Tax Talk

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

Editorial

With the arrival of March the countdown for the end of current financial year has begun. The year has witnessed some key developments both in the financial and non-financial sectors. The year indeed has been eventful in more than one ways and has impacted the life of both the influential and ordinary segments of the society. Shocks and surprises were the hallmarks of the year both in terms of military surgical strikes, global election results, and financial upheaval caused by demonetization and its perceived side effects. THAT there has not been any violent disruption to the settled daily life of the society proves only the resilient power of the ordinary.

Amidst this dust and fury, the transition to indirect taxation reforms is being navigated with skillful drive and momentum. Government is determined that the passage to introduction of the much inspirational Goods and Service Tax–One Nation One Tax should be consensual and must embody the spirit of participative representation of all the key stakeholders.

GST Council, the epicenter for all the functional direction for the GST has been receptive to the various issues associated with the transitions and has shown remarkable achievement in resolving issues such as the administrative turf between Centre and states, compensation to states , proposed rate band-width etc. Government has also been prompt in revising the Model GST Law in November 2016 after introducing the first Model GST Law in June. The revision was the outcome of the various trade representations made over some of the provisions which were not considered favourable by the Chambers of Commerce and other Trade Bodies.

There are still some provisions e.g. that the Input Tax Credit will be allowed to the recipient only when the supplier has deposited the tax charged and filled the return moreover the anti-profiteering provision mandating that the benefit of reduction in rate should be passed to the receiver are being frowned upon by the stakeholders. Looking at the significance of the provisions related to input tax credit, the same have been discussed in Page 2 & 3 of this issue.

On the service tax front, the Central Government has given retrospective exemptions on (i) services by the operators of Common Effluent Treatment Plant by way of treatment of effluent and (ii) services by way of admission to a museum, for the period starting from 1st July, 2012 to 31st March, 2015, during this period largely people had not paid tax on such services. These exemptions along with few more subjects have been discussed in Page 4 of the issue.

GST, it seems, has realized the importance of aligning the statutory provisions with the changing business modules. On line services and e-commerce services are receiving focused attention both under existing provisions of Service Tax laws as well as in the proposed GST. In the meanwhile some of the key e-commerce operators have jointly represented to Ministry of Finance over the hardships in complying with the proposed TCS provisions. May the Final version of GST Laws give some relief to them.

It is hoped that with the current spate of debates and dialogues, in the new financial year 2017-18, Government will be successful in introducing GST and will be a watershed year in the history of Indirect Tax Reforms in India.

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 the month ending February, 2017 (assessees other than individual, proprietorship firm, HUF, OPC ≤ Rs.50 lakhs, partnership firm and LLP)	E-Payment	6th March, 2017

Conceptual Analysis of Input Tax Credit under GST

Meaning of Input Tax Credit

"Input Tax Credit" means the credit of 'input tax'.

"Input tax" in relation to a taxable person, means:

- CGST and SGST charged on any supply of goods or services.
- the IGST, including that on import of goods.

and includes the tax payable on Reverse Charge Basis.

But does not include the tax paid under Composition Scheme.

Input Tax Credit - Essence

- ➢ Every Registered Taxable Person (RTP) shall be entitled to take Input Tax Credit (ITC) -
  - Charged on supplies of goods and/or services;
  - Supplies used or intended to be used in course or furtherance of business.
- ➢ Credit of ITC in respect of pipelines and telecommunication tower fixed to earth by foundation or structural support including foundation and structural support thereto available in staggered manner –
  - 1/3rd in first financial year;
  - upto 2/3rd in the succeeding financial year and
  - balance in any subsequent financial year

Input Tax Credit – Eligibility and Conditions

- RTP to possess Tax invoice, debit note or other taxpaying document that may be prescribed,
- Goods / Services should have been received.
- Delivery to agent and delivery by transfer of documents of title to goods or otherwise before or during movement of goods deemed to be receipt by the RTP.
- Tax Charged by the supplier should have been deposited either in cash or by utilization of input tax.
- RTP should have filed the prescribed return
- Where goods are received in lots or installments, ITC shall be available on receipt of last lot or installment.
- Value of supply and tax charged thereon should be paid to supplier within 3 months from the date of issue of invoice. If such value not paid, the output liability to the extent of ITC to be increased by the recipient.
- ITC not allowable on tax element charged in invoice if depreciation has been claimed under Income Tax Act on the value of capital goods plus tax thereon.
- ITC not claimed on any invoice in a financial year can be claimed upto the return for the month of September in the subsequent year or furnishing of annual return, whichever is earlier.

Apportionment of Input Tax Credit

- Goods and/ or services used for business purposes only are entitled for ITC.
- ITC allowed only for effecting Taxable supplies including zero-rated supplies.
- ITC not allowed on supplies taxable on reverse charge basis.
- Banking Company or Financial Institution including NBFC have the one time option to either avail ITC on taxable supplies or avail to the extent of 50% of eligible ITC on capital goods, inputs and input services for the month.

Blocked Credits –

Sl. No	Credit not available for	Exclusion i.e., available for
1.	Motor vehicles and other conveyances	For making the following taxable supplies: ➢ Further supplies of such vehicles or conveyances, ➢ Transportation of passengers and goods, ➢ imparting training on driving, flying, navigating such vehicles or conveyances.
2.	Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery.	Where such inward supply of goods or services of a particular category is used by a RTP for making an outward taxable supply of the same category of goods or services.
3.	Membership of a club, health and fitness centre.	-
4.	Rent-a-cab, life insurance, health insurance.	Where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force.
5.	Travel benefits extended to employees on vacation such as leave or home travel concession.	-
6.	Works Contract Services for construction of immovable property.	Works contract service for construction of plant and machinery and where it is an input service for further supply of works contract service.
7.	Goods or services received for construction of an immovable property on his own account/used in course or furtherance of business.	Goods or services received for construction of plant and machinery.

put Tax Credit under GST

Input Tax Credit - Relevant Explanations

"Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Plant and Machinery means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures.

