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TAX TALK
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Editorial...

A very Happy and Prosperous New Financial Year 2020-21. We are happy to inform you that with this 97th issue of Tax Talk, we have entered the 9th year of publication. When it was started 8 year back on 1st April 2012 it was a small beginning, today we have more than 30,000 readers. Our heartfelt thanks to all for unstinted support and good wishes.

Wish we will be able to overcome this COVID-19 soon. The Prime Minister's Office, Group of Ministers, Ministry of Health & Family Welfare and Cabinet Secretary are closely monitoring the situation. The States government are also playing the vital role in this because law and order is in their hand. They have taken urgent steps to strengthen surveillance, contact tracing and isolation, laboratory capacity, quarantine facilities, and ensure availability of adequate personal protective equipment, trained manpower and rapid response teams. We urge our readers to ***Stay Home, Stay Safe!***

39th GST Council Meeting was held on Saturday, 14th March 2020. The Council took number of taxpayer-friendly decisions. Among others the highly awaited decision of the council regarding Interest will be payable on net liability with retrospective effect, putting an end to the singeing issue of interest liability on gross vs net basis. This will close-down number of cases which started in the recent past. The Council also took an array of others decisions, including an increase in the tax rate on mobile phones and specified parts to 18% from 12%. GST on handmade, machine-made matchsticks has been rationalised to 12% while GST on Maintenance Repair Overhaul Services of aircraft has been slashed to 5% from 18%.

Implementation of the new GST returns, e-Invoicing and QR Code have been deferred for another 6 months. Present return system (GSTR-1 & GSTR-3B) will be continued until September 2020 is a welcome step. At the same time extension of due dates and raising of the threshold for GSTR-9C got mixed reactions. Council has also approved amendments in the GST laws and one of them is relating to Sec 16(2) where curbs are going to be imposed on ITC availment if the supplier fails to file GSTR-1.

Though the Press Releases issued after the Council's meeting have not specified the details of the these amendments as they are likely to presented in the Parliament in the form of a Bill but it is expected that some of the amendments are likely to be relating to some of the observations made in the recent High Court orders.

On Tuesday, 24th March, 2020 several important relief measures taken by the Government of India in view of COVID-19 outbreak, especially on statutory and regulatory compliance matters related to several sectors. Goods and Services Tax related measures are discussed in this issue detail notification/exact date for filling in this respect are still awaited.

After introduction of Insolvency & Bankruptcy Code 2016, number of corporate covered by this code and management of these organisation has gone in the hands of IRP/RP and they were facing difficulties in compiling the GST provisions for the Corporate Debtors. A special procedure has been prescribed for registered persons who are corporate debtors and are undergoing the corporate insolvency resolution process, so as to enable them to comply with the provisions of GST Laws during the CIRP period, which has been discussed on page 4.

A transition plan is also been laid down for the taxpayers belonging to Dadra and Nagar Haveli & Daman and Diu, due to the merger in January 2020. Due date for filing of GSTR 1, GSTR 3B and GSTR 7 for those taxpayers whose principal place of business is in the erstwhile State of Jammu and Kashmir or the Union territory of Jammu and Kashmir or the Union territory of Ladakh for various tax period has been extended.

Lottery will attract GST @ 28% uniformly from 1st March, 2020. All the foreign airlines working in the country has been exempted from filing the Reconciliation Statement & Certification in form GSTR 9C to Central Goods and Services Tax Rules, 2017. Notifications issuing in these regards are discussed at Page 2 & 3.

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.

CA Sushil Kr Goyal

Due Date : All due dates have been extended for April 2020, Announcement awaited.

CHANGES IN GST RATES

➢**Mobile phones and other specified parts:** GST Rate on mobile phones and other specified parts are being increased to 18% from 12%.

➢**Matches:** Uniform rate of 12% on all matches is being prescribed as compared to 5% on Handmade Matches and 18% on other matches.

➢**Maintenance, Repair and Overhaul (MRO) services:** Reduced rate of 5% with full ITC is being prescribed as compared to 18% earlier. The place of supply for B2B MRO transaction has also been changed to the location of recipient.

Changes in rate is effective from 1st April, 2020

E-INVOICE AND QR-CODE

➢Implementation of E-invoice and QR Code deferred to 01.10.2020.

