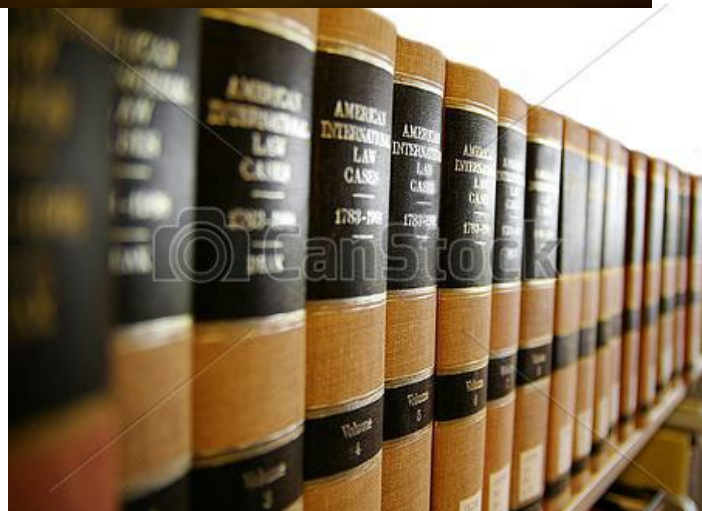
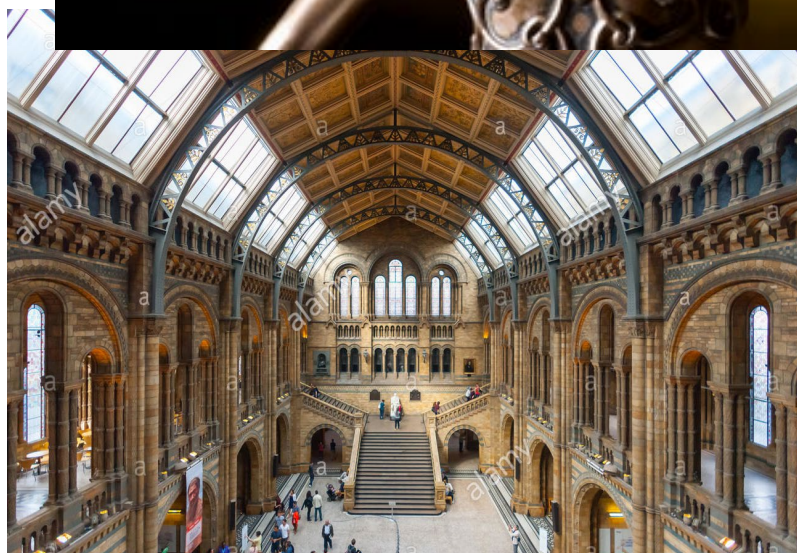




NITYA's Insight | Issue 50 |

Recent Notifications and Circulars in Indirect Taxes (including Notifications issued post 37th GST Council meeting)

October 7, 2019

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A. CHANGES PURSUANT TO 37th GST COUNCIL MEETING

The GST Council in its 37th GST Council Meeting held on September 20, 2019, recommended various rate, procedural and legislative changes under GST. We also shared a snapshot of key takeaways from this meeting in *NITYA's Insight | Issue 47 | Update on 37th GST Council Meeting dated September 23, 2019*.

The Government has recently issued various Notifications to give effect to these changes which are effective from October 1, 2019. The key changes have been discussed hereinafter.

1. Relevant rate changes

Goods

Item	HSN Code	Rate change
Goods such as railway wagons, coaches, rolling stock, parts of railways etc.	8601 to 8608	5 to 12 percent (refund of accumulated Input Tax Credit ('ITC') on account of inverted duty structure continues to be prohibited)
Caffeinated Beverages	2202 99 90	GST– 18 to 28 percent Compensation Cess – 0 to 12 percent
Motor vehicles with - Engine capacity < 1500cc (Diesel) / 1200cc (Petrol); - Length < 4000 mm; and - Capacity of 10-13 passengers	8703	Compensation Cess – 15 to 1 percent
Polypropelene / Polyethylene Woven and Non-Woven Bags and Sacks (laminated or not), used for packing of goods	3923 or 6305	12 percent (multiple rates presently applicable)
Mechanical Sprayers	8424	18 to 12 percent
Parts and accessories used solely and principally with medical devices	9018, 9019, 9021 and 9022	12 percent (multiple rates presently applicable)
Parts of solar power-based devices	Chapters 84, 85 or 94	5 percent

