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TAX TALK

GST

A Monthly Goods & Services Tax Bulletin

Vol : 7 | Issue No. 08 | November 2019 | Rs. 5/-

Editorial...

Happy Diwali!!!May this Diwali light up your new dreams, new hopes, new avenues, and new perspectives. May it shower everything good in your life and fill each day with pleasant moments.

India has jumped 14 places to rank 63rd in the World Bank's ease of doing business ranking index and the country aims to be within 50 in the next few years.Finance Minister Nirmala Sitharaman on 24th October, 2019 said "*efforts will be made to further simplify Goods and Services Tax, and expressed hope that it will help in further improving India's ranking in the World Bank's ease of doing business index*".

The revenue during September, 2019 has declined by 2.67% in comparison to the revenue during September, 2018. Government is set to crack down on GST defaulters.High level committee has been set up for suggesting measures to boost GST collections, to make businesses comply with GST voluntarily, ways for better administrative coordination. Further, committee will look into issues such as systematic changes in GST to prevent misuse, measures for expansion of tax base, improved compliance monitoring and anti-evasion measures using better data analytics and better administrative coordination.

One of the important amendments made in the CGST Rules is that GSTR 3B is now a return from a retrospective date of 1st July 2019. Until 9th October, 2019, there was dilemma prevailing over the industry qua the last date for availment of input tax credit for the financial year as GSTR 3B was not introduced as a return in lieu of return required to be filed in Form GSTR-3. The taxpayers were choosing to interpret the GST laws liberally and were of the view that last date for the input tax credit is due date of annual return. Many taxpayers across India have contended this matter before the State High Courts. The HC has directed to stay the demand orders reversing such Input Tax Credit claims. But henceforth, all such pronouncements favouring taxpayers on this matter could be void.

Another important amendment is a taxpayer filing GSTR-3B,can claim provisional input tax credit, in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in the GSTR 1, hence not reflecting in GSTR 2A,shall not exceed 20% of the eligible credit available. The effective date of implementation is 9th October 2019. The above amendment may bring an incumbent task of regularly matching of ITC details by the taxpayers with those appearing in his GSTR-2A. Further, any gaps may have to be resolved with constant follow-ups with the suppliers.

Due dates for filing of GSTR 3B/ GSTR 1 for the period October, 2019 to March, 2020 has been notified as the new return system has been deferred till April, 2020. Late fees for taxpayers in the State of Jammu & Kashmir have been waived if the return GSTR 1/7/3B for the month of July, 2019 and August, 2019 has been filed on or before 11th October, 2019. Numbers of clarification has been issued by CBIC on various representation received which have been discussed at Page 2 & 3 of this issue.CBIC has also notified that filing of annual return GSTR 9 for F.Y. 2017-18 and 2018-19 is optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date.

The GST Council has approved introduction of 'E-invoicing' or 'electronic invoicing' in a phased manner for reporting of business to business (B2B) invoices to GST System, starting from 1st January 2020 on voluntary basis. A facility is given to taxpayers to make payment on voluntary basis, through Form GST DRC-03. Same has been discussed at Page 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 on my facebook wall.

CA Sushil Kr Goyal

DUE DATES			
Category of Taxpayer	**Return**	**Period**	**Due date**
Regular Taxpayer (AggregateTurnover > 1.5 cr)	GSTR-1	October, 2019	11th November, 2019
Monthly GST Return	GSTR-3B	October, 2019	20th November, 2019
Monthly ISD Return	GSTR-6	October, 2019	13th November, 2019
Annual Return	GSTR-9	2017-18	30th November, 2019
Reconciliation Statement	GSTR 9C	2017-18	30th November, 2019

GST UPDATE

GST RATES AND CLASSIFICATION

CBIC has issued a clarification on GST rates and classification are discussed below:

1. **Classification of leguminous vegetables when subject to mild heat treatment (parching):** It is clarified that leguminous vegetables which are subjected to mere heat treatment for removing moisture, or for softening and puffing or removing the skin, and not subjecting to any other processing or addition of any other ingredients such as salt and oil, would be classified under HS code 0713 (same HS code as dried leguminous vegetable). Such goods if branded and packed in a unit container would attract GST at the rate of 5%. In all other cases, such goods would be exempted from GST.

