GST

102

TAX TALK

A Monthly Goods & Services Tax Bulletin

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Editorial...

Business world is looking forward for normalcy after a disrupted period of six month. Life is slowly coming back on track; there is much hope with the coming festive session. Amongst all these happenings, professionals are still struggling with the due dates. Although people have started their normal activities but they wish to take care of their source of earning first, rather devoting time on compliance. We are wishing for normalcy at the earliest but at the same time we need to keep ourselves vigilant about the movement of virus, which has taken so much life world-wide.

It is important to note that the Goods and Services Tax (GST) collection is directly related to consumption because it is a consumption tax, which has shown the indication of recovery in the business activities after the outbreak of Covid-19 pandemic after forced lockdown in the month of March 2020. The economy is resuming operations and international trade is also getting momentum. Hence, the collections have shown significant growth. The increased revenue is itself a proof of normalcy in business operations and provides an optimistic outlook.

It has not only recorded a year-on-year growth figure at Rs 95,480 crore in September 2020, but also recorded a substantial increase over the preceding month. The total gross collections, Central GST is Rs.17,741 crore, State GST is Rs.23,131 crore, Integrated GST is Rs.47,484 crore and includes the collection of Rs.22,442 crore on import of goods, and Cess of Rs.7,124 crore (including Rs.788 crore on import of goods) according to official data.

GST annual return and GST reconciliation statement are very important means as it gives an opportunity to the taxpayers, to review and rectify their mistakes in any of the returns filed in that particular year after the year end. Hence, one must give sufficient time and efforts to reconcile and understand before filing the forms. The due date for filing Annual GSTR 9 return and reconciliation statement including audit form GSTR 9C has been extended due to continuous demands of various stake holders.

GSTR 9 (Annual Return) and GSTR 9C (Reconciliation Statement) due dates extension has given another opportunity to the taxpayers to file their annual returns on time with correct figures which is observed by the government. We are required to file the GSTR-9 and GSTR-9C for Financial Year 2018-19, by 31st October, 2020.

E-invoicing, a form of electronically-authenticated invoices, which is implemented from 1st October 2020 for businesses with turnover of Rs.500 crore or more. However, extension of 30 days has been provided for the invoice raised in the month of October 2020. Moreover, any person who is having turnover more than the prescribed limit in any one of the financial years since introduction of GST, he is liable for e-invoicing , as notified by the CBIC. We have discussed this issue in detail on page 2.

All the extended period for reduction or waiver of late fees or reduced rate of interest has ended on 30th September 2020. We would like to advise here that anybody who has missed the opportunity, please don't delay further in compliance as it will have many other implications. Another waiver of late fees came for the Final Return, which is required to be filed in GSTR-10. Due Date for filing Form GSTR-10 has been extended to 31st December, 2020 for the Final Return falling due since the inception of the GST i.e. 1st July 2017. This is indeed a welcome move from the government because quite good number of people have not yet complied with the requirement of filing of GSTR-10. This will allow them to file without any late fees applicable on the form.

The Central Government in exercise of the powers conferred by section 6 of the Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020, has notified that anything which falls due for the completion or compliance on 30th December, 2020 shall stand extended to 31st December 2020 under, the Central Excise Act, 1944, the Customs Act, 1962 (except few section), the Customs Tariff Act, 1975 or Chapter V of the Finance Act, 1994 (Service Tax). This extension has both pros and cons as it permits the assessee to comply with the requirement within extended date as well as it is granting time to officers for issuing notices even extended period of limitations has crossed.

We are having detailed discussion on the number of notifications/clarification/press released issued and happing during the period and other 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.

CA Sushil Kr Goyal

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

E-INVOICING & QR CODE

E-invoicing also known as Electronic Invoicing is an electronic authentication mechanism under GST or alternately it is known as registration of Invoices on the Invoice Registration Portal (IRP) which in turn generate Invoice Registration Number (IRN). Under this mechanism, all invoices generated by a business will have to be authenticated on the GSTN portal, electronically. Once an e-invoice has been authenticated, its details shall be made available on the GST portal and EWB portal on real-time basis.

In December 2019 the government had prescribed that the GST Taxpayers having aggregate annual turnover more than Rs. 100 crore (later increased to 500 crore) in a Financial Year will be required to issue e-invoice for all the Business to Business (B2B) supplies, in the manner prescribed under Rule 48(4) of the CGST Rules, 2017 w.e.f. 1st April 2020 (later changed to 1st October 2020).

