GST

TAX TALK

104

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Editorial...

With the shining of diyas and the echoes of the chants, may prosperity and happiness of this festival of lights fill our lives. ***Have a happy, safe, and blessed Diwali!***

The 42nd GST Council's meeting was able to make slight progress in two respect: simplifying the return filing process and taking a tentative step forward in resolving the impasse over compensation cess. The intent to move towards auto-populated returns and invoice matching can go a long way towards checking tax evasion and improving revenue collection.

In order to curb on fraudulent availment and passing of ITC, the government will use artificial intelligence (AI) and Aadhaar registration to identify the dubious firm purposely created for Goods and Services Tax (GST) evasion and put them under the "risky" category to closely monitor their activities. The customs department has already created a database of "risky" exporters who fraudulently availed input tax credit (ITC) and nabbed several firms, including star exporters. Now the same mechanism could be used for fake firms claiming GST refunds without actually conducting transaction or business.

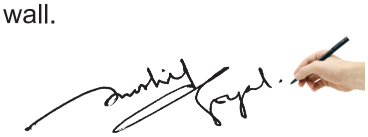
In order to improve tax collection, CBDT had allowed income tax authorities to share the information with various other departments/ authorities, including GST. Further, format of Form 26AS has been modified and enlarged to include information received from other departments/ authorities, including GST. In respect of data shared, the GST Department had issued various notices demanding Service Tax as well as GST. Assessee are now requires to keep the track of transactions reflecting in Form 26AS to avoid disputes.

GST Annual Return for the financial year 2018-19 which was to be filled by 31st December, 2019 earlier got extended to 31st October, 2020. Now this has been further extended till 31st December, 2020 to facilitate the taxpayers. An issue has been raised that the auto populated GSTR 9 for the financial year 2018-19 (Tables 4, 5, 6 and 7) also includes the data for financial year 2017-18. It is recently clarified that the taxpayers are required to report only the values pertaining to Financial Year 2018-19 and the values pertaining to Financial Year 2017-18 which has been shown in the GST return in the year 2018-19 is not to be considered. It has also been clarified that no adverse view would be taken in cases where there are variations in returns for taxpayers who have already filed their GSTR-9 of Financial Year 2018-19 by including the details of supplies and ITC pertaining to Financial Year 2017-18 in the Annual return for FY 2018-19.The impact of this extension of due datefor filing of Annual Return is discussed in Page 4.

E-invoicing has been made mandatory for assesses with a turnover of Rs.500 crores or more from October, 1. Keeping in view the hardships faced by the taxpayers due to COVID-19 lockdown and as some of these taxpayers are still not ready, as a last chance, Government had given relaxation that invoices raised by notified taxpayers during October,2020 without following e-invoice procedure (i.e. uploading invoice details on e-invoice portal (IRP), obtaining IRN and issuing invoice with QR Code) will be deemed to be valid and no penalty will be there if the IRN for such invoices is obtained within 30 days of date of invoice.

In this issue, on page 2 & 3, we have tried to cover services and goods under reverse charge mechanism by incorporating various changes, brought from time to time since GST implication as guide to the user. Around 16 notifications and 1 Circular have been issued so far in this respect. The concept of Reverse Charge Mechanism is not new as the same was already there in the erstwhile Service Tax laws. However, in GST regime Government has notified not only supply of certain services but also supply of certain goods under RCM.

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 (Aggregate Turnover > 1.5 cr)	GSTR-1	October, 2020	11th November, 2020
Monthly GST Return	GSTR-3B	October, 2020	20th / 22nd / 24th November, 2020
Monthly ISD Return	GSTR-6	October, 2020	13th November, 2020
Person required to deduct TDS	GSTR-7	October, 2020	10th November, 2020
Person required to deduct TCS	GSTR-8	October, 2020	10th November, 2020

The taxability under reverse charge mechanism is not entirely a new concept for the taxpayers. It was originally introduced during the period of Service tax and now it is also carried forward in GST regime. The objective of the Reverse Charge Mechanism is to widen the scope of levy of tax on unorganized sectors. Therefore, under Reverse Charge Mechanism, the liability to pay tax is fixed on the Recipient of the supply of goods or services instead of the Supplier.

