



## NITYA's INSIGHT | Issue 32 |

Notifications, Circulars and Orders issued post  
35<sup>th</sup> GST Council Meeting

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## Index

S. No.	Topic
<b>A.</b>	<b>Amendment in the CGST Rules.....3</b> 1. Kerala Food Cess ('KFC') .....3 2. QR code in tax invoice .....3 3. Refund to retail outlets located in departure area of International Airport .....3 4. Amendment in procedure related to Anti-Profitteering proceedings .....4 5. Validity of e-way bill .....5 6. Miscellaneous.....5
<b>B.</b>	<b>Extension and notification of dates .....5</b>
<b>C.</b>	<b>Clarifications .....6</b> 1. GST liability on additional / penal interest on late payment of installments.....6 2. Place of supply in certain cases.....6 3. Processing of refund application FORM GST RFD-01A wrongly mapped on the common portal .....6

## Recent Changes and Clarifications in GST Law

### A. Amendment in the CGST Rules

The Central Government has made various amendments in the Central Goods and Services Tax Rules, 2017 ('CGST Rules'). These changes are effective from July 1, 2019 unless stated otherwise. The key changes are discussed hereunder:

#### **1. Kerala Food Cess ('KFC')**

- Rule 32A has been inserted in CGST Rules, clarifying that the value of supply for the purpose of charging KFC shall not include KFC itself.

##### ***NITYA Comments:***

*Section 15(2)(a) of the Central Goods and Services Tax Act, 2017 ('CGST Act') includes any taxes, duties, cesses, fees and charges levied under any law in the value of the supply other than taxes levied under the CGST Act, the respective State GST Act and the Compensation Cess Act. While the Rule provides for exclusion of KFC for computation of KFC itself (thereby avoiding circular computation), the same does not provide for exclusion of KFC for charging CGST and SGST.*

*Hence, CGST and SGST should be payable on transaction value plus KFC. This will increase the effective rate of CGST and SGST on goods sold to end customers in Kerala in addition to KFC itself.*

#### **2. QR code in tax invoice**

- The tax invoice and bill of supply need to have Quick Response ('QR') code (*this will be implemented from a later date*).

##### ***NITYA Comments:***

*This will envisage significant change in IT systems and invoice formats of the taxpayers and hence, will increase the compliance cost.*

#### **3. Refund to retail outlets located in departure area of International Airport**

- Rule 95A in the CGST Rules has been inserted, to provide for refund of taxes (CGST, SGST, IGST or Cess) paid on inward supply by retail outlets established in departure area of the International Airport. The following points are notable in this regard:
  - Refund is available for indigenous goods procured on payment of tax
  - Such goods must be ***made to outgoing international tourist against foreign exchange without charging any tax.***
  - Application for refund can be filed in FORM GST RFD-10B

The Notification and Rules, defines outgoing international tourist as a person not normally resident in India and who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Such supplies have also been exempted vide **Notification No. 10/2019 and 11/2019-IGST (Rate) and Notification No. 11/2019-CGST (Rate), all dated June 29, 2019. Circular No.106/25/2019 dated June 29, 2019** has been issued to clarify the procedure and manner of filing refund claims.

#### **NITYA Comments:**

*Recently, in the case of **Atin Krishna v. UOI, 2019-VIL-231-ALH**, the Allahabad High Court held that sale of goods by Duty Free Shops located at international departure terminal, shall qualify as exports. In the light of this decision, **restricting exemption and refund only to international tourist is inequitable**. This amendment will also create doubts over taxability of transactions in respect to sales made to outgoing Indian tourists which is otherwise not taxable.*

#### **4. Amendment in procedure related to Anti-Profiteering proceedings**

- The Standing Committee can extend examination period by 1 month (in addition to existing period of 2 months) to examine the adequacy and accuracy of the application to determine existence of *prima-facie* evidence to support the claim of the complainant.
- A period of 2 months, with 1 month extension, has been provided to State Level Screening Committee for forwarding the application to Screening Committee for further processing.
- The time period for completion of investigation by the Director General of Anti-Profiteering ('DGAP') and for the National Anti-profiteering Authority ('NAA') to pass order from the receipt of report from DGAP, have both been extended from three months to six months.