Turnover in a Financial Year

The provisions related to E-invoice were so far mentioning the requisite turnover for implementation as aggregate turnover more than 500 crore in "a financial year", but it was not clarified in which financial year, whether preceding financial year or some other period. It is now clarified by way of amendment vide Notification No. 70/2020 – Central Tax dated 30th September, 2020. After the amendment any person having aggregate turnover more than 500 crore in "any preceding financial year from 2017-18 onwards" i.e. F.Y 2017-18, F.Y 2018-19, F.Y 2019-20 or F.Y 2020-21 is liable for the E-invoicing.

Benefits of E-invoicing

Tax leakage and frauds due to fake invoices or paper transaction has been an issue in GST. E-invoicing will put an end to many wrong practices. It required only One-time reporting of the invoicing for all GST compliances. It eliminates the invoice mismatching issues during reconciliation. E-invoicing system means interoperability between different software. It also provides a Real-time tracking of invoices prepared by the supplier. It will help in return filing process as necessary details shall be auto-populated for various returns and even from the E-Way Bill Portal. It will help in claiming ITC without any error or delay.

Export Invoices

The provisions related to E-invoice were so far discussed and understood by the business with an understanding that it covers only B2B transactions in respect of supply of Goods/Services. But vide Notification No. 70/2020 – Central Tax dated 30th September, 2020 it is also extended to Export Invoices. After the amendment in E-invoicing with respect to supply of Goods/Services it does not only covers B2B transactions but also export transactions by the person having aggregate turnover more than 500 crore w.e.f. 1st October 2020 except few specified businesses, which are excluded from the requirement of E-invoicing.

Relaxation of 30 days

Government in a press release on 30th September, 2020 highlighted that even after more than 9 months of the first notification in this regard, some of the taxpayers having aggregate turnover of Rs. 500 crore and above are still not ready. As per the said press release it is imperative to note that, invoices issued by such taxpayers during October 2020 may be validated within 30 days.

Accordingly, additional time of 30 days for generation of Invoice Reference Number (IRN) for invoices generated in the month of October 2020 has been provided by CBIC vide Notification No. 73/2020 – Central Tax dated 1st October, 2020. The Notification requires to follow the special procedure such that the said persons shall obtain an Invoice Reference Number (IRN) for such invoice by uploading specified particulars in FORM GST INV-01 on the Common Goods and Services Tax Electronic Portal, within thirty days from the date of such invoice, failing which the same shall not be treated as an invoice.

Any invoice issued by taxpayers during the month of October 2020 shall remain valid even if they do not comply with provisions of Rule 48(4) of the CGST Rules, 2017, if the Invoice Reference Number (IRN) is generated from Invoice Reference Portal (IRP) within 30 days from date of invoice.

Penalty for non-compliance of E-invoicing under section 122 of the CGST Act, 2017 or for delay in generation of IRN from invoice Reference Portal (IRP) will not be levied, provided IRN are generated within 30 days from issuance of invoice.

It may be noted that no such relaxation would be available for the invoices issued from 1st November 2020 and any invoices issued in violation of Rule 48(4) of the CGST Rules 2017 would not be valid and all the applicable provisions of CGST Act and Rules would apply for the said violation. Examples:

Invoice Date	Generation of IRN	Remark
Case 1		
1st October 20	31st October 20	Within 30 days
In compliance with provisions and no penalty imposable		
Case 2		
23rd October 20	22nd November 20	Within 30 days
In compliance with provisions and no penalty imposable		
Case 3		
1st October 20	1st November 20	Beyond 30 days
Not in compliance with provisions and penalty imposable u/s 122		
Case 4		
13th October 20	13th November 20	Beyond 30 days
Not in compliance with provisions and penalty imposable u/s 122		
Case 5		
1st November 20	3rd November 20	Within 30 days
No relaxation for invoice generated post October 2020, hence, not in compliance with provisions and penalty imposable u/s 122		

QR Code on B2C Supply

The requirement of printing dynamic Quick Response code (QR Code) on B2C supply was proposed to be implemented from 1st October 2020. A QR Code will help users to verify the details in the digitally signed e-invoice.