Q1 What does Reverse Charge mean?

Ans. As per Section 2(98), Reverse Charge means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under Section 9(3) or 9(4) of the CGST Act or under Section 5(3) or 5(4) of the IGST Act.

Q2 Registration:

Ans. A person who is required to pay tax under reverse charge has to compulsorily get register under GST even if the turnover is below the threshold limit.

Q3 What is 'Time of Supply' in Reverse Charge under GST?

Ans. The Time of supply is the point when the supply is liable to GST. Time of Supply under RCM is different from the supplies which are under forward charge.

For Supply of Goods, the time of supply shall be the earliest of the following dates:

a) date of receipt of goods; or

b) date of payment as per books of account or date of debit in bank account, whichever is earlier; or

c) date immediately after 30 days from the date of issue of an invoice by the supplier

For Supply of Services, the time of supply shall be the earliest of the following dates:

a) Date of Payment

b) Date immediately after 60 days from the date of issue of invoice by the supplier

If it not possible to determine the time of supply, the time of supply shall be the date of entry in the books of account of the recipient.

Q4 How to pay tax under RCM?

Ans. Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. The reverse charge liability cannot be discharged by using input tax credit.Advance paid for reverse charge supplies is also liable to GST.

Q5 Can we Claim credit for RCM?

Ans. The service recipient can avail Input Tax credit on the Tax amount that is paid under reverse charge on goods and services. The only condition is that the goods and services are used or will be used for business or furtherance of business.

If the composite dealer falls under reverse charge mechanism then the dealer is ineligible to claim any credit of tax paid. The tax will be paid at the normal applicable rates and not at the composition rates.

However, a supplier cannot take ITC of GST paid on goods or services used to make supplies on which recipient is liable to pay tax.

Q6 Is there any specified goods or service on which recipient is liable to pay tax if received from unregistered supplier?

Ans. Three kinds of supplies have been specified when received from unregistered supplier by the promoter:

- Input and input service for construction of project
- Cement purchase
- Capital goods

The promoter will not be liable to pay tax under reverse charge mechanism, if 80% of the value of input and input services are procured from the registered suppliers. However, on cement and capital goods purchased from unregistered supplier, the promoter had pay to tax under reverse charge mechanism irrespective of percentage of total purchase.

Q7 What if an Input Service Distributor receives supplies liable to Reverse Charge?

Ans. The ISD mechanism is only to facilitate distribution of credit of taxes paid. Hence an ISD cannot make purchases liable to Reverse Charge. If the unit having ISD registration wants to procure such supplies which are under RCM and take credit of same, the ISD should register as a person liable to pay tax.

Q8 On what goods RCM is applicable?

Ans. Chart of notified Goods on which GST is Payable under RCM:

Description of Goods	Supplier of Goods	Recipient of Supply
Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
Bidi wrapper leaves(tendu)	Agriculturist	Any registered person
Tobacco leaves	Agriculturist	Any registered person
Silk yarn	Any manufacturers of silk yarn.	Any registered person
Raw cotton	Agriculturist	Any registered person
Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent.
Used vehicles seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a Local authority.	Any registered person
Priority Sector Lending Certificate	Any registered person	Any registered person

*Above Table incorporate list of goods as applicable on date

Q10 On what services RCM is applicable?

Ans. Chart of notified Services on which GST is Payable under RCM:

Category of Supply of Services	Supplier of service	Recipient of Service
GTA Service	GTA who has not paid central tax at the rate of 6%.	Person liable to pay freight (Note 1)
Legal Service	An individual advocate including a senior advocate or firm of advocates.	Any business entity
An Arbitral Tribunal	An arbitral tribunal	Any business entity
Sponsorship Services	Any person	A body corporate or partnershipfirm persons
Services other than, • renting of immovable property, • services by the Department of Post & agency services provided to a person other than CG, SG or UT or LA; • services in relation to an aircraft or a vessel • transport of goods or passengers	CG, SG, UT, or LA	Any business entity
Renting of immovable property	CG, SG, UT, or LA	Any person registered under the CGST Act, 2017
Transfer of development right or FSI for construction	Any Person	Promoter
Long term lease of land (30 yrs or more) against consideration in the form of upfront amount and/or periodic rent for construction	Any Person	Promoter
Director Services	A director of a company/body corporate	Company/ bodycorporate
Insurance Agency Service	An Insurance Agent	Any person carrying on insurance business
Recovery Agency Service	A Recovery Agent	A banking company or a financial institution or a NBFC
Copyright other than original literary works	Musiccomposer, photographer, artist, or the like	Music company, producer or the like
Copyright relating to original literary works	Author	Publisher
Supply of services by the members of Overseeing Committee	Members of Overseeing Committee constituted by the RBI	RBI
Services supplied by individual Direct Selling Agents (DSAs)	DSAs other than body corporate, partnership or LLP	A banking company or a non-banking financial company
Services provided by business facilitator (BF) to a banking company	Business Facilitator (BF)	A banking company
Services provided by an agent of business correspondent (BC) to BC.	An agent of business correspondent	Business correspondent
Security services, Provided that nothing contained in this entry shall apply to: (i) Person liable to collect TDS (ii) Composite Dealer	Any person other than a body corporate	A registered person
Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging CGST @6% to the service recipient.	Anybody corporate
Lending of securities under Securities Lending Scheme, 1997 of SEBI, as amended.	Lender	Borrower
Any service supplied by any person who is located in a non- taxable territory to any person other than non-taxable online recipient	Any person Located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	Any person Located in a non-taxable territory	Importer located in taxable territory.

*Above Table incorporate list of services as applicable on date.

Note 1: Person liable to pay freight :

(a) Any factory registered under or governed by the Factories Act; or (b) any society registered under the Societies Registration Act, or under any other law; or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGSTAct; or (e) anybodycorporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person.

Extension - Oppotunuty Or Obstacle?

The deadline to file GSTR-9 and 9C has been extended a couple of times for various reasons. For CAs and businesses both, the last one year have been a confusing and complex period, trying to understand the intricate GSTR-9 form due to effect of figures of 2017-18, while tallying their monthly and quarterly filed-returns with their books of accounts.

Last extension done by Notification No 80/2020 dated 28.10.2020 for filing of Annual Return (FORM GSTR-9) and Reconciliation Statement (FORM GSTR-9C) for Financial Year 2018-19 from 31st October 2020 to 31st December, 2020. For F.Y 2018-19, due date will be 31st December. Originally, it was 31st December 2019, so exactly one year got extended. Three important provisions of GST Act, which can intimate the mind of taxpayer: -

Section 73 (Non-Fraud Cases):- An order can be issued within 3 years from the due date of filing annual return of that relevant F.Y i.e. the government authority also gets their due date extended for an order to be passed. This time period gets extended for the corresponding provision pertaining to issuance of show cause notice at least 3 months from due date of passing order.

Section 74 (Fraud Cases):- An order can be issued within 5 years from the due date of filing annual return of that relevant F.Y i.e. the government authority also gets their due date extended for an order to be passed. This time period gets extended the corresponding provision pertaining to issuance of show cause notice at least 6 months from due date of passing order.

Section 36 (Retention of Accounts):- Every registered person must maintain and retain their Books of Accounts for minimum 72 months from the due date of filing return of that particular financial year. So as the due date gets extended this corresponding provision also gets extended.

Department is getting further time period for issuing show cause, which we find as relief for GSTR9 & 9C for the financial year.

Alternate option:- We should demand waiver of late fees. By this the due date for Annual Return and Reconciliation Statement or GSTR-9C do not get extended, only the late fees get waived. If it is not extended then the power to issue show cause notice/order and retention of Books of Accounts will be limited and restricted to the original due date i.e. 31st December, 2019. We are only highlighting here that instead of demanding for extension and due date, we must demand waiver of late fees only.

There is one more point which we would like to mention here that GSTR-9 and 9C for F.Y 2018-19 is optional for a taxpayer whose aggregate turnover is less than 2 Cr, this is applicable for 2018-19 and 2019-20 as well. But, if your turnover is between 2Cr to 5Cr, then the taxpayer are compulsorily required to file GSTR-9, same is applicable for the F.Y 2019-20.

BOOK POST

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