

GOODS AND SERVICES TAX

A monthly highlights of Legislative Reforms,
Statutory Changes and Judicial Pronouncements

August 2018

The 29th GST Council meeting was held on 4th August, 2018, concluded with decisions that included incentivizing digital payments and constitution of a panel that addresses the issues of Micro, Small and Medium Enterprises (MSME's) and small traders. In view of promoting digital transactions, enhancing tax compliance and improving the collection of tax, the meeting has put forth the idea of providing cash back of 20% on tax payments made through Bhima App, RuPay Debit and UPI-based transactions subject to a cap of Rs. 100. The widely anticipated decisions of GST rate cuts are put on hold for the time being due to lower GST revenues.

STATUTORY CHANGES

■ Lok Sabha passes four GST Amendment Bills

The Lok Sabha passed four bills amending laws relating to the GST on 9th August 2018. They aim at plugging loopholes in existing laws and reducing the compliance burden for taxpayers. The CGST (Amendment) Bill, IGST (Amendment) Bill, The UTGST (Amendment) Bill, and the GST (Compensation to States) Amendment Bill, got the Lower House's nod.

Source: www.loksabha.nic.in

■ Govt. disbursed GST refund of Rs. 54,378 crore till July 31, 2018

The Government has disbursed GST refunds of Rs. 54,378 crore till July 31, 2018. The remaining GST refunds pending with CBIC will continue to be processed expeditiously.

Source: Press release by GST Council dated 01/08/2018

■ GST revenue collection for August, 2018 was Rs. 93,960 crore

GST collections dropped to Rs. 93,960 crore in August from Rs. 96,483 crore in the previous month. The total number of GSTR 3B filed for the month of July up to August 31, is 67 lakh. This is slightly higher than the 66 lakh returns filed in the previous month.

Source: Press release by PTI, dated 01/09/2018 GST revenue collection for July, 2018 was Rs. 96,483 crore

■ No reverse charge on supply of goods or services by unregistered person till September, 2019

The reverse charge mechanism on supply of goods or a service by an unregistered person to registered person has been deferred till September 30, 2019.

Source: Notification No.22/2018 - Central Tax (rate) dated 6/8/2018

■ Return due date of Input Service Distributor (ISD) extended

The Government has extended the due date for filing of return by Input Service Distributor in Form GSTR-6 for the months of July 2017 to August 2018 till September 30, 2018.

Source: Notification No. 30/2018- Central Tax dated 30/07/2018

■ Committee constituted for tackling MSMEs Issues

In pursuance of the decision taken in the 29th Meeting of GST Council held on 4th August 2018 at New Delhi, a sub-committee has been constituted with the objective of tackling issues connected with the MSMEs. This will work under the chairmanship of Shri Shiv Pratap Shukla, and the members will be Dr. Thomas Isaac, Shri Sushil Kumar Modi, Shri Manish Sisodia, Dr. Himanta Biswa Sarma, and Shri Manpreet Singh Badal. The committee will identify the measures to be taken after examining the recommendations of the Law Committee, the Fitment Committee and the IT Committee on the representations and suggestions relating to MSMEs received from stakeholders.

Source: GST Council, F.No.531/GoM for MSME/GSTC/2018 dated 14/08/2018

■ Committee will conduct the examinations for enrollment as GST Practitioners

In pursuance of the decision of the 17th GST implementation committee meeting held on 16th May 2018 and with the approval of Govt. of India, a committee of officers under the leadership of Director General, National Academy of Customs, Indirect Taxes and Narcotics (NACIN), CBIC has been constituted to conduct the examinations for enrolment as GST Practitioners.

Source: F.No.257/GIC Meetings/GSTC/2018 dated 04/06/2018

■ Integration of accounting system of State Accounting Authorities, Public Finance Management System (PFMS) with GSTN

In pursuance of the decision taken in the 28th GST Council meeting held on 21st July 2018 at New Delhi, it was decided to constitute a committee of officers with the objective to examine integration of accounting system of State Accounting Authorities (IntAccSys), PFMS with GSTN and checking preparedness of the States to implement TDS. This committee shall be led by Shri Ritvik Pandey, Joint Secretary, Department of Revenue, Government of India.

Source: GST Council, F.No.546/Comm-IntAccSys/GSTC/2018 dated 13/08/2018.

■ 1205 cases of tax evasion were reported in GST regime

The Government has reported 1205 tax evasion cases, which involved an amount of Rs. 3026 crore from July 2017 to June 2018. The nature of cases includes misuse of ITC, mis-declaration in GST returns, Tax declared in returns but not paid etc.

Source: Press release by GST Council dated 31/07/2018

■ Govt. permits use of stickers for revising price of pre-packaged commodities due to reduction of GST rate

The Government has granted permission to affix an additional sticker for declaring the reduced MRP on the pre-packaged commodities following to reduction in the rate of GST. This order would be applicable up to December 31, 2018.