➢Class of registered persons exempted from e-invoicing and QR Code:-
(a) Insurer or a banking company or a financial institution, including a non-banking financial company
(b) Goods transport agency
(c) Registered person supplying passenger transportation service
(d) Registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens.

AADHAR BASED AUTHENTICATION

➢ New GST Registrations shall be able to pass on ITC only after physical verification, financial KYC and AADHAR based authentication from 1st April, 2020.

➢Aadhar authentication shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely:–

- Individual
- Authorised signatory of all types
- Managing and Authorised partner; and
- Karta of a Hindu undivided family.

NON-CONSTITUTION OF GSTAT

The prescribed time limit to make application to Appellate Tribunal will be counted from the date on which President or the State President of GSTAT enters office. So, the Appellate Authority while passing order may mention in the preamble that appeal may be made to the Appellate Tribunal whenever it is constituted within three months from the President or the State President enters office.

RETURNS

➢**Annual Returns:** Due date of GSTR 9 & 9C for the FY 2018-19 has been extended to 30th June, 2020. Further, only taxpayers having aggregate turnover exceeding Rs. 5 Crore are required file GSTR 9C for FY 2018-19.

Foreign Airlines Company has been exempted from furnishing GSTR 9C provided a Statement of Receipts and Payments certified by a CA is submitted for each GSTIN by 30th September of the next year.

➢**Service Composition Scheme:** Taxpayers under Composition Scheme shall be exempt from filing CMP-08 and GSTR-1 for all the tax periods of F. Y. 2019-2020, if he has filled GSTR-3B for all the tax periods in the year.

➢**Regular Returns:** GSTR-1 and GSTR-3B shall continue till September, 2020. The taxpayers having annual turnover less than Rs.5 crore shall continue to furnish GSTR-3B for the month of April-September 2020 in a staggered manner.

The last date for filing of GSTR-3B for the taxpayers having annual turnover of Rs.5 crore and more would remain unchanged (20th of the month).

VALUATION OF LOTTERY

The face value of lottery shall be deemed to be inclusive of 28% GST. The value of supply will be computed as follows:-

Value of supply= Face Value of Ticket X 100/128.

COVID-19 RELIEFS OF GST

The Hon'ble Finance Minister announced the following measure for the relief of taxpayers amidst the Nation Lock-down due to the outbreak of COVID-19:-

• The due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under the GST laws where the time limit is expiring between 20th March, 2020 to 29th June, 2020 will be extended to 30th June 2020.

• Taxpayers having turnover of less than Rs. 5Cr will not have to pay any interest or late feels or penalty for filing of periodical returns. However assesses having turnover greater than Rs. 5Cr reduced interest rate of 9% shall apply. No late fees/penalty shall be levied.

• Payments for SVLDRS'19 has been extended to 30th June, 2020.

• Last date for opting for composition scheme for F.Y. 2020-2021 has been extended to 30th June, 2020.

ITC ON CAPITAL GOODS

Procedure for reversal of input tax credit in respect of capital goods partly used for affecting taxable supplies and partly for exempt supplies to bring more clarity. Amount of tax reflected in the invoice will be credited to Electronic Credit Ledger in case of capital goods as compared to value arrived by reducing the input tax at the rate of 5% points for every quarter and input tax at the rate of 5% points for every quarter will be added to the output tax liability. This shall be done separately for each Capital Goods.

Where any capital goods earlier was exclusively used for taxable supplies including zero rated supplied is subsequently common capital goods, the input tax credit claimed in respect of such capital good(s) shall be added to the amount of credit in respect of common capital goods for the purpose of reversal as compared to adding the value arrived at by reducing the input tax at the rate of 5% points for every quarter.

APPORTIONMENT OF ITC IN CASES OF BUSINESS REORGANIZATION

A clarification has been issued by the CBIC clarifying how to apportion and transfer unutilised ITC in cases of business reorganization viz merger, demerger, amalgamation or change in the constitution/ ownership of business.

1.**Apportionment of ITC:** Ratio of value of assets transferred to total value of assets of the unit. The value of assets shall be taken at the State level and not on all India level.