[Refer Notification No.14/2019-Integrated Tax (Rate) dated September 30, 2019 and Notification No. 2/2019-Compensation Cess (Rate) dated September 30, 2019]

Services

Hotel Accommodation service

SAC	Transaction Value (Per unit per day)	GST Rate
Supply of hotel accommodation service – 9963	₹ 1,000 and less	Nil
	₹ 1,001 – Rs. 7,500	12 percent
	₹ 7,501 and more	18 percent

Outdoor Catering service

- GST rate on Outdoor Catering service (SAC-9963) has been reduced from 18 to 5 percent (without ITC). GST rate continues to be 18 percent if provided in a hotel whose tariff value (per unit per day) exceeds ₹ 7,500.

Job work service

- GST rate on job-work service (other than bus body building) has been reduced from 18 to 12 percent. The abovementioned Notification has removed the ambiguity and clarified that any job-work (other than the following) will attract GST of 12 percent:
 - Bus-body building
 - Printing of newspapers, books, journals etc.
 - Job-work on textile products
 - Tailoring services
 - Manufacture of umbrella
 - Manufacture of handicraft goods
 - Job-work on precious stones
 - Manufacture of leather goods or footwear
 - Manufacture of food and food products
 - Manufacture of clay bricks

NITYA Comments: The Press Release issued after GST Council meeting mentioned that machine job-work service will attract concessional rate of 12 percent. Notably, the amending Notification does not make any such distinction. Hence, any job-work activity will qualify for concessional rate of 12 percent.

Interestingly, the residuary entry under SAC 9988 i.e. Manufacturing services on physical inputs (goods) owned by others, other than above-mentioned list and job-work service still finds mention in **Notification No. 11/2017-Central Tax (Rate), dated June 28, 2017** and attracts GST of 18 percent. With this amendment, the entry will become redundant as all manufacturing services qualify as job-work and will attract concessional GST of 12 percent.

Rental service of transport vehicles

- GST rate on various category of rental service of transport vehicles, is tabulated as under:

Prior to amendment		Post amendment	
Service description	GST Rate	Service description	GST Rate
Rental service of transport vehicles, with or without operator – SAC 9966:		Rental service of transport vehicles with or without operator – SAC 9966:	
- Where cost of fuel is included	5 percent	- Where cost of fuel is included	5 percent
- Other cases	18 percent	- Other cases	18 percent
Leasing or rental services, with or without operator (other than specified cases) – SAC 9973	18 percent	Leasing or rental services, with or without operator (other than specified cases) – SAC 9973	18 percent

[Refer Notification No. 19/2019-Central Tax (Rate) dated September 30, 2019]

2. Exemptions and relaxations

- Liquor license fee charged by State Governments shall neither be treated as supply of goods nor as supply of services. Thus, the same will be outside the purview of GST.

NITYA Comments: The Notification clarifies that the exemption has been granted to give effect to recommendations of 26th GST Council meeting dated March 10, 2018.

While the intent of the legislature was never to tax this activity, this exemption has been brought prospectively. This is likely to result in confusion of applicability of GST on this fee for the period July 1, 2017 to September 29, 2019.

[Refer Notification No. 14/2019-Integrated Tax (Rate) dated September 30, 2019]

- Exemption for transportation services for export of goods by air or sea (SAC 9965) has been extended till September 2020.
- Services of an intermediary (SAC 9961), when both supplier and recipient of goods are located outside India, have been exempted for a period of 5 years subject to maintenance of certain documents.
- Storage and warehousing services for specified agricultural products (SAC 9967 or 9985) have been exempted.

