified manner in Page 2 - 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	Month	Due date
Regular Taxpayers (annual turnover > Rs 1.5 crore)	GSTR-1	February, 2019	11th March, 2019
Input Service Distributors	GSTR-6	February, 2019	13th March, 2019
Regular Taxpayers	GSTR-3B	February, 2019	20th March, 2019

GST AMENDMENTS

The CGST Amendment Act, 2018, IGST Amendment Act, 2018, UTGST Amendment Act, 2018 and GST (Compensation to States) Amendment Act, 2018 became applicable w.e.f. 1st Feb, 2019. This is the first time after enforcement of the Goods and Services Tax that major amendments are taking place through the amendment acts. An insight to the important changes made in the act and rules are as follows:

Scope of supply

The amendment in Section 7 of CGST Act has been made retrospectively from 01.07.2017. Earlier, since Schedule II was a part of definition of supply, the activities of Schedule II were deemed to be supply even if it was not a supply as per the other clauses of the scope of supply. Now, Schedule II has been excluded from the definition of supply. This means that Schedule II will be used to determine the transaction as supply of goods or supply of services only when the same constitutes to be supply as per the definition of supply. In other words, where a transaction is not a supply, merely finding it in Schedule II does not attract tax incidence. Similarly, a transaction missing from Schedule II does not mean that it will not be taxable.

Reverse Charge

As per earlier provision contained in the act, reverse charge was payable by the registered person on procurement of goods or services from unregistered person. However, the same was suspended vide notification up to 30th Sep, 2019. Now, the section has been amended to state that the government on recommendation of the council may specify the category of goods or services and class of registered persons who will be required to make payment under reverse charge for procurement from unregistered persons. Identical amendment has also been made under IGST Act in section 5(4).

Composition Scheme

The following amendments has been carried out for the composition taxpayers:

a) The amendment empowers the government to increase the threshold limit to 1.5 crore.

b) Prior to amendment, traders and manufacturers engaged in supply of services were not eligible for composition scheme even if a small proportion of their supplies related to services. Now, section 10 has been amended to provide that the composition taxpayers will be allowed to supply services (other than restaurant services), for up to a value that will be higher of 10% of turnover in a state in previous financial year or Rs. 5 lakhs.

Apportionment of Credit

The value of exempt supply for the purpose of reversal of common credit has been amended by excluding the supplies covered under schedule III except sale of land or building. Therefore, no reversal of ITC shall be required on activities or transactions specified in Schedule III (other than sale of land or building).

Input Tax Credit

One of the conditions for availing input tax credit under this law is that the goods or services must have been received. In the business world, there are transactions where the recipient and consignee of the goods or recipient and beneficiary of services are not same. In case of goods, where bill to ship to model is used, it is deemed that goods are received when the supplier delivers the goods to any other person on direction of the recipient. The same assumption will now be applicable to services as well.

Blocked Credit

The amendment in Section 17(5) are as follows:

a) The input tax credit will be blocked only in case of motor vehicles with seating capacity (including driver) of less than 13 passengers, vessels and aircrafts. However, input for such vehicles will be available if it is used for the following taxable supplies-
   i) Further supply of motor vehicles, vessels, aircrafts
   ii) Transportation of passengers
   iii) Imparting training on driving such vehicles, navigating the vessels, flying the aircraft.

b) Input tax credit will be available on all other types of motor vehicles.

c) ITC in respect of general insurance, servicing, repairs & maintenance will be blocked for motor vehicles, vessels, aircrafts when input for respective vehicle is ineligible.
   However, ITC will be available if such services are received by a taxable person engaged in:
   i) Manufacture of such motor vehicle, vessel or aircraft
   ii) Supply of general insurance service in respect of such motor vehicle, vessel, aircraft

d) ITC on food and beverage, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircrafts will be allowed only when-
   i) Used for making outward taxable supply of same category
   ii) It is obligatory for an employer to provide the same to its employee under any law for the time being in force.
   Further ITC on renting or hiring of motor vehicles, vessels or aircraft is allowed when they are used for purposes specified in point (a) above.

Recovery of tax

The amendment provides that recovery of tax can now be made from distinct person in different states/ Union Territories in respect of default by any person with the same PAN.

GST AMENDMENTS

Registration

The following amendments have been incorporated through the amendment act:

a) A proviso has been inserted in Section 22(1) which gives power to the government to increase the threshold limit from Rs. 10 lakhs to Rs. 20 lakhs for the special category states. The limit has not been increased yet.

b) Amendment has been made in Section 24 to provide that only the e-commerce operators who are liable to collect TCS will be required to be registered under this act compulsorily.

c) A proviso has been inserted in Section 25(1) which states that SEZ must obtain separate registration apart from the non-SEZ operations within a state. The said provision was already mentioned in the rules earlier and it has been inserted in the section now.

d) The proviso contained in Section 25(2) has been amended to provide that a taxpayer may opt for separate registrations for multiple places of business within a state. Prior to the amendment, separate registration within a state was allowed only for different business verticals.

e) Where a registered person has obtained separate registration for multiple places of business and intends to transfer the unutilised input tax credit to new registrations, FORM GST ITC-02A has to be filed within 30 days from the date of obtaining of new registration. The input tax credit shall be transferred in the ratio of the assets held at the time of registration.

f) The proviso inserted in Section 29 provides that during the procedural formalities of cancellation of registration which requires some time, the registration of such taxpayer will be suspended. This means that the taxpayer will not be required to file any returns and make taxable supplies till the suspension is effective.