Source: Order No. WM-10 (31)/2017, dated 27/07/2018

■ No GST on approved vocational course provided by private Industrial Training Institutes (ITIs)

The Government has clarified that the private ITIs will qualify as educational institutions if the education provided by these ITIs is approved as vocational education course. Therefore, the services provided by private ITIs in respect of designated trades are exempt from GST. Further, it has also been clarified that in case of designated trades, the services provided by private ITIs by way of conducting of entrance examination against consideration in the form of entrance fee are also exempt from GST.

Source: Circular No.55/29/2018-GST, dated 10/08/2018

■ No GST on Ambulance Service provided to Govt. by Private Service Providers (PSP) under National Health Mission (NHM)

The Government has clarified that the service rented by PSP to the Government under NHM by way of transportation of patients in an ambulance would be exempted from GST.

Source: Circular No. 51/25/2018 -GST dated 31/07/2018

KERALA STATE GST

■ Kerala approached GST Council to allow it to levy 10% Cess

As the state struggles to raise resources for rehabilitation in the wake of devastating floods, the Government of Kerala decided to approach the GST Council with a request to allow it to levy a 10% cess on GST to finance rehabilitation efforts.

Source: Cabinet decision dated 21/08/2018

■ Last date for filing GST return extended to 5th October due to floods

The government has extended the last for filing GST return

(GSTR 3B) to August 24 in the wake of flood situation in Kerala, the same has been extended to October 5 for Kerala. The earlier deadline for filing the GSTR-3B form for the month of July 2018 was August 20.

Source: Press release Ministry of Finance dated 21/08/2018

■ Exempted basic customs duty and IGST for relief materials to Kerala

The Govt. of India decided to exempt basic customs duty and the IGST for the consignments of aid and relief materials being dispatched or imported from abroad for the affected people.

Source: Press release dated 20/08/2018

■ Special squads to check e-way bill compliance

The Government of Kerala has formed special squads to conduct e-way bill inspections on goods vehicles entering the state. The state's IGST share is far below expectations. Since Kerala is a consumer state, the IGST share should be double the SGST amount. At present, the state has 90 goods vehicle inspection squads; it will be raised to 190.

Source: Press release by State GST Dept., dated 02/08/2018

■ Kerala's GST collection for June, 2018 was Rs. 2614 crore.

The Government of Kerala collected Rs. 2614.36 crore as GST in the month of June 2018 which is Rs. 1099 crore more than the previous month's collection. Out of the amount Rs. 682.47 crore has been collected as SGST, Rs. 879.89 crore as IGST and Rs. 1052 crore as adhoc settlement. Apart from this Kerala received Rs. 2047.05 crore from VAT, LNG and Non-VAT resources during this month.

Source: State GST Dept., Kerala

■ Nomination of Smt. Shainamol IAS, as a Member in State Level Screening Committee

In exercise of the power conferred under sub-rule (2) of rule 123 of Kerala GST Rules, 2017, the Government has nominated Smt. Shainamol IAS, Additional Commissioner of State GST department as a Member in State Level screening Committee constituted as per notification issued under G.O. (P) No. 115/2017/TAXES dated 25/9/2017.

Source: Notification No.512/2018 by State GST Dept., dated 27/07/2018

CASE LAWS

■ Anti-Profiteering clause not applicable to E-commerce operator acting as an Agent: National Anti-Profiteering Authority (NAA)

Shri. Rishi Gupta v. Flipkart Internet Pvt. Ltd (2018)

The assessee had placed an order for a godrej almirah on 04/11/2017 and the tax invoice dated 07/11/2017 was issued to him for an amount of Rs.14852. At the time of delivery, the supplier issued another invoice dated 29/11/2017 for an amount of Rs.14152. He alleged that he had paid an amount of Rs.14852 and the excess amount was not refunded to him. By not refunding the excess amount, the flipkart was restoring to profiteering, which amounted to the provisions of the anti-profiteering. The assessee filed an application before the NAA and they held that the difference in price was due to different rate of GST at the time of placing the order and at the time of supply. It directed the flipkart to refund the excess amount without any delay. Hence, the allegation of violations of anti-profiteering provisions was not established. Further the issue of denial of discount at the time of supply also did not amount to profiteering because the discount was offered from profit margin of supplier and did not form part of

base price. Therefore, the present application was not maintainable and the same was dismissed.

■ **Truck maintenance and safety certificate can't be treated as technical inspection & certification services (Bangalore –CESTAT)**

Hindustan Petrochemical Corporation Ltd. v. CCE (2018)

The assessee provided certain activities in relation to maintenance and safety of the tank trucks. It had also issued the certificate to the effect that the tank trucks were degassed. For this activity, the assessee had collected the labour charges from the truck owner. The department held that the said activities undertaken by the assessee would fall under the category of technical inspection and certification services and raised the tax demand upon it. The assessee filed an appeal before the Commissioner (Appeals) who allowed the appeal in favour of revenue. Again, it filed an appeal in the Tribunal against the same. The CESTAT held that the assessee was not an agency involved in the activities of testing and certification. In fact, it was performing certain activities which made the tank truck fit to be filled with LPG for further transportation. Therefore, such services could not be considered within scope of 'technical inspection and certification service'.

