Tax Talk

The Monthly Service Tax Bulletin - Also Covering GST **Rs. 5/-**

Editorial

Happy New Year 2017!!! New beginnings, fresh starts, reaffirmations of love and promises for a brighter future all come to mind as we ring in a New Year. 2016 has been an eventful year which has witnessed the unfolding of various political and economic events which has had a far – reaching effect on the varied common masses.

Getting back to GST, the year 2016 witnessed some key advancement in the field of introduction of GST. The unanimous approval of the Constitutional Amendment Bill by the Rajya Sabha and its consequent assent by the President, formation of the GST Council, and release of the draft Model GST Law along with its subsequent revision in November were some of the major events which lift up the failing hopes of the stakeholders.

GST Council, the key decision making body, which was entrusted with the work of recommending the tax rate, exemption from tax, taxes to be subsumed etc has held 7 meetings so far. The Council's fifth meeting held on 3rd & 4th December, 2016 failed to break the deadlock between the Centre and the States on the issue of dual control in the proposed pan-India indirect tax regime. The sixth meeting of the Council commenced in the shadow of demonetization, whose fallout has put a serious question mark on implementing GST by the Central Government's targeted deadline. In its seventh meeting, the Council cleared most of the provisions of the CGST, SGST and the Compensation Law. Nevertheless, the Centre and the states failed to make a breakthrough over the vexed issue of division of control over tax assessees.

The demonetization policy of the Government has stolen the limelight from GST. It has added a new dimension to the relations between the Centre and the States by claim of the States for the increased quantum of compensation and delayed implementation of the GST because of the collateral damage caused by demonetization. In the background of changed context, the Hon'ble Finance minister Shri Arun Jaitley has made his stance clear in unequivocal words that for the sake of promised date of implementation, the due process of deliberation will not be sacrificed. He has further stated that GST being transaction tax, can be introduced in any part of the financial year beginning 1st April, 2017 till 16th September, 2017. We are sure the New Year will unfurl new hopes, dialogues, debates, deliberations for a meaningful and sustainable conclusion on the subject.

Planning and precaution during the transition period would be the pre–requisites for the targeted benefits. Looking at the significance of the phase, the challenges during the transitional period have been discussed in Page 2 & 3 of this issue.

Pursuant to the demonetisation policy of the Government, a notification has been issued extending exemption from tax on services provided by an acquiring bank, to any person in relation to settlement of an amount in single digital transactions upto Rs. 2000/- and an instruction has been issued that entails no re-opening of past assessments under indirect taxes on account of increased turnover in the books. These have been discussed in page 4 of the issue.

We hope this newsletter will add some value and prove to be beneficial to the readers. We highly solicit suggestions/opinions of the readers. Please feel free to convey your views at servicetaxgoyal@gmail.com. You may refer all earlier issues of Tax Talk at www.gstpeople.com.

Sushil Goyal.

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DUE DATES

PAYMENT	FORM	DUE DATE
Payment for Month/ Quarter ending December 2016 (all assessees)	E-Payment	6th January, 2017
RETURN	**FORM**	**DUE DATE**
Return for the Quarter October 2016 - December 2016 (For a SEZ Unit or a Developer)	A-3 (Physical)	30th January, 2017

Concept of 'Supplies' under

Brief Introduction

Under the Model GST Law, taxes (CGST/SGST/IGST) will be levied on supplies of goods and/or services. This is going to be a major departure over the present system of levy and collection of three important constituents of Indirect taxes viz. Excise duty, Service Tax & Value Added Tax (VAT).

At present Excise Duty is levied on manufacture and removal of goods, Service Tax is levied when services are rendered or to be rendered and State VAT is levied when intra-state sale is made. As these taxes, among others, are going to be sub-summed under GST, the three events i.e. Manufacture, Rendering of Service and Sale of goods will not be relevant under GST regime. Under GST regime, tax will be levied, as stated above, on effecting supplies of goods and/ or services. It is therefore, essential that the full scope of the concept of supply and its ramifications are understood properly by the tax payer.

Meaning and significance of Supply

'Supply' is the most critical and pivotal term under the proposed GST regime, which would be centric point to determine levy & collection of GST. Despite being the first step for taking off under GST regime, the Model GST Law has chosen to define 'supply' in an inclusive manner, without even defining what supply means. 'Supply' covers transactions of the nature of Sale, Transfer, Barter, Exchange, License, Lease, Rental, Disposal of goods and services. In other words, supply should not be confused with delivery. Importation of service – whether for consideration or not- in the course of or furtherance of business or not will be covered under GST.

For the purposes of GST, supply essentially covers transactions of supply of goods and/ or services made or to be made against consideration by a person in the course of or furtherance of business. It is interesting to note that whereas words like 'supply', 'goods', 'services', 'consideration', 'person' are defined in the Model Law, expression 'in the course of or furtherance of business' has not been explained. This expression has been used in different definitions like, casual taxable person, composite supply, input, input service, outward supply, 'supply 'and in Schedule I of the draft law.

GST is a tax on supplies made in the course of or furtherance of business - an economic activity or supplies made as a part of business. It should not cover activities covering personal hobbies of an individual, gifts made for personal reasons or charitable activity with any business or commercial concern.

