

INDIRECT TAX EXPRESS

Fortnightly e-newsletter from m/s DAVA & Associates, Chartered Accountants

FROM THE EDITORIAL TEAM

Key Components of GST Returns GSTR-2, GSTR-6 and GSTR-7

A. GST Return for Inward Supplies received by the Taxpayer (GSTR-2) – GSTR-2 is required to be filed by all taxpayers except the compounding taxpayers and Input Service Distributors. Besides the basic details like Name of the taxpayer along with GSTIN & period to which return pertains, the GSTR-2 return would capture following information:

1. Information about Final invoice-level inward supply pertaining to the tax period for goods and services separately.
2. Information submitted in GSTR-1 by the Counterparty Supplier of the taxpayer will be auto populated in the concerned tables of GSTR-2, with an option with the taxpayer to modify the same while filing his GSTR-2 form.
3. There will be separate tables for submitting Details regarding import of Goods/Capital Goods and for Services.
4. Details of inward supplies would be auto-populated in the ITC ledger of the taxpayer on submission of his return, where he will have to select the invoice details relating to ineligibility or eligibility of ITC and the quantum available in the concerned tax period.
5. There will be a separate table for submitting Details in relation to ITC received on an invoice on which partial credit has been availed earlier.
6. In respect of capital goods, there will be a field to capture Information regarding availment of ITC over a period from the date of account of capital goods in the taxpayer's books of accounts.
7. In respect of inputs, there can be two situations -
 - The ITC on inputs which are received in one lot will be given in the return period in which the purchase is recorded in the books of accounts; while
 - The ITC, when inputs covered under one invoice are received in more than one instance/lot, will be given in the return period in which the last purchase is recorded in the books of accounts.
8. Details of revision in information of inward supply invoices pertaining to previous tax periods, including the details of Credit/Debit Note issued by the suppliers and the differential value impact and concomitant tax payable/refundable.
9. Information effecting modifications/corrections of errors in the returns submitted earlier.
10. Details in relation to NIL rated, Exempted and Non-GST inward Supplies, including those received from compounding taxpayers and unregistered dealers.
11. Information regarding ISD credit received by the taxpayer.
12. Details relating to TDS Credit received by the taxpayer.
13. This return will be auto populated from GSTR-1 on or after 11th of the succeeding month, followed by addition or deletion of the invoices by the taxpayer (if necessary) between 12th and 15th. Thereafter, adjustments would be permitted and said return would be required to be filed by 17th of the succeeding month.

B. GST Return for Input Service Distributors (GSTR-6) - All taxpayers registered as Input Service Distributors will be required to file GSTR-6 by 15th of the succeeding month. This return form would capture the basic details like Name of the taxpayer along with

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GST NEWS

Union Minister for Parliamentary Affairs Mr. M Venkaiah Naidu said on 2nd February, 2016 that, Government would leave no stone "unturned" to get the long-awaited GST bill passed in the budget session of Parliament which would begin after February 20. He further said—"There is tremendous buildup of public opinion across the country in favour of the GST Bill. I hope other parties will realise the importance of GST and (give) support. The government is also looking forward to clearing of bills on Real Estate Development and Regulation and bankruptcy." He also said that passing of GST bill will revolutionize the system and it will increase revenue by 1.5 percent to 2 percent.

-The Economic Times.

The Ministry of Finance is planning to make the forthcoming general budget people-friendly. The service tax threshold exemption limit is expected to be increased from Rs.10 lakh at present to Rs.25 lakhs.

This will be good news for many small independent service providers, ranging from consultants to interior designers, who are likely to come within the ambit of the proposed Goods and Service Tax (GST). But the government is also considering a balancing act by lowering the exemption threshold limit for excise.

- **The Times Of India**

GSTIN & period to which return pertains, along with following additional information:

1. Details relating to Final invoice-level inward supply information for goods and services, on which ITC is being claimed for the relevant tax period. This information will be auto populated from GSTR-1 filed by Counterparty Supplier of the taxpayer and the same may be modified by the Taxpayer while filing his ISD return.
2. Details of the Invoices, along with the GSTIN of the receiver of the credit.
3. Separate ISD Ledger to detail the Opening Balance of ITC (to be auto- populated on the basis of previous return), credit for ITC services received, debit for ITC reversal and ITC distributed and Closing Balance.