The government has decided to defer the requirement on business to consumer invoices by two months i.e. 1st December 2020. The deferment was announced in the last-minute vide Notification No. 71/2020 – Central Tax dated 30th September, 2020. It is expected that during this period government will announce detail clarification on this.

In respect of QR Code, it is also clarified in respect of Financial Year by way of amendment by Notification No.71/2020 – Central Tax dated 30th September, 2020, that any person having aggregate turnover more than 500 crore in "any preceding financial year from 2017-18 onwards" i.e. F.Y 2017-18, F.Y 2018-19, F.Y 2019-20 or F.Y 2020-21 is liable for the QR Code.

Amnesty for late fee of Final Return

A taxable person whose GST registration is cancelled or surrendered has to file a return in the form of GSTR-10. This return is called final return. It must be filed within three months from the date of cancellation or date of cancellation order whichever is later. For instance, if the date of cancellation is 1st January, 2018, then the GSTR 10 must be filed by 1st April, 2018. If the GSTR 10 is not filed within the due date, a notice may be sent in GSTR 3A to the such registered person. The person will be given a time of 15 days for filing the return with all the documents required. If the person still fails to file the return, the tax officer will pass the final order for the cancellation with the amount of tax payable along with interest/penalty. For non-filing of Form GSTR 10 within 3 months a fine of Rs. 200/- per day being Rs 100/- for CGST and Rs 100/- for SGST/ UTGST up to a maximum of Rs 10,000 is leviable.

This Return is mandatory for all category of Taxpayers even if no business or no stock is held at the time of cancellation except –

1) Input Service Distributor.
2) Non-resident taxable persons.
3) Persons required to deduct TDS under section 51.
4) Composition Taxpayer
5) Persons required to collect TCS under section 52.

It is important to know that before filing of GSTR-10, all pending returns to be filed till the date of an order issued for cancellation of registration. Dues Should be clear in earlier returns or can pay while filing GSTR-10.

Now understanding that number of person has not complied with the requirement of filing of GSTR 10, the government has reduced the late fee for non-filing of GSTR-10 within the due date to Rs.500/- (Rs.250+Rs.250), if the Return is filed between 22nd September, 2020 to 31st December, 2020. This should be considered as an amnesty for the defaulter.

Anti-Profiteering - Extension

The suppliers of goods and services should pass on the benefit of any reduction in the rate of tax or the benefit of input tax credit to the recipients by way of commensurate reduction in prices. The willful action of not passing on the above benefits to the recipients in the manner prescribed is known as “profiteering”. The National Anti-Profiteering Authority (NAA) is required to determine whether the benefit of input tax credit or reduction in the tax rate has actually resulted in a commensurate reduction in the price of the goods or services or both.

The NAA has the power to identify the registered person who has not passed on the benefit of reduction in tax rate or input tax credit by way of commensurate reduction in prices and it may order reduction in prices; return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest; cancellation of registration of the supplier and imposition of penalty. In case the eligible recipient is not identifiable or does not claim return of the amount, the NAA may order the supplier to deposit the amount in the Consumer Welfare Fund.

Due to the outbreak of Novel Corona Virus (COVID-19) across many countries of the world, including India and challenges faced by tax payers in meeting compliance requirements under various provisions of the CGST Act. Notification No 65/2020- CT dated 1st September 2020 provides extension by which the Authority gets further breather time of three months to complete any action or comply with any action as now any such action falls during the period from the 20th March, 2020 to the 29th November, 2020 can be completed by the Anti profiteering authority by 30th November 2020.

GST Vs TCS

Newly introduced TCS provision in Income Tax Laws requires every person having turnover more than 10 Crore during the preceding financial year in respect of sale of Goods is required to collect tax at source (TCS) w.e.f. 1st October 2020. It is to be collected only from those buyers from whom, sale consideration received during the Financial Year exceeds Rs. 50 lakh. This condition needs to be evaluated separately for each buyer and the amount needs to be evaluated separately every year. It is important to note here that the trigger point for collection of TCS is receipts and not sales. Hence, in case consideration is received for sales, made over a number of years, TCS shall still be applicable even if the annual sale does not exceed Rs.50 lakh.