"capital goods" means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

Availability of credit - special circumstances

- Taxable person applying for registration within 30 days of becoming liable and also granted registration will be entitled for ITC in respect of inputs and inputs contained in semi-finished goods and finished goods held in stock on the day immediately preceding the day from which he becomes liable for tax.

- Person seeking voluntary registration will also be entitled for ITC in respect of inputs and inputs contained in semi-finished goods and finished goods held in stock on the day immediately before the date of grant of registration.
- Taxable Person ceasing to pay tax under Composition scheme will be entitled to take ITC in respect of inputs and inputs contained in semi-finished goods and finished goods held in stock and Capital Goods [subject to prescribed percentage points reduction] held in stock immediately before the day of cessation.
- In case an exempt supply becomes a taxable supply, ITC will be allowed in respect of inputs and inputs contained in semi-finished goods and finished goods held in stock relatable to Exempt supplies and on Capital Goods [subject to prescribed percentage points reduction] used exclusively for exempt supplies on the day immediately preceding the day when such supplies become taxable.

Time Limit for Credit availment

No credit shall be allowed after the expiry of 1 year from the date of issue of tax invoice relating to such supply.

Availability of credit - other circumstances

- In case of change in constitution on account of sale, merger, demerger, amalgamation, lease or transfer of the business: Unutilized ITC in the books of transferor allowed to be carried forward to the transferee entity provided there is a specific provision for transfer of liabilities.
- Person switching over to Composition scheme OR where the goods/services supplied become exempt absolutely will be required to pay an amount (by way of debit in the electronic credit or cash ledger) which shall be equivalent to ITC in respect of inputs and inputs contained in semi-finished goods and finished goods held in stock and Capital goods [reduced by percentage point] immediately preceding the date of such switch over/the date of such exemption. The balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.
- In case of Supply of capital goods or plant or machinery on which credit has been taken, amount required to be paid shall be higher of - (i) an amount equal to ITC taken on said capital goods/plant and machinery, or (ii) tax on transaction value of such capital goods or plant or machinery.
- Refractory bricks, moulds and dies, jigs and fixtures when supplied as scrap, the taxable person may pay tax on the transaction value of such goods.

Input Tax Credit - Job worker

- Principal entitled to ITC for inputs/capital goods sent to a job-worker for the job-work. Principal will still be entitled to take ITC where the inputs/ capital goods are directly sent to job worker for job-work without their being first brought to the place of business of the Principal.
- Where inputs are sent by the principal to a job worker for job-work without payment of tax, then after completion, such inputs are required to be brought back to any of the place of business of principal principal/supply such inputs within 1 year of their being sent out. Time limit of 1 year shall be counted from the date of receipt of inputs by the job-worker where inputs are directly sent to the job worker.

  But in case the inputs are not received back/supplied from the place of business of job-worker within 1 year, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.
- Where the capital goods are sent by the principal to a job worker for job-work without payment of tax, then such capital goods are required to be brought back to any of the place of business of principal principal/supply such capital goods within 3 years of their being sent out. Time limit of 3 years shall be counted from the date of receipt of capital goods by the job-worker where capital goods are directly sent to the job worker.

  But in case the capital goods are not received back within 3 years, it shall be deemed that such capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out.
- Provisions relating to inputs/capital goods for return and supply do not apply to moulds and dies, jigs and fixtures, or tools.

Recent Updates

GST

The GST Council has in the foregoing meetings, discussed and reached consensus on most of the contentious issues which had become an apple of discord between the Centre and the States. The Council in its last meeting approved the draft compensation bills for states. The Government will table the said bill in the Parliament in the next session of Parliament. The next GST Council meeting will be held on 4th & 5th March, in which the Council is expected to clear the IGST and SGST Bills and also discuss the tax rate slabs for the commodities.

The proposed introduction of GST has raised the expectations of the stakeholders. It is believed that GST would be a win – win proposition for all the sectors of the economy. In the midst of the high expectation, a discordant note is being heard from one particular sector – the e-commerce sector. The e-commerce sector has raised many concerns, particularly the provisions which relates to the collection of tax at source by the e-commerce operators from their vendors and depositing the same to the account of the Government.

Service Tax

Retrospective Exemptions

The Central Government has granted exemption for the following services where due to a practice generally prevalent, no tax was levied, for the period starting from 1st July 2012 and ending with 31st March 2015 on -

- Services by the operator of Common Effluent Treatment Plant by way of treatment of effluent.

  [Notification No. 08/2017-ST dated 20.02.2017]

- Services by way of admission to museum

  [Notification No. 09/2017-ST dated 28.02.2017]

Clarification on transshipped goods

Clarification has been issued on applicability of tax on services by way of transportation of goods by vessel from outside India to the custom station in India with respect to goods intended for transshipment to any country outside India.

As per Rule 10 of the Place of Provision of Services Rules, 2012, the place of provision of services of transportation of goods by vessel shall be the place of destination of goods. Hence, with respect to goods imported into India intended for transshipment, services by way of transportation of goods by vessel are not taxable as the destination of such goods is a country other than India. It is to be noted that the fact that destination of goods is a country other than India, should be mentioned in the import manifest/import report.

[Circular No. 204/02/2017-ST dated 16.02.2017]

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