



NITYA INSIGHT:

An update to key GST changes & Advance Rulings

May 21, 2018 (Volume 1/2018)

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A. COMPLIANCES FOR THE MONTH OF MAY 2018

- A taxpayer is required to ensure the following compliances for the month of May 2018:

Return type	Applicable Month	Due Date
GSTR-3B <i>(Summary return)</i>	April 2018	May 22, 2018*
Payment of tax	April 2018	May 22, 2018*
GSTR-1 <i>(Outward supply return)</i>	April 2018	May 31, 2018
GSTR-6 <i>(ISD return)</i>	July 2017 to April 2018	May 31, 2018

* *Vide Notification No. 23/2018 – Central Tax, dated May 18, 2018, due date of filing of Form GSTR3B extended from May 20, 2018 to May 22, 2018*

B. APPLICABILITY OF E-WAY BILL ON INTRA-STATE TRANSACTIONS

Notifications have been issued for introduction of e-way bill for intra-state movement of goods in the following additional states:

State	Applicability	Notified Date
Assam	On all products	May 16, 2018
Chandigarh	On all products	May 25, 2018
Dadra & Nagar Haveli	On all products	May 25, 2018
Daman & Diu	On all products	May 25, 2018
Goa	Applicable for 22 goods like iron & steel, FMCG, IT products etc.	June 1, 2018
Maharashtra	On all products	May 25, 2018
Punjab	On all products	May 18, 2018 (on trial basis); June 1, 2018
Rajasthan	On all products	May 20, 2018

E-way bill is currently applicable for intra-state movement in the following States:

Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Meghalaya, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttar Pradesh and Uttarakhand.

C. KEY TAKEAWAYS FROM 27TH MEETING OF THE GST COUNCIL HELD ON MAY 04, 2018

➤ Simplification of the GST returns

The GST Council has approved the *following principal changes* in the return filling system:

One monthly return

- All taxpayers would be required to submit a monthly return. Due date of filing of the return will vary based on the turnover of the taxpayer
- Taxpayers under the composition scheme and taxpayers having nil transactions will file quarterly return

Unidirectional flow of invoices and real time uploading and viewing of invoices

- Supplier can add invoices at any-time and the same can also be viewed by the recipient on real-time basis
- Recipient can avail credit on the basis of invoice uploaded by the supplier. No separate requirement to upload purchase invoices
- The system will auto calculate the tax liability based on the output invoices, and input tax credit ('ITC') based on the invoices uploaded by the supplier
- Importantly, all invoices to have a 4-digit HSN to have uniformity in reporting structure

Reversal in case of non-payment of tax by supplier

- No automatic reversal of ITC in case tax is not paid by the supplier. In such cases, recovery shall be made from the supplier
- Reversal of ITC from buyer shall also be an option with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.
- System to also have tools to block a supplier who defaults in payment of tax. This shall be to ensure misuse of input tax credit

Transition

- There will be a three-stage transition to the new system. The same is summarized as under:

Stage	Process	Period	ITC availability
Stage 1	Present system involving filling of Form GSTR 1 and Form GSTR 3B to continue. No filing of GSTR 2 and GSTR 3	6 months	ITC on provisional basis (based upon ITC declared in Form GSTR 3B)

Stage 2A	New return plus Uploading of invoices by supplier	6 Months	ITC can be claimed on provisional basis as (in case of present GSTR 3B system)
Stage 2B		Eventually	ITC would be available based upon invoices uploaded by the supplier

NITYA Comments:

- ✚ *New return structure, apart from filing of one return, doesn't bring any significant change in the existing system, in as much as the credits are linked to uploading of supply invoices and payment of tax by the supplier.*
- ✚ *The facility of a real-time uploading of invoice will benefit the tax-payers. Further, the fact that revenue authorities would seek a recovery first from the supplier, and also block the supplier in case of tax payment default will ensure sanity of tax credits at the recipient's end.*
- ✚ *In the three-stage transition phase discussed above, the Government has provided that input tax credit will be provided on provisional basis based on the amount declared in GSTR-3B. The process of finalization of this provisional input tax credit has not been discussed or clarified.*
- ✚ *It has been proposed that all invoices should contain four-digit HSN code to ensure that the proposed system runs efficiently. This is in contrast with the current HSN declaration methodology which is dependent upon the turnover of taxpayer (i.e. no HSN for taxpayers with turnover less than 1.5 crores and 2-digit HSN for taxpayers with turnover between 1.5 crores to 5 crores).*

D. KEY ADVANCE RULINGS

I. Recovery of food expenses by employer from its employee subject to GST – Kerala AAR

Re: Caltech Polymers Private Limited, dated March 26, 2018

Issue raised

- Whether recovery of food expenses by employer from employees for canteen service is a supply under GST?