[Refer Notification No. 20/2019-Integrated Tax (Rate) dated September 30, 2019]

- The place of supply of specified R&D services (such as integrated discovery and development, safety assessment, stability studies, clinical trials etc.) provided by Indian pharmaceutical companies to foreign recipients will be the location of service recipient i.e. outside India, subject to following conditions:

- The services are supplied as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory
- Such supply of services fulfills all conditions of export of services (under Section 2(6)(iii) of the Integrated Goods and Services Tax Act, 2017) except for the condition of place of supply of service

NITYA Comments: *The amendment is only made for pharmaceutical companies which will put the non-pharmaceutical companies such as laboratories etc. into adverse situation.*

Additionally, in our view, the place of supply of R&D service was always the location of service recipient and this amendment was not needed. This is because R&D service is not provided in respect of goods required to be physically made available to the service provider (where place of supply is location of performance of service). While the goods may be required for R&D service, these are inputs for providing the service and no activity is undertaken on the goods. Accordingly, this amendment will open a Pandora box of disputes for the past period as well as for other sectors.

[Refer Notification No. 4/2019-Integrated Tax dated September 30, 2019]

3. Amendments relating to reverse charge

- Services of renting of motor vehicle, provided by a person other than a body corporate (and paying GST at 5 percent) to a body corporate, have been covered under reverse charge mechanism.

NITYA Comments: *The Government is slowly increasing the scope of services covered under reverse charge.*

It is pertinent to note that this amendment may increase the cost of rent-a-cab service particularly where the service provider has taken the vehicle on rent for further providing the renting service (since no ITC will be available to the service provider post amendment).

Notably, the entry covers service providers paying tax at 5 percent. The same is an anomaly, since once the service is covered under reverse charge, the service providers will cease to pay tax under forward charge and will no longer be 'paying' the tax. In our view, the expression 'paying' should be read as 'payable'. Thus, reverse charge will apply to service recipients where service providers were liable to pay tax under forward charge (if reverse charge was not applicable).

[Refer Notification No. 22/2019-Central Tax (Rate) dated September 30, 2019]

- Vide **Notification No.4/2018-Central Tax (Rate) dated January 25, 2018**, it was clarified that the liability to pay GST on development rights transferred against receipt for construction service, shall arise at the time of transfer of possession of constructed property. The Notification has been amended and will not apply to development rights supplied post April 1, 2019.

NITYA Comments: *The option to pay GST on development rights, at time of transfer of constructed property was given to avoid complexities relating to valuation of development rights. Such complexity will arise again with this amendment. The Notification has come into effect from October 1, 2019 but has been made applicable on development rights supplied post April 1, 2019. Hence, supplier of development rights who supplied the same between April 2019 to August 2019 were liable to pay GST by 20th of next*

month and the department may demand interest from such taxpayers for delayed payment of GST.

[Refer Notification No. 23/2019-Central Tax (Rate) dated September 30, 2019]

4. Legislative changes

- The controversial post-sales discount **Circular No. 105/24/2019-GST dated June 28, 2019** dealing with multiple issues surrounding post-sales discounts, has been withdrawn.

NITYA Comments: This Circular created a major controversy when it clarified that 'special reduced prices' offered to dealers to augment sales volume, would be treated as an additional consideration for the dealers and dealers need to pay GST on the same. In our view, the clarification was incorrect and accordingly, the withdrawal was much needed and welcome. This will bring a relief to the industry.

Notably, that the Government has withdrawn the entire Circular, which also clarified two other points relating to post-sales discount. The first point related to post-sale discounts given without mandating dealer to perform any activity. On this point, it was clarified that there was no requirement to reverse credit on such discounts. This clarification nullified the Advance Ruling in the case of **MRF Limited, 2019-VIL-71-AAR**, wherein it was held that the recipient is required to reverse credit proportionate to the discount received since such amount is not paid by the recipient to the supplier. Notable that this Advance Ruling has also been overruled by the Appellate Authority of Advance Ruling (AAAR). Thus, the point is not nullified even after withdrawal of this Circular.

The second point related to post-sale discounts given to dealer for undertaking additional activity / 'sales promotion activities' wherein it was clarified that if the dealer undertakes specific activities as instructed by the manufacturer, these will be considered as independent supply from dealer and GST will be applicable and credit will be available to the manufacturer. Basis this clarification, it became clear that there is no supply of service from dealer to manufacturer in case of discounts (like cash discount, turnover discounts etc.). In