C. GST Return for Tax Deducted at Source (GSTR-7) – GSTR-7 will be required to be filed by all Tax Deductors, the cutoff date for filing of such TDS return being 10th day of the succeeding month. Following information shall be incorporated in the aforementioned return form:

1. Basic details like Name of the taxpayer along with GSTIN & period to which return pertains.
2. Details of GSTIN of the Supplier, along with the invoices against which the tax has been deducted. Additionally, this will also contain the details of tax deducted against each major head, i.e. CGST, SGST and IGST.
3. Details of other payments in the form of Interest/Penalties/Fee/Others, which will be auto populated from the Debit entries in the Cash ledger.

NOTIFICATIONS & CIRCULARS

- Tax Research Unit of the Department of Revenue, vide an instruction **F.No.354/311/2015-TRU dated 20.1.2016**, has directed that in valuing the service of construction provided by a builder/developer to a landowner, who transfers his land/development rights to builder, for getting, in return, constructed flats/dwellings from builder/developer, the Service Tax assessing authorities should be guided by the Board Circular dated 10.2.2012 and not the Education Guide.
- Central Government, vide **Notification No. 04/2016-CE dated 30.01.2016** has again increased the Excise Duty on unbranded Petrol to Rs. 9.48/l, branded petrol to Rs. 10.66/l, unbranded Diesel to Rs. 11.33/l and branded diesel to Rs. 13.69/l w.e.f. 31.01.2016.
- Central Government, vide **Notification No. 03/2016-CE dated 22.01.2016** has amended Notifications No. 56/2002-CE & No.57/2002-CE both dated 14.11.2002 so as to insert a sunset clause of 31.03.2016 and to deny the benefit of the exemption to goods on which certain specified processes have been undertaken
- Central Government, vide **Notification Nos. 04/2016-Cus dated 19.01.2016** has amended notification No. 12/2012- Cus dated 17.03.2012 to increase the rate of basic customs duty on certain specified medical device. Simultaneously, it has reduced basic customs duty along with full exemption from SAD on raw materials, parts and accessories for manufacture of medical devices, falling under headings 9018 to 9022.
- Central Government, vide **Notification No. 05/2016-Cus dated 19.01.2016** has amended Notification No.21/2012-Customs dated 17.03.2012 & increased the additional customs duty on certain specified medical devices.

QUIZ!!!

1. **State whether true or false – “Interest Payable u/s 75 for delayed payment of service tax can be waived by the Commissioner Of Service Tax”**
2. **Which authority is empowered to grant Centralised Registration of Service Tax?**
3. **What is the time limit for issue of SCN in cases not involving wilful suppression or misstatement of facts, fraud, collusion, etc. under Finance Act, 1994?**

(Please mail your replies with your name and mail id to **davaidtexpress@gmail.com**)

(The first 3 correct answers will be published in the next issue with name & mail id of the sender.)

ANSWER TO LAST FORTNIGHT'S QUIZ

Reply to Q1- **True**

Reply to Q2- **Yes**

Reply to Q3- **Yes**

Reply given by:

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1. Larsen & Toubro Ltd. vs. Commissioner of Central Excise, Bhopal [2016 (41) S.T.R. 95 (Tri. – Del.)]

Issue: - Whether it is justified to confirm demand on full value of purchase order when the service component in form of supervision of erection and commissioning of plant has been rendered free of cost?

Decision: - The appellant was required to supply the plant and provide supervision of erection and commissioning thereof. Relying on the case of *CIT vs. Sundwiger EMFG & Co.*, the Hon'ble Delhi CESTAT agreed that such supervision of erection and commissioning has to be treated as part of sale and that supervision is only incidental to the sale. Moreover, in the present case, there has been no charge for such supervision which has been provided free of cost. Thus, there is no consideration received for such supervision. A careful perusal of the purchase order also makes it clear that notwithstanding its subject title, it is essentially for supply of limestone crushing plant. Even if it is held that there was a service component in the form of supervision of erection and commissioning of the plant supplied, the said service was manifestly rendered free of cost and no service tax liability can arise as the value of the goods supplied cannot be included in the assessable value even as per notification No. 12/2003-ST as no Cenvat credit has been taken by the appellant in respect of such goods.

2. Commissioner of C.Ex., Chennai vs Addisons Paints & Chemicals Ltd. [2015 (318) E.L.T. 17 (S.C.)]

Issue: - Whether value of packing done for safety during transportation of goods shall be included in the assessable value of goods for calculation of excise duty?