2. **Filing requirements:** The transferor shall be required to file Form GST ITC-02 only in those states where both transferor and transferee are registered. The unutilised ITC as on the date of filing Form GST ITC-02 shall be considered and the formula shall be applied on the sum of unutilised ITC. The transferor shall be allowed to determine the amount to be transferred under each tax head subject to availability of under the concerned tax head.

3. **Valuation:** The ratio of value of assets shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor. The said formula need not be applied separately in respect of each heads of ITC.

4. **Relevant Date:** Filing of FORM GST ITC – 02 by the transferor would be considered as the relevant date to calculate amount of unutilized ITC balance of transferor. For calculating the ratio of value of assets appointed date of demerger is to be considered. Such ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.

EXPORTS OF GOODS

1.Export with payment of Tax: In the Month of October 2017, the Government while restoring the tax-free procurements, for the EOU's, under Advance authorization/ EPCG etc., had imposed the condition that exporters who avails tax free procurements are not eligible for option of making exports with payment of IGST.

Retrospective amendment had been made by inserting an explanation that exporter who had opted for payment of IGST can also avail tax free procurement provided the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD).

2. Two-pronged approach: Government has taken two-pronged approach to curb fraudulent and excess input tax credit claims by exporters.

➢CAP on the value of Zero Rated Supplies: The existing definition of 'turnover of zero rated supply of goods' does not specify any numerical cap. Now the value of zero rated supplies has been limited at 1.5 times the value of similar goods supplied in the domestic territory by the same or similar supplier.

➢Repayment of refund: Cases where refund has been paid to the applicant on account of unutilised ITC or IGST paid on export of goods and where export proceeds remain unrealised partly or fully on the expiry of the specified time period, the person who was in receipt of the said amount shall deposit the received sum to the extent of unrealised sale proceeds along with interest within thirty days of the expiry of the specified time period, else shall be recovered in the same manner in which erroneous refunds are recovered along with interest.

Further, if the applicant realises the unrealised sale proceeds fully or partly and he produces evidence about such realisation within three months from the date of realization (within period extended by RBI), the recovered amount, to the extent of realisation, shall be refunded to the applicant.

RECOMMENDATIONS OF THE COUNCIL

➢ Interest for delay in payment of GST to be charged on the net cash tax liability w.e.f. 01.07.2017 (Law to be amended retrospectively)

➢ As one-time measure to facilitate those who want to conduct business the Council has decided that where registrations have been cancelled till 14.03.2020, application for revocation of cancellation of registration can be filled up to 30.06.2020.

➢ No late fees will be levied for delayed filing of the Annual return and the Reconciliation Statement for financial year 2017-18 and 2018-19 for taxpayers with aggregate turnover less than Rs. 2 crores.

SPECIAL PREOCEDURE FOR CORPORATE DEBTORS

The Central Board of Indirect Taxes and Customs (CBIC) has laid down the special procedure to be followed in case of Corporate Debtors (CD) under the Insolvency and Bankruptcy Code (IBC), 2016 undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP).

New Registration: CD will be required to take a new registration in each of the States or Union Territories where it was registered earlier within 30 days of the appointment of IRP/RP.

Where IRP/RP has been appointed prior to this special procedure prescribed than registration is required to be taken on or before 20.04.2020

First Return: Details of all outward supply and input take credit from the period beginning the date on which it became liable to take registration till the date on which registration has been granted is to be furnished in the first return.

Input Tax Credit: In the first return, input tax credit on supply of goods or services or both received where the tax invoice bears the GSTIN of the erstwhile registered person will be eligible. Registered persons who are in receipt of supplies from the CD shall also be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person.

Refund: Any amount deposited by the IRP/RP in the cash ledger from the date of appointment of IRP/RP to the date of new registration as obtained by the debtor in the existing registration shall be available for refund.

Cancellation of earlier Registration: Cancellation of erstwhile registration of CD is not required. The proper officer may, if need be, suspend the registration.

Returns of pre-CIRP period: It is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.

GST dues for pre-CIRP period: The dues of the period prior to the commencement of CIRP will be treated as 'operational debt'. The proper officer will require to file claims before the NCLT in accordance with the provisions of the IBC.

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