Schedules to the Model GST Law

Although consideration is a vital constituent for bringing any transaction within the net of taxation but under GST there are specified transactions listed under Schedule I, which would be subjected to tax even in the absence of consideration. This has enlarged the scope of taxing the supplies. Services put to any private or non-business use-supply of goods or services by a taxable person to another taxable or non-taxable person in the course of or furtherance of business (e.g., free gifts or samples, free services to friends etc.) will come under the purview of GST.) The said **Schedule I** have been depicted below:

a. *Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.*

b. *Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.*

c. *Supply of goods—*

   i. *by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or*

   ii. *by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.*

d. *Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.*

Schedule II of the draft model law also provides for various matters which shall be deemed as or shall be treated as 'Supply' of goods or services. The following shall be treated as "supply of service" -

a. *renting of immovable property;*

b. *construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.*

c. *Temporary transfer or permitting the use or enjoyment of any intellectual property right.*

d. *development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software.*

e. *agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.*

f. *works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.*

g. *transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.*

h. *supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.*

i. *Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof.*

j. *Any lease, tenancy, easement, licence to occupy land.*

k. *Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly.*

l. *Any treatment or process which is being applied to another person's goods.*

m. *Where under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods shall be supply of services.*

Apart from the aforesaid activities which shall be treated as supply of services, the following shall be treated as supply of goods:

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a. *Any transfer of the title in goods.*

b. *Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed.*

c. *Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration*

d. *Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless –*

   (i) *the business is transferred as a going concern to another person;*

   (ii) *the business is carried on by a personal representative who is deemed to be a taxable person*

e. *Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.*

In the earlier draft model law, the persons to be registered were specified in Schedule III but in the revised draft GST law, those activities and transactions which are neither supply of goods nor services have been have been listed in **Schedule III**. The contents of the said schedule have been numerated below:

a. *Services by an employee to the employer in the course of or in relation to his employment.*

b. *Services by any Court or Tribunal established under any law for the time being in force.*

c. *The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.*

d. *The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.*

e. *The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.*

f. *Services by a foreign diplomatic mission located in India.*

g. *Services of funeral, burial, crematorium or mortuary including transportation of the deceased.*

Schedule IV deals with the activities of supply of goods and/ or services undertaken by the Centre and State Government or Local Authority which will not be considered as supply. The said schedule has been depicted below:

a. *Services provided by a Government or local authority to another Government or local authority excluding the following services:*

   i. *services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services.*

   ii. *services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an aircraft; or*

   iii. *transport of goods or passengers.*

b. *Services provided by a Government or local authority to individuals in discharge of its statutory powers or functions such as-*

   i. *issuance of passport, visa, driving licence, birth certificate or death certificate; and*

   ii. *assignment of right to use natural resources to an individual farmer for the purpose of agriculture.*

c. *Services provided by a Government or local authority or a governmental authority by way of:*

   i. *any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.*

   ii. *any activity in relation to any function entrusted to a Panchayat under article 243 G of the Constitution.*

   iii. *health care; and*

   iv. *education.*

d. *Services provided by Government towards-*

   i. *diplomatic or consular activities;*

   ii. *citizenship, naturalization and aliens;*

   iii. *admission into , and emigration and expulsion from India;*

   iv. *currency , coinage and legal tender , foreign exchange;*

   v. *trade and commerce with foreign countries , import and export across customs frontiers , interstate trade and commerce; or*

   vi. *maintenance of public order.*

e. *Any services provided by a Government or a local authority in the course of discharging any liability on account of any tax levied by such Government or authority.*

f. *Services provided by a Government or a local authority by way of –*

   i. *tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; or*

   ii. *assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016:*

g. *Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import or export of cargo on payment of Merchant Overtime Charges (MOT).*

h. *Services provided by Government or a local authority by way of-*

   i. *registration required under any law for the time being in force; or*

   ii. *testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.*

The Government also been vested with the power to notify transactions which will be considered as supply of goods and not supply of services; transactions which will be considered as supply of services and not supply of goods; transactions which will be considered neither as supply of goods nor supply of service.

Recent Updates

Digitised Transaction upto Rs. 2000

Exemption has been provided on services provided by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service. This exemption has been extended to boost digital transactions and encourage merchant establishments to accept payment through credit card, debit card, charge card or other payment card service.

For this purpose, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

[Notification No. 52/2016-ST dated 08.12.2016]

Authentication by digital signature

A person located in non-taxable territory providing online information and database access or retrieval services to Government, a local authority, a governmental authority or an individual receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession located in taxable territory shall be the person liable to pay tax w.e.f. 01.12.2016.

In this regards, it has been provided that the person located in non-taxable territory may issue online invoices not authenticated by means of a digital signature for a period upto 31st January, 2017.

[Notification No. 53/2016-ST dated 19.12.2016]

Past assessments not to be reopened

The recent initiative of the government to curb black economy in the country has encouraged people to shift towards digital modes of payment. By adopting digital mode of payment, no financial transactions would remain undisclosed and consequently an enhanced turnover of business might get reflected in the books of accounts. Under the circumstances an apprehension has been raised that increased turnover on account of use of digital means of payment may lead to demands for the earlier period. It has been clarified by CBEC that in indirect taxes, past assessments will not be reopened for this reason alone.

[Instruction F.No. 137/155/2012-Service Tax (Part-I) dated 09.12.2016]

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Happy New Year! 2017