Decision - The Hon'ble Supreme Court held that it is only when packaging is done to make the goods saleable in the market that the cost of such packing is to be included for the purpose of calculating the excise duty. In the present case, parts of sheet glass were being manufactured and the wooden packing was required only for safety during transport. Thus, since packing is not done in order to put the goods in marketable condition and the goods are capable of reaching the market even without the type of packaging concerned, such activity cannot be considered to be a requirement for sale at "factory gate". Hence, value of wooden packing is not includible in assessable value of sheet glass.

3. Darbar Transport Co. vs. Commissioner of Central Excise, Jaipur-I [2016 (41) S.T.R. 320 (Tri. – Del.)]

Issue: - Whether service tax can be demanded again on the amount retained by the GTA, who is hiring trucks from individual truck owners for providing GTA service and discharging service tax liability on entire consideration received from customers?

Decision – The appellant entered into an agreement with the customers for doing transportation business. For this he hired trucks from individual truck owners to whom he pays a part amount as rent. In the process he saves a small amount for himself. The Revenue created tax liability on the same on the ground that by promoting the business of individual truck owners, they have earned the said amount as commission. The Hon'ble Delhi CESTAT found no favour with the said stand of the revenue, but, keeping in view that the appellant has already discharged its service tax liability on the total collected amount from its customers; it held that creating a duty liability in respect of a part amount from the same would amount to double taxation. The Tribunal also relied on a similar case of *Jai Shree Road Lines vs. CCE, Jaipur-II* reported in [2013 (31) S.T.R. 226 (Tri. – Del.)] where the tribunal had set aside the demand on the same ground.

4. Tata Consultancy Services Ltd. vs. Commissioner of ST, Mumbai [2016 (41) S.T.R. 121 (Tri.-Mumbai)]

Issue: - Whether service tax applicable on Intellectual Property Rights which did not satisfy the definition as given under section 65(55b) of the Finance Act, 1994?

Decision: – The Hon'ble Mumbai Tribunal observed that definition of Intellectual Property Right must be satisfied to term the service received by the appellant as intellectual property right service. There is no clue at all in the records as to which type of intellectual property right is being assigned to the technical know-how received by the appellant. It is obvious from the definition of IPR that the right has to be a specific right under a specific law. Examples are given under the definition such as the trade mark which is a right provided under Trademarks Act. Similarly rights mentioned as design in the definition is a right under the Designs Act. Therefore the technical know-how received by the appellant and the royalty payment made by the appellant to Unisys is nowhere established to result from the use of any Intellectual Property Right. The Hon'ble Tribunal went on to add that the IPR should be a right under the Indian Law. IPRs not covered by the Indian laws would not be covered under taxable service in the category of IPR services. The Tribunal's views are fortified by Board Circular F. No. 80/10/2004-ST dated 17.09.2004.

FREQUENTLY ASKED QUESTIONS

Query 1: A 100% EOU is engaged in the business of processed marine products. The company procures from local harvesting parties and exports accordingly after processing which includes severing of heads and freezing as per the requirement of foreign importer. After packaging of frozen shrimps, containers are being loaded and transported by road by individual carriers from the place of removal. Whether the company is liable to pay service tax under reverse charge mechanism on GTA services or it is exempted from service tax?

Reply by e-newsletter team: As per *Notification No. 31/2012 - Service Tax dated 20th June 2012* as amended, the central government exempts the “service provided to an exporter in relation to transport of the said goods by goods transport agency in a goods carriage directly from their place of removal, to an inland container depot, a container freight station, a port, airport or land customs station, as the case may be, from where the goods are exported” subject to conditions specified in the said notification. It appears that the aforesaid goods transportation service is covered under this notification and hence is exempt from service tax provided the conditions specified in the notifications are fulfilled.

Query 2: A buyer made a booking for a flat in an under-construction residential complex in December 2015 and paid the booking amount along with applicable service tax as well as Swachh Bharat Cess. Thereafter, the buyer cancelled the booking later on and claimed refund. Whether the construction company can refund the Swachh Bharat Cess portion to the buyer and make adjustment in the ST-3 return under Rule 6(3) of Service Tax Rules?

Reply by e-newsletter team: there is no specific provision regarding refund of Swachh Bharat Cess in case service is not provided or short provided. However, As per Section 119(5) of the Finance Act, 1994, ‘the provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made thereunder, as the case may be.’ Since the provisions applicable for service tax are applicable for Swachh Bharat Cess too, the construction company may refund the Swachh Bharat Cess portion to the buyer and thereafter make adjustment of the same in the ST-3 return under Rule 6(3) of the Service Tax Rules, 1994.

“The most important thing in life is to stop saying ‘I wish’ and start saying ‘I will’”

- Charles Dickens



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