#### **NITYA Comments:**

*In several cases till now, it has been noted that DGAP did not complete its investigations within 3 months or NAA did not pass order within 3 months from the receipt of report. In case the DGAP or NAA do not meet the timeline as prescribed in the Rules, the taxpayers can challenge the proceedings on this ground alone.*

- It has been provided that where the NAA orders taxpayer to deposit profiteering amount in Consumer Welfare Fund (CWF), interest at the rate of 18 percent shall be applicable from the date taxpayer indulged in profiteering up to the date of deposit of such amount.
- The jurisdiction of NAA has been extended to other goods or services for which complaint has not been made but violation comes to the notice of NAA.

#### **NITYA Comments:**

*Importantly, these amendments are prospective in nature and will not apply for the earlier period. Like NAA did not have powers to investigate the products for which complaint was not filed. Further, such powers rests only with NAA and not with DGAP.*

## 5. Validity of e-way bill

- In case of multi modal transportation where transportation by ship is involved, e-way bill shall be valid for one day for the distance of every 20 kms or part thereof.
- E-way bill can be extended within 8 hours (earlier the time was 4 hours) from the time of its expiry.

## 6. Miscellaneous

- The taxpayer can transfer balance lying in electronic cash ledger of one head to another head through FORM GST PMT 09 (*to be effective from a later date*).

### **NITYA Comments:**

*This is a big step in ease of doing business since taxpayers will not be required to apply for refund for taxes paid in incorrect heads.*

- FORM GST DRC-03 has been amended to include annual return and reconciliation statement in drop down menu as a reason for voluntary payment of tax.
- The Government has inserted a new Rule 10A in CGST Rules, requiring registered person, to furnish bank account details or other prescribed information on common portal within forty-five days from date of grant of registration or due date of FORM GSTR- 3, whichever is earlier.

## B. Extension and notification of dates

- The due date of furnishing several returns have been notified / extended:

Relevant Return	Revised due date
GSTR-9 – Annual return and GSTR-9C – Reconciliation statement	August 31, 2019
GSTR-1 for month / quarter from July to September 2019	11 <sup>th</sup> day of succeeding month.
GSTR-3B for month / quarter from July to September 2019	20 <sup>th</sup> day of succeeding month.
GSTR-7 for October 2018 to July 2019	August 31, 2019
ITC-04 (Job work return) for July 2017 to June 2019	August 31, 2019
Blocking of facility of generation of e-way bill for non-filing of return for period of 2 months	August 21, 2019

The Government has further exempted registered person supplying online information and data base access or retrieval services ('OIDAR') from a place outside India to a person in India, from filing FORM GSTR 9 and FORM GSTR 9C.

(Refer **Notification No. 25/2019 dated June 21, 2019, Notification No. 30 and 31/ 2019-Central Tax and Order No. 6/2019, all dated June 28, 2019**)

## C. Clarifications

### 1. **GST liability on additional / penal interest on late payment of installments**

The Government has clarified applicability of GST on delayed payment charges in case of late payment of installment. The Circular discussed the following two cases:

**Case 1:** Where consideration is to be paid in installments and penalty is payable for failure to pay any installment – Such penalty shall be amount for late payment and shall be added to value of supply

**Case 2:** Where consideration is pre-agreed to be paid in monthly installment along with applicable interest – The amount represents interest for loan and deposit and shall be exempt from payment of GST.

(Refer **Circular No. 102/21/2019-GST dated June 28, 2019**)

### 2. **Place of supply in certain cases**

- **Services provided by port authorities to its clients:** The services provided by port authorities vis-à-vis cargo handling, unloading of wagons, movement of unloading cargo etc., are ancillary to cargo handling service and not related to immovable property. Hence, place of supply for such services shall be the location of the recipient.
- **Services in respect of unpolished diamonds:** The services such as cutting and polishing activity are undertaken on unpolished diamonds, which are temporarily imported into India and not put to any use in India. It has been clarified that place of provision of such services shall be location of the recipient.

(Refer **Circular No. 103/22/2019-GST dated June 28, 2019**)

### 3. **Processing of refund application FORM GST RFD-01A wrongly mapped on the common portal**

In several cases, refund application submitted by taxpayers have been transmitted by the common portal to the tax authorities who does not have jurisdiction over the taxpayer. Such refund applications shall be re-assigned to the correct tax authority. As re-assignment facility is not available on the portal as on date, the authority to whom refund application was wrongly assigned, should process the refund application.

(Refer **Circular No. 104/23/2019-GST dated June 28, 2019**)

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