■ **Failure to file Part-B of E-way bill would attract penalty on transporter: HC (Madhya Pradesh)**

Gati Kintetsu Express (P.) Ltd. v. CCT (2018)

The assessee was a transport company who transported the goods from Maharashtra to Noida via Indore and other places. But the assessee had not uploaded the Part-B of the E-way bill i.e., the details of conveyance. The competent authority initiated proceedings and imposed penalty of Rs. 1,32,13,683. The assessee filed writ a petition in the High Court on the ground that Part -B of the e-way bill could not be updated due to technical error and contended that the minor penalty of Rs.5000 should be levied. The High Court held that no grievance had been received by the assessee with regard to technical error. It could not be treated as technical error when there was an option of raising a grievance of the GST portal. In the present case tax liability was more than lakh of rupees. Thus the department had rightly imposed the penalty of Rs. 1,32,13,683. Therefore, the writ petition filed by the was dismissed.

ADVANCE RULINGS

■ **Supply of UPS along with battery could be considered as mixed supply: AAAR – West Bengal**

Switching Avo Electro Power Ltd; In re (2018)

The Switching Avo Electro Power Ltd., filed an application for Advance Ruling on whether the supply of UPS along with battery was to be considered as mixed supply as they are supplied under a single contract at a combined single price? It contended that UPS couldn't function without battery because it is an integral part of UPS. Hence, it is naturally bundled and such supply should be treated as a composite supply and not as a mixed supply. The Appellate Authority for Advance Ruling (AAAR) held that the storage battery had multiple uses and could be put to different uses. Therefore, when battery was supplied with UPS, then it could not be considered as a composite supply or a naturally bundled supply.

■ **GST to be levied on activities between corporate office and units located in other states being distinct persons: AAR – Karnataka**

Columbia Asia Hospital (P.) Ltd., In re (2018)

The employees of corporate office had performed the activities in the course of or in relation to employment. The same activities were also performed for the units located in the other States. Columbia Asia Hospital (P.) Ltd., filed an application for Advance Ruling whether GST would be applicable on supplies made to other units located in the States by employees of corporate office? The AAR held that the service provided to the employer, i.e., the corporate office by the persons employed by the corporate office were in the nature of the employee and employer relationship. The corporate office and the units were distinct person. Therefore, such activities performed by employees of corporate office for other units of company shall be treated as supplies as per Entry 2 of Schedule I of the CGST Act. Hence, GST would be applicable even if made without consideration.

■ **Goods are liable to IGST when they are imported into India: AAR-Kerala**

Synthite Industries Ltd; In re (2018)

The applicant approached for Advance Ruling on following issues for determination by the Authority; 1. Whether on procuring goods from China, in a context where the goods purchased are not brought into India, is GST payable by them? 2. On the sale of goods to the company in USA, where goods sold are shipped directly from China to USA without entering India, is GST payable by them? 3. On procuring goods from China not against specific export order, in a context when the goods purchased are not brought into India, is GST payable by them? and 4. On the sale of goods from Netherlands warehouse to their end customers in and around Netherlands, without entering India, is GST payable by them?. The Advance Ruling Authority held that the goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India. The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands, as the goods are not imported into India at any point.

■ **GST @ 18% applicable on supply of rubber wood / standing rubber trees: AAR-Kerala**

N.C. Varghese; In re (2018)

The applicant has preferred an application for Advance Ruling on the rate of tax of standing rubber trees. As per the terms and conditions of State Farming Corporation, the applicant should cut and remove the trees from the estate. Further, no other trees or fuel wood in the estate are allowed to be cut down or removed. In this case, under the contract of supply, growing crops – i.e., rubber trees are agreed to be severed before supply and hence, comes under the definition of 'goods'. Thus, standing rubber trees no longer remain as such. Therefore, it can only be treated as 'wood in rough form'. The Authority held that the firewood is exempted as per HSN Code 4401. There is no differentiation between soft wood and hardwood in GST. It is hereby clarified that rate of tax on rubber wood in the aforesaid transaction is 18% under the HSN 4403.

Your Queries

■ **Can we issue consolidated debit or credit notes in respect of multiple invoices issued in a financial year or whether we need to issue debit or credit note for each invoice separately?**

At present as per Section 34 of the CGST Act, 2017, a credit note or debit note can be issued only against underlying invoice, which is quite cumbersome to correlate. Further, in

such cases large number of credit notes may be required to be issued in case post-supply discount is given in respect of voluminous number of invoices. Thus, it was recommended in the 28th GST Council meeting held on 21st July, 2018 that parties can issue consolidated credit or debit notes in respect of multiple invoices issued in a financial year to reduce the compliance burden for taxpayers. In accordance with the said recommendation of the GST Council, necessary amendment has been proposed to Section 34 of the CGST Act, 2017 through the CGST (Amendment) Bill, 2018 which has been passed in the Lok Sabha on 9-8-2018. Once said Bill is approved by both houses and the presidential as-

cent is received, the amended Section 34 would come into play and consolidated debit or credit notes can be issued in respect of multiple invoices issued in a financial year.



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