GST

TAX TALK 101

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Editorial...

We like to extend our heartfelt thanks to all our readers for sending their kind wishes on achieving the milestone of 100th Issue. We are humble yet working towards the next mile stone and for that we seek your continuous support. Your suggestions and guidance always help us to work towards betterment.

Since introduction of GST, the issue related to calculation of interest on gross tax liability or on only payment through cash ledger was in discussion. GST Council has accepted the amendment to be done and same was carried out but without any retrospective effect. Further they agreed for retrospective effect but somehow it was not done or delayed. People started writing on social media when CBIC notified the provision with prospective date i.e. 1st September 2020. Now this issue is finally settled after issue of press release by CBIC confirming that interest to be collected only on payment through cash ledger since 1st July 2017, but they took too much time to do so. We have discussed this issue in detail on page 2.

The Government along with GSTN is taking note of the challenges and providing solutions on regular basis to assuage some of the industry woes. The larger issue of back-end infrastructure is taken care by doubling the capacity of GSTN portal along with scattered due dates for GST return. It will further be reduced by option to file NIL returns through SMS.

It is now well known to all that the government decided to improve existing GST return filing system instead of rolling out a new GST Return filing model. The new GST return filing system was supposed to be launched on 1st October, 2020. New Form GSTR-2B has been introduced, which is like GSTR-2A and have details of purchases of the company or business with added information on input tax credits (ITC). Existing GSTR-1 form, which captures sales-related information, will be made more detailed. The Form GSTR-3B, which gives the tax computation, will now have auto-populated data. New features including matching tool for comparison of GSTR-2A with purchase register, communication channel between buyer and seller, and an improved comparison table of tax liability and input tax credit (ITC) are added in the new improved version of the existing return system. The process of linking GSTR1 with GSTR-3B and GSTR-2A data with GSTR-3B for flow of input tax credit has also been improved.

Further, E-invoicing, a form of electronically-authenticated invoices, which has been implemented in more than 100 countries, will be implemented from 1st October 2020. In first phase it is only for businesses with turnover of Rs.500 Crore or more. This mechanism also known as invoice registration system. The purpose of e-invoicing is to eliminate multiple reporting by taxpayer in different formats, once for generating e-way bill and the second in the form of filing returns. However, the 'limited' implementation of e-invoicing system may not serve the purpose as it is not necessary that the vendors of the large companies will also have turnover more than Rs.500 Crore and hence, the desired result of pre-filled sales and purchase returns may not be achieved. It seems soon after successful implementation at this level government will reduce the limit for the requirement of E-invoice.

Facility for filing Nil returns by short message service, which was introduced for GSTR-3B, has also been extended for Form GSTR-1. Due Date for filing Form GSTR-4 has been extended to 31st October, 2020. Confusion on GST rate on hand sanitizers has increased many folds in recent past, considering the same a clarification has been issued by Ministry of Finance.

Regularly, GST authorities are busting racket of fake invoicing involving fraudulent Input Tax Credit (ITC) using a network of shell companies or untraceable persons. They work in network by procuring and generating invoices without actual supply of goods and avail as well as pass on the ITC. These activities are done on the basis of fraudulently obtained GST registrations. In order to restrict such type of activities before issuing of registration, Aadhar authentication or physical verification made mandatory. Hope it will help authorities in curbing such activities. We have discussed this issue in detail on page 4.

All the stake holders are waiting for further extension of due date considering normalcy yet to be achieved. We are having detailed discussion on the notification issued during the period and development took place in the field of GST on page 2, 3, and 4 of the 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.

Sushil Goyal.

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Compliance dates for returns are falling in the month of September 2020. Be ready !

INTEREST ON LATE PAYMENT

It is expected wherever there will be delay payment of tax, interest will be charged on the delay payment, accordingly GST law also contain provision for payment of interest on delay payment. This is also accepted fact that it is difficult to collect tax in time unless some penal provision for delay payment of tax is prescribed.

The provision in GST law for interest in case of delay payment has been provided in sub section (1) of section 50 of the CGST Act 2017. Same is reproduced below:

"Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate,not exceeding eighteen per cent, as may be notified by the Government, on the recommendation of the Council."