   However, if the above dried leguminous vegetable is mixed with other ingredients (such as oil, salt etc) or sold as namkeens then the same would be classified under Sub heading 2106 90 as namkeens, bhujia, chabena and similar edible preparations and attract applicable GST rate.

2. **Classification and applicable GST rate on Almond Milk:** It is clarified that almond milk neither constitutes any fruit pulp or fruit juice as Almond Milk is made by pulverizing almonds in a blender with water and is then strained,as such. Therefore, Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST rate of 18%.

3. **Applicable GST rate on Mechanical Sprayer:** It is clarified that the sl. no. 195B of the Schedule II to notification No. 1/2017- Central Tax (Rate), dated 28.06.2017 covers "mechanical sprayers" of all types whether or not hand operated (like hand operated sprayer, power operated sprayers, battery operated sprayers, foot sprayer, rocker etc.) and accordingly, GST at the rate 12% will be leviable.

4. **Clarification regarding taxability of imported stores by the Indian Navy:** Indian Naval ship stores are exempted from import duty. Further, goods "taken on board a ship of the Indian Navy" shall be construed as exported to any place outside India. It is also provided that imported stores for the use of a ship of the Indian Navy and stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service will be exempted from duty. Accordingly, it is clarified that imported stores for use in navy ships are entitled to exemption from GST.

5. **Clarification regarding taxability of goods imported under lease:** It is clarified that the expression "taken on lease/imported under lease" (in S. No. 557A and 557B respectively of Notification No. 50/2017-Customs dated 30.06.2017) covers imports under an arrangement so as to supply services covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 to avoid double taxation subject to the conditions. The above clarification holds for such transactions in the past.

6. **Applicability of GST rate on parts for the manufacture solar water heater and system:** It is clarified that parts including Solar Evacuated Tube falling under chapter 84, 85 and 94 for the manufacture of solar water heater and system will attract 5% GST.

7. **Applicability of GST on the parts and accessories suitable for use solely or principally with a medical device:** It has been clarified that parts and accessories of the instruments used mainly and principally for the medical instrument shall be classified with the machine only. Accordingly, 12% GST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022 in terms of chapter note 2 (b).

Circular No. 113/32/2019-GST dated 11th October, 2019

SUPPORT SERVICES TO EXPLORATION, MINING OR DRILLING OF PETROLEUM CRUDE OR NATURAL GAS OR BOTH

Activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986. A few services particularly technical and consulting services relating to exploration also fall under heading 9983. Following entry has been inserted under heading 9983 with effect from 1st October 2019 "(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both". A clarification has been seek on the scope of the entry "services of exploration, mining or drilling of petroleum crude or natural gas or both" at Sr. No. 24 (ii) of heading 9986 in Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017.

- It has been clarified that the scope of the entry at Sr. 24 (ii) under heading 9986 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 shall be governed by the explanatory notes to service codes 998621 and 998622 of the Scheme of Classification of Services.
- It is further clarified that the scope of the entry at Sr. No. 21 (ia) under heading 9983 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 inserted with effect from 1st October 2019 shall be governed by the explanatory notes to service codes 998341 and 998343 of the Scheme of Classification of Services.
- The services which do not fall under the said entries under heading 9983 and 9986 of the said notification shall be classified in their respective headings and taxed accordingly.

Circular No. 114/33/2019-GST

GST UPDATE

AIRPORT LEVIES

Airport operators such as AAI, DIAL, MIAL levies Passenger Service Fees (PSF) and User Development Fees which are collected by the airlines from the passengers at the time of issue of air tickets and same is remitted to airport operators in the line system/procedures in vogue. Issue has been raised whether such airport levies will be liable to GST. It has been clarified that such charges are collected for providing service to the passengers by the airport operators. Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST.

It is further clarified that airline is not responsible for payment of GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent. The airlines should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers.The registered passengers, who are the ultimate recipient of the airport services, may take Input Tax Credit of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

It is also clarified that collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator and airlines shall be liable to pay GST on the same under forward charge. Input Tax Credit of the same will be available with the airport operator

Circular No. 115/34/2019-GST

CHARITABLE ORGANISATIONS

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. Clarification is seek that whether displaying the name of donor in recipient institution will be leviable to GST.