Since, seller is responsible to collect the TCS on consideration received by him on receipt basis, seller needs to mention on the invoice then only it will be recovered. Alternatively, after payment of TCS on the due date, separate invoice / debit note for TCS also can be raised. However, on the receipt of TCS no further TCS is required to be paid.

It is clarified by CBIC in the past that the GST is not to be charged on the collection of TCS amount vide circular No.76/50/2018 dated 31st December 2018 read with corrigendum issued on 7th March 2018. CBIC has clarified as below:

1) Section 15(2) of CGST Act specifies that the value of supply shall include “any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier.”
2) For the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be included as it is an interim levy not having the character of tax.

It has been clarified by the Central Board of Direct Tax (CBDT) that, no adjustment on account of sales return, discount to be made at the time of collection of TCS. Moreover, in respect of indirect tax including GST, it is clarified that seller required collect tax (TCS) even on the GST, since collection is to be made w.r.t. receipt of amount of sales consideration.

In summary no GST charged on TCS collection but TCS to be collected on GST charged and no adjustment on account of sale return or discount given.

Sale on Approval - EXPORT

Every registered person is required to issue a tax invoice on taxable outward supply of goods or services, where the supply involves movement of goods it should be issued before or at the time of removal of goods. However, where the goods being sent on approval are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier. Thus, the tax invoice must be issued within six months from removal.

The date of issue of Tax invoice for sale of goods on approval basis has been extended in respect of goods sent or taken out of India on approval for sale or return. Where an invoice is to be issued on expiry of six month and which falls during the period from the 20th March, 2020 to the 30th October, 2020, and it is not issued in such time, then, the time limit for completion or compliance of such action, shall stand extended up to the 31st October, 2020.

GST ON PARATHA

Paratha, is once again in discussion, previously, it was due to the higher GST rate determined by Karnataka AAR whereas currently it's due to decision of Appellate Authority. The Karnataka Authority of Advance Ruling (AAR) gave a ruling of 18% Goods and Service Tax (GST) on Whole Wheat Paratha and Malabar Paratha, the ruling of AAR has been declared void ab initio by the Karnataka Appellate Authority of Advance Ruling (AAAR).

The applicant (ID Fresh Food) is a company indulged in making ready to eat and fresh food products for its customers and the question that the authority was dwelling into was whether the Malabar parathas made by the company be classified under tariff heading 1905 and GST rate of 5% be levied or not. The appellate authority observed on the finding of AAR that the applicant, ID Fresh Food, had filed the application seeking advance ruling suppressing the fact that investigation on tax evasion was pending against them.

Therefore, the appellate authority held, the application was hit by Section 98(2) of the Central Goods and Services Tax Act,2017 (CGST Act) which prohibits the AAR from admitting an application when the question raised is already pending in proceedings against the applicant.

The AAAR, however, did not give any ruling on the issue whether the preparation of parathas be classified under Chapter heading 1905, attracting GST at the rate of 5 per cent as the matter is pending in the proceedings.

The appellant had sought a clarification on whether its product of frozen/packaged parathas from the AAR, whether attracts 5% or 18% GST.

The AAR has ruled differentiating paratha or parotta from roti, which are essentially two types of Indian breads, and has clarified that paratha is be taxed at more than triple the GST tax rate on roti. In May 2020, the AAR had ruled that the product cannot be category of roti which attracts 5% GST. The applicant contended that paratha was to be included in the entry "khakhra, plain chapati or roti" which attracts 5% GST.

Rejecting this contention, the AAR had observed:
The products khakhra, plain chapatti or roti are completely cooked preparations, which does not require any processing for human consumption and hence are ready to eat foods preparations, whereas the disputed products are not only different from the said khakhra, plain chapatti or roti but also are not like products in common parlance as well as in respect of the essential nature of the product. As it is required heating up before their consumption.These products also require further processing for human consumption, as admitted by the applicant.

In its order, AAR said that rotis are already prepared or completely cooked meals while parathas need to be heated before consumption. The AAR had in its order ruled that the product paratha is classified under Chapter Heading 2106 and is not covered entry No. 99A of Schedule I, so 18 per cent of Goods and Service Tax is applicable. Challenging this ruling of AAR, the applicant approached the appellate authority.

The appellate authority dismissed the appeal on all counts for suppression of facts and declared the AAR ruling to be void ab initio.

BOOK POST

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