Debit and Credit Notes

The suppliers are not required to link debit or credit notes to individual invoices and may now issue a consolidated debit or credit note for against invoices issued in a financial year. Prior to this amendment, one debit or credit note was required to be issued against one invoice. However, suitable amendment will be required in the return formats for making this amendment practically effective.

Accounts and Records

Every registered person whose turnover during a financial year exceeds Rs. 2 crores is required to get the books of account audited by a Chartered Accountant or a Cost Accountant. Amendment has been made and it provides that any department of the Central or State Government/ local authority which is subject to audit by CAG need not get their books of account audited by any Chartered Accountant or a Cost Accountant.

Set-off

The rules for set-off of tax have been changed. The changes have been produced hereunder:

a) It is now provided that the credit of State Tax can only be utilised for payment of Integrated Tax when no balance of Central Tax is there to make the payment of Integrated Tax. In other words, SGST can be utilised for payment of IGST when the balances of IGST and CGST are fully exhausted.

b) The new utilisation process will require the balance of IGST to be first utilised against payment of any output tax liability of IGST, CGST, SGST. The balances of CGST and SGST can be used only when the balance of IGST is exhausted. This will minimise fund settlement on account of IGST.

Refund

The following changes have been made in respect of refund provisions:

a) The relevant date for filing refund on account of inverted duty structure will be the due date of filing the monthly return. Earlier, the relevant date was end of the financial year in which the refund claim arose. This amendment will permit monthly filing of refunds rather than yearly filing.

b) Section 54(8) has been amended to provide that the principle of unjust enrichment will apply in case of refund claim arising out of supplies of goods or services made to SEZ Developer/ Unit. Currently, only the supplier making supplies of goods or services to SEZ Developer/ Unit can claim refund. It is now proposed to allow ITC to the SEZ Developer/ Unit and the supplier in DTA may recover the tax amount from such SEZ unit.

Detention, Seizure and Release of goods and conveyances in transit

The time limit for payment of tax and penalty in case of detention of goods in transit has now been extended from seven days to fourteen days. Therefore, no proceedings shall be initiated in case of non-payment before 14 days of detention or seizure.

Job Work Procedure

The earlier provision of bringing back the input or capital goods within a period of 1 year and 3 years respectively may now be extended on approval of the commissioner for a further period of not exceeding 1 year and 2 years respectively.

Ceiling limit for filing appeal

Amendment has been made which prescribes for maximum ceiling limit of INR 50 crores/ 100 crores as pre-deposit for filing appeal to Appellate Authority and Appellate Tribunal respectively.

GST AMENDMENTS

Export of Services

The definition of export of services has been amended which allows receipt of payment in Indian rupees also in case of export of services wherever permitted by the RBI. As per the earlier provision in case of export of services, receipt has to be received in foreign convertible exchange only to qualify.

Place of Supply of Transportation of goods

In order to promote export of goods, new proviso has been inserted which states that the place of supply in case of transportation of goods to a place outside India shall be the place of destination of such goods i.e. place outside India. No such proviso was there earlier and with this amendment growth of domestic transport companies will be seen.

Place of Supply of performance based services

As per the earlier provision, tax exemption was available in case of job work services supplied in respect of goods which are temporarily imported into India only for the purpose of repairs and the said goods are exported back after such repairs, without being put to any use in India.

However, amendment has been made that no GST will be applicable on any treatment or process done on the goods temporarily imported into India which are then exported without any use.

Apportionment of tax and settlement of funds

The amendment provides that the IGST credit which does not get apportioned shall be apportioned to the Central Government and State Government on an ad hoc basis @ 50% each on the recommendations of the council and shall be adjusted against the amounts apportioned.

SCHEDULE III

The scope of Schedule III has been expanded and includes the following transactions which will neither be treated as supply of goods nor as supply of services:

a. Supply of goods from a place in non-taxable territory to another without entering into India.

b. Supply of warehoused goods before clearance for home consumption.

c. Supply of goods after dispatch from port of origin but before clearance for home consumption.

Earlier, these transactions were not leviable to tax under the IGST Act and were considered as Non- GST supply but now they will not be treated as supply altogether. These resulted in reversal of input tax credit as the outward supply was considered as exempt supply. But now, there shall be no reversal of common credit on account of these supplies.

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