It has been clarified that when the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy i.e. it leads to no commercial gain and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

Circular No. 116/35/2019-GST

DG SHIPPING APPROVED MARITIME COURSES CONDUCTED BY MARITIME TRAINING INSTITUTES OF INDIA

Services provided by educational institutions to its students, faculty and staff are exempt from levy of GST. "Educational institution" has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force. Clarification is seek whether Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India will be covered under the said exemption.

It has been clarified that Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.

Circular No. 117/36/2019-GST

SOFTWARE/DESIGN SERVICES RELATED TO ELECTRONICS SEMI-CONDUCTOR AND DESIGN MANUFACTURING (ESDM) INDUSTRY

Number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs. In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free. Clarification is seek whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of "goods required to be made physically available by the recipient to the provider"

It is clarified that it will be consider as composite supply as the service provider is not involved in software testing alone as a separate service. Accordingly, the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient.

Circular No. 118/37/2019-GST

VOLUNTARY PAYMENT (FORM GST DRC-03)

Features of making payment on voluntary basis are discussed below:

1. **Making Voluntary Payment on GST Portal:** A facility is given to taxpayers to make payment on voluntary basis, through Form GST DRC-03. Login into GST Portal and navigate to Services > User Services > My Applications and Select the Intimation of Voluntary Payment - DRC – 03, from the Application Type drop-down list.
2. **When to make Payment Voluntary Payment:** Payment can be voluntarily made by taxpayer for a self-ascertained liability or in response to the show cause notice (SCN) raised by the tax authorities within 30 days of issuance of SCN or even before issuance of the SCN.
3. **Partial Payment not allowed:** GST Portal does not allow for making partial payments of the amount stated in the SCN.
4. **Cause of Payment:** Payments through Form GST DRC-03 can be made for any causes like Audit, Investigation, Voluntary Payment, SCN, Annual Return, Reconciliation Statement or Others.
5. **Saving Draft DRC 03 Application:** Draft of Application for intimation of voluntary payment can be saved for a maximum period of 15 days. If the same is not filed within 15 days, the saved draft will be purged. To view the saved application, navigate to Services > User Services > My Saved Applications option.
6. **Using Payment Reference Number:** If payment has been made and payment reference number (PRN) has been generated, but application in Form GST DRC-03 has not been filed, then in such cases, application available in 'My Saved Applications' need to be selected and using PRN already generated, it may be filed. However, if a period of fifteen days has elapsed, then, details in Form need to be filled up again. PRN generated already can be used for filing the application.
7. **Filing Form GST DRC 03:** Taxpayers are required to file Form GST DRC-03 using DSC or EVC, as the case may be, after making payment. The status will change to "Pending for approval by Tax officer". However, it may be noted that, no approval of tax officer is needed on earlier application, while making another voluntary payment using FORM GST DRC 03.
8. **Acknowledgment by Tax Official:** Upon filing of Form GST DRC-03, the tax officer will issue an Acknowledgement in Form GST DRC-04 (Acknowledgement of Acceptance of voluntary payment). There is no bar on making another payment on voluntary basis by a taxpayer, pending issuance of acknowledgement by the tax officer.

BOOK POST

Published from :

Tax Talk

Stephen House
Room No. 64, 4th Floor, 4, B.B.D. Bag (East) Kolkata - 700 001

Owner: M/s. Goyal Tax Services Pvt. Ltd., Printer & Publisher: Mrs. Reena Goyal Published from Stephen House, Room No. 64, 4 B. B. D. Bag (East), 4th Floor, Kolkata-700 001 and Printed from M/s. CDC Printers Pvt. Ltd., Tangra Industrial Estate-II (Bengal Pottery), 45, Radhanath Chowdhury Road, Kolkata - 700 015. Editor: **CA Sushil Kumar Goyal.**

Registration under RNI No. WBENG/2013/55099 Postal Registration No. KOL RMS/465/2018-2020 Date of Publication : 1st November 2019