Ruling given

- Such recovery would be liable to GST because of the following reasons:
 - Recovery of canteen expenses would be covered under the definition of ‘business’ as it is an activity incidental or ancillary to the main business of applicant
 - Even though no profit is earned by the appellant, it would be a supply made in the course or furtherance of business
 - No specific exemption provided under GST law to exempt serving of food by a canteen maintained in factory covered under Factories Act, 1948

Nitya Comments

- Section 7 of the CGST Act defines the scope of supply under GST. It states that supply inter-alia includes all forms of supply of goods or services for a consideration in the course or furtherance of business
- The term ‘in the course of business’ covers those activities which are undertaken during business. Further, the term business has been defined in Section 2(17) of the CGST Act to include any trade, commerce, manufacture etc. and activity ancillary or incidental to such trade, commerce, manufacture etc.
- In our view, recovery of cost of food is not an activity of trade or commerce for an assessee engaged in manufacturing or trading of a product. The same cannot be said to be incidental or ancillary to the main business, as it does not support or happens as a consequence of main business of the assessee. AAR ought to have deliberated on this point in detail
- AAR also did not deliberate on the GST rate as well as value (on which GST is payable) on such supply

II. Supply by Duty Free Shops (DFS) to outbound passengers liable to GST – Delhi AAR

Re: ROD Retail Private Limited, dated March 27, 2018

Issue raised

- Whether the sale of goods by DFS at international airports to outbound passengers is exigible to GST?

Ruling given

- Such supplies made by DFS would be liable to GST because of the following reasons:
 - DFS are not outside India but are within the territory of India in accordance with Section 2(56) of the CGST Act and Section 2(27) of the Customs Act
 - Export of goods has been defined under the IGST Act as taking goods out of India to a place outside India
 - The present supply transaction is complete as soon as the goods are handed over to the outbound passengers with the territory of India. Hence, there is no export of goods

Nitya Comments

- Export of goods as defined under IGST Act means 'taking goods out of India'. It does not envisage as to who takes the goods out of India
- In the present facts, goods are supplied to passengers who intend/ take the same out of India. Such passengers do have a passport, visa and an (outbound) boarding pass, as a proof they are destined to a place outside India. Thus, the fact that goods are being taken out of India is not in dispute. AAR did not consider this aspect while pronouncing this ruling
- Further, such an interpretation of AAR would ultimately lead to taxes being exported, which shall hamper the exports as well as viability of the DFS

III. Supply of UPS and Batteries together at a single price is a mixed supply - West Bengal AAR

Re: Switching Avo Elctro Power Limited, dated March 21, 2018

Issue raised

- What is the applicable rate of GST when UPS and batteries are supplied together for a single price to customer?

Ruling given

Supply of UPS and batteries together for a single price shall be considered as a mixed supply (and not a composite supply) for the following reasons:

- UPS and batteries have separate commercial identity as goods i.e. they can be separately supplied in a retail shop or can be purchased by the customer from different vendors
- Supply shall be considered as composite (as naturally bundled) when the contract itself is indivisible. For instance, works contract for civil construction where supply of steel, cement or architectural service are inseparable. The recipient never contracts for individual components but for construction of civil structure. Hence, all the individual supplies are inseparable and naturally bundled. In case of UPS and batteries, the customer can ask for individual components independently. Thus, such supplies are not naturally bundled.
- GST rate on UPS is 18 percent and on batteries is 28 percent. The whole transaction of supply of UPS and batteries will qualify as mixed supply and GST rate of 28 percent will be applicable on it.

Nitya
Comments

The tests laid down by the AAR for determination of mixed supply and composite supply are not complete and the following aspects were not considered:

- When a customer contracts for purchasing a UPS and batteries, he seeks for a power back-up solution. There are no separate contracts for supply of UPS and batteries. Hence, there is a single supply comprising of UPS and batteries
- Section Note 4 to Section XVI of the Customs Tariff Act provides that where a machine consists of multiple components meant to perform a defined function, the whole machine is classified under the heading appropriate to such function.
- In various judicial precedents, it has been held that batteries supplied with UPS are an integral part of UPS and classification of UPS should apply on the supply of batteries as well [*Tata Liebert Ltd vs. CCE, Mumbai – III, 2004 (173) ELT 242; Kerala State Electronics Dev. Corp. Ltd. vs. CCE 1994 (71) ELT 508*]
- Hence, supply of UPS and battery together is a composite supply where principal supply is supply of UPS. Hence, GST rate of 18 percent will be applicable on the whole transaction.