Rate specified for the purpose of section 50(1) is 18%. The quantum on which interest to be levied is under dispute from the introduction of GST i.e. 1st July 2017. The dispute was on the point whether GST will be charged on total payment or on payment through cash ledger or also on payment through credit ledger. In other words, on the Gross Liability or on Net Liability i.e. after adjusting ITC.

As per section 49 of the CGST Act 2017 read with Rule 85 payment shall be made by debiting the "electronic credit ledger", "electronic cash ledger" and by crediting "electronic liability ledger".

So as per above provisions unless electronic cash ledger or electronic credit ledger is debited, it cannot be said that the payment has been made. Accordingly, one should understand that Interest shall be charged on Gross liability i.e. without adjusting ITC.

Say Mr. A has a liability of GST of Rs. 10,000 and input tax credit of Rs. 6,000. Although ITC is available for payment of tax, he will have to pay interest as per above provision on Rs. 10,000, not on Net tax liability of Rs.4,000.

Important points to be noted

1. Whenever assesses deposit some money towards the tax liabilities it goes to Electronic Cash Ledger. The money deposited in the Electronic Cash Ledger is not considered as payment of tax. Hence, even interest is to be calculated on utilisation of balances from cash ledger.
2. Whenever, assesses have some credit adjustable towards the tax liabilities it goes to Electronic Credit Ledger. The balance in the Electronic Credit Ledger is also not considered as payment of tax. Hence, even interest is to be calculated on utilisation of balance from credit ledger.
3. The balance in the Electronic Credit Ledger is coming on the basis of taxes paid or payable by the person issuing these taxable invoices. Wherever there is delay on their part, they are liable for interest.
4. Interest is to be calculated from due date for filing of return i.e. GSTR-3B to the actual date of filing of return on the gross tax liability whatever utilised from cash ledger and/or credit ledger.
5. The assesses are not allowed to file return with part discharge of tax liability, whether by payment of tax through cash ledger or credit ledger. Hence, they are liable to pay interest till full amount is arranged and deposited.

31st GST Council (22nd Dec 2018):

The GST Council has decided that the interest to be charged only on net tax liability i.e. after taking into account the admissible input tax credit. i.e. interest would be leviable only on the amount payable through the electronic cash ledger Accordingly gave in approval to the amendment in the GST Acts.

It was expected that notification/instruction will be issued to make this recommendation effective. But nothing has been done.

Finance Act, 2019:

Section 100 of Finance Act, 2019 provides for amendment in section 50(1) of CGST Act, 2017 and introduced proviso to section 50(1) which provides that interest shall be charged on that portion of tax that is paid by debiting the electronic cash ledger.

However, notification has been issued by CBIC prospectively to make this amendment effective w.e.f. 1st September 2020.

Decision on Gross Liability:

Hon'ble Telengana High court in case of M/s. Megha Engineering & Infra Ltd. Verses Commissioner of Central Tax held in the judgment that no ITC available to assessee if return not filed. Hence Interest on delay is mandatorily payable on gross liability of tax.

Decision on Net Liability:

Hon'ble Madras High Court in the case of Refex Industries Ltd., whereby the Madras High Court held that levy of interest on delayed payment is compensatory in nature thus, would be levied only on the net liability and not gross liability.

Hon'ble Telangana High Court in case of Raghava Constructions Verses Union of India issued interim order for stay on collection of interest on gross liability. Hon'ble Delhi, Karnataka and Gujarat High Courts are also taken similar decision and have granted interim relief stating that interest in to be paid on net liability.

CBIC Collection Instruction:

In the letter F. No. CBEC-20/16/07/2020- GST dated the 10th February 2020, the GST officers were nudged to expedite the process of interest collection that had amounted to a whopping Rs 45,996 crore. they were instructed to compute interest only on the gross liability.

Moreover, the CBIC tweet dated 15th February 2020 caused concern among the taxpayers. The tweet also clarified that date of applicability of this change is a prospective one.

39th GST Council (14th March 2020):

The Council decided that the interest on delayed GST payments would be applicable only on net cash tax liability after the deduction of the available input tax credits. This change will be applicable retrospectively with effect from 1 July 2017, the date on which GST legislation came into force.