IV. No GST implications on merchanting transactions - Kerala AAR

Re: Synthite Industries Limited, dated March 26, 2018

Issue raised

- Whether sale of goods by a registered person who procures goods from one country and sells them in another country without bringing goods in to India is exigible to GST?

Ruling
given

- Such supplies would not be subject to GST, for the following reasons:
 - Goods are liable to GST when they are imported into India and customs duties are paid at that point of time. In the present case, Since, the goods do not enter into India, the levy is not attracted
 - In a Circular issued by the CBIC on High Seas Sales, it has been clarified that High Seas sales are not liable to GST, as GST is levied only at the time of import of goods

Nitya
Comments

- Section 7(5)(a) of the IGST Act provides that where the supplier is located in India and place of supply of a transaction is outside India such transaction would qualify as inter-state supply and will be exigible to GST
- In the instant transaction, location of supplier is in India and the goods are delivered outside India. Accordingly, the place of supply will be outside India. Therefore, the transaction would qualify as an inter-state supply and thus subject to IGST
- This is a peculiar situation where goods are delivered outside India and will also be consumed outside India but still be liable to GST in India under Section 7(5)(a)
- GST being a destination-based consumption tax, the legislature does not intend to tax such transaction. The ruling marries the intent but not so with the legal provisions

V. Contract for setting-up of a solar power plant is a works contract under GST – Maharashtra AAR

Re: Giriraj Renewables Private Limited, dated February 17, 2018 ('Giriraj'); Fermi Solar Farms Private Limited, dated March 3, 2018 ('Fermi')

Issue raised

- Whether the supply under the turnkey EPC project for setting up of the Solar Power Generation Plant ('Plant') shall qualify as composite supply under GST?
- Whether in case of separate supply of goods and services contracts, GST can be chargeable at the rate of 5 percent as applicable on 'solar power generating systems'?

Ruling given

- In both the rulings, the AARs have held in principle that the contracts for supply of Plant and its components are not entered merely with the intention of supply of the Plant alone
- Thus, when a Plant is set up, it becomes an immovable property.
- The entire transaction is one supply of works contract service liable to be taxed at the rate of 18 percent. This is irrespective of separate contracts for supply of goods and supply of services
- Therefore, the contract for setting up, design, engineering and commissioning of the Plant is a works contract supply within the meaning provided in Section 2(119) of the CGST Act. GST at the rate of 18 percent shall apply on the complete contract value

Nitya Comments

- AARs in both the cases in hand relied upon the following key aspects:
 - Qualification of supply of the Plant, its components and the entire structure as 'solar power generating system'
 - Importance of the contractual clauses primarily, the scope of work, essence of contractual responsibilities, completion onus of setting up the Plant, proper operation of the Plant, and the underlying intent of the parties to set up the entire Plant in place
 - Principles for determining the Plant structure as immovable property such as sufficient degree of permanency, relocation capacity without substantial damage and the frequency intervals associated with the relocation of the Plant
- Hence the rulings, while legally correct, defeat the Government's intent of promoting use of renewable energy sources / devices

VI. Compliance with Anti-Profiteering provisions by Honda dealership – National Anti-Profiteering Authority

(Sh. Dinesh Mohan Bhardwaj vs. M/s Vrandavaneshwree Automotive Pvt Ltd., 2018 VIL 01 NAA, dated March 27, 2018)

Issue raised

- Allegation raised by the applicant as to:
 - Whether there was a substantial reduction in the rate of tax of the cars after the GST implementation and whether such benefit has been passed on the consumer
 - Whether benefit in terms of reduced rate of tax or input tax credit has been passed-on to the customer

Ruling given

- For analysis of the imputation raised by the applicant, the authority *inter-alia* looked into the following:
 - Pricing structure of sale of cars (*pre-as well as post GST*)
 - Tax rate applicable on sale of cars (*pre-as well as post GST*)
 - Input tax credit available (*pre-as well as post GST*)
- It was noted that the benefit emanating from the GST regime (in terms of reduced tax rate) was passed on by reducing the price of cars. As the price was inclusive of tax, the same was also held to be duly complied
- Hence, the contention of applicant was held to be invalid and was rejected

Nitya Comments

- The authority looked into the specific facts to dwell upon the compliance with anti-profiteering provisions
- No clear guidelines/ rules were laid down for compliance to anti-profiteering measures. Given the same, it seems apparent that the authorities will look into facts of each case to decide on anti-profiteering

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