Notification No. 63/2020 dated 25th Aug 2020:

The government notified interest on delayed payment of goods and services tax (GST) will be charged on net tax liability with effect from 1st September 2020.

Press Release dated 26th Aug 2020:

The CBIC clarified that the Notification No. 63/2020-Central Tax dated 25th August 2020 relating to interest on delayed payment of GST has been issued prospectively due to certain technical limitations. However, it has assured that no recoveries shall be made for the past period as well by the Central and State tax administration in accordance with the decision taken in the 39th Meeting of GST Council. This will ensure full relief to the taxpayers as decided by the GST Council.

Conclusion:

We believe that authorities should issue notifications separately to clarify regarding the position of tax. Also, whether additional interest paid will be refunded or not to a taxpayer who has already paid the interest on the gross amount.

SHORT MESSAGE SERVICE (SMS)

In order to provide facility to the small business man, who are required to file Nil returns for some of the months, filing of return through SMS has been provided. This facility not only help the small business man but also reduce the pressure on the GST Portal. These assessee will not be required to login on the GST Portal. Hence it will also improve the working of the portal, which is a concern for all the stake holders. The capacity of the portal has been doubled than the earlier. These measures will help smooth functioning of the GST Portal.

Earlier, businesses with nil or no entry can only file Form GSTR-3B through SMS using the registered mobile number. The said facility has also been extended for Form GSTR-1. A Nil return or Nil details of outward supplies shall mean nil or no entry in all the Tables in FORM GSTR-1 or FORM GSTR-3B, as the case may be.

Steps to file NIL return through SMS in filing of Form GSTR 1:

Step 1: Send an SMS to 14409 from your registered mobile number. The message should be as follows:

NIL<space>R1<space>GSTIN number<space>Return period.

Say for Monthly Filing for Tax Period August 2020:

NIL R1 19ABCDE1234F1Z6 082020

Say for Quarterly Filing for Tax Period Apr-Jun 2020:

NIL R1 19ABCDE1234F1Z6 062020

Step 2: The user will then receive a six-digit validation code, which will have a validity of 30 minutes.

Step 3: Confirm the NIL filing with another SMS to same number i.e. 14409: CNF<space>R1<Space>Code [CNF R1 123456]

Step 4: A receipt message will come with an ARN code indicating that Nil filing has been successful.

Similar steps to be followed for Form GSTR-3B except in first SMS in place of R1, 3B to be written. The ARN code can be used to track the status of the return at www.gst.gov.in, by going to Services > Returns > Track Return.

E-INVOICING

E-invoicing involves reporting details about GST invoices, credit notes, debit notes for all B2B supplies and exports on a special government notified portal. This reporting on portal is besides the regular invoices created on their own accounting/billing/ERP systems.

E-invoicing, which is basically a form of electronically-authenticated invoices, will be implemented from 1st October, 2020 only for businesses with turnover of Rs.500 Crore or more. Earlier, it was proposed to be implement for businesses with turnover of Rs.100 Crore or more in a year. It will cover all assessee but in phase manner after introduction and implementation for the present limit of 500 Crore.

Further, a unit in Special Economic Zone, Insurer or a Banking Company or a Financial Institution including a NBFC, Goods Transport Agency, Services by way of Passenger Transportation service and Services by way of admission to exhibition of Cinematographic films in multiplex screens are exempted from e-invoicing even if turnover exceeds Rs.500 Crore. Revised Format/Schema for e-Invoice has been notified by Notification No. 60/2020-CT.

COMPOSITION DEALER

All Composition Taxpayers are required to file Form GSTR-4 Annual Return, on annual basis, for each financial year. GSTR-4 is a GST Return that has to be filed by a composition dealer. When a dealer is opting for the composition scheme is required to furnish only 1 return which is GSTR 4 and same is to be filed by 30th of April, following a financial year. It also required to be filed by the 6% special composition scheme (Composition for service providers) as notified by the notification number 2/2019 dated 7th March 2020 with effect from 1st April 2019.

It also to be noted here that the GST Council increased the annual turnover limit to 1.50 Crore, effectively from 1 April 2019 and 6 per cent GST rate applicable to the Composition scheme for service providers is available to service provider having annual turnover up to 50 lakh.

This annual filing is implemented with effect from 1st April, 2019. The GSTR 4 was a quarterly return to be filed for every quarter up to financial year 2018-19 and the due date was 18th of the month after the end of the quarter. Deadlines for filing yearly return for the financial year 2019-20 in Form GSTR-4 has been further extended number of times now it is 31st October, 2020. However, payment of self-assessed tax in Form CMP 08 for the quarter ended March, 2020 is still 7th July, 2020 there is no extension for the same.

Now these composition dealers are required to file CMP-08, which is known as quarterly statements to be filed for each quarter. Form GSTR 4 can be filed only if, all applicable quarterly statements in Form CMP 08 of that financial year, have been filed. Once filed, it can't be revised. After successfully filing, ARN will be generated and intimated through email and SMS.

HAND SANITIZERS

Lot of confusion was moving around GST rate on hand sanitizers for quite some time and debates were going on. Even after several advance ruling things were not settling down. on of the AAR said alcohol-based sanitisers, which are used to "maintain hygiene", did not contain any curative or preventive ingredients and hence could not be considered medicaments. The Directorate General of GST Intelligence (DGGI) also clarified that 18% of Goods and Service Tax (GST) is applicable to the Hand Sanitizer and not 12% of GST. As per the authorities, GST on hand sanitizers, being alcohol-based, attract 18% under the HSN 3808 and not to be considered as Medicament under the HSN 3004.

Finally, Ministry of Finance had clarified that sanitizers are disinfectants like soaps, anti-bacterial liquids, dettol etc accordingly, will attract duty standard rate of 18%.

It is further clarified that inputs for manufacture of hand sanitizers are chemicals packing material, input services, which also attract a GST rate of 18%. Reducing the GST rate on sanitizers/similar items would lead to an inverted duty structure and put the domestic manufacturers at disadvantage vis-a-vis importers. Lower GST rates help imports by making them cheaper. This is against the nation's policy on Atmanirbhar Bharat. Consumers would also not benefited from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure. This logic for not reducing rate of GST by MoF seems not so logical.

Under the situation, it is now advisable for those who have paid the GST @ 12% should do the rectification on their own. This will save them from the penal consequences and liability towards the interest also.

VERIFICATION BEFORE REGISTRARION

Aadhaar authentication or physical verification before registration has been implemented with effect from 1st April 2020. CBIC has issued notification Notification No 62/2020 – Central Tax dated 20th August 2020 to modify certain provision related to this which has come in force from 21st of August 2020. Aadhar authentication is to create an online platform wherein the identity of Aadhaar holders can be validated anytime anywhere.

In order to keep a check on the malpractices happening under the Goods and Services Tax. On regular basis, GST authorities are busting racket of fake invoicing involving fraudulent Input Tax Credit (ITC) using a network of shell companies or untraceable persons. They work in network by procuring and generating invoices without actual supply of goods and avail as well as pass on the ITC. These activities are done on the basis of fraudulently obtained GST registrations. The Aadhaar Authentication for GST registration is not required for non-residents, persons other than citizens of India and persons who have already been registered under GST.

As per section 25 of the CGST Act as amended withe effect from 1.1.2020 that every person applying for registration has to go for Aadhaar authentication whether the applicant is an individual or any other person. In case of other than individual, key person like Karta, Managing Director, whole-time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons have to go for Aadhaar authentication.

Aadhaar Authentication:

The verification will be done by sending a link on the registered mobile number and email address. On clicking the verification link, a window for Aadhaar Authentication will open where Aadhaar Number was entered and the OTP shall be received by applicants on the mobile number linked with Aadhaar.

Physical Verification:

Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication "or due to not opting for Aadhaar authentication" before the grant of registration, or due to any other reason after the grant of registration.

He may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

Document Verification:

In Rule 9(1) proviso has been inserted by Notification No.62/2020 with effect from 21.82020. As per proviso inserted in the rule, which gives power to the officer not below the rank of Joint Commissioner, who can in lieu of the physical verification of the place of business, carry out the verification of such documents as he may deem fit for completing the verification.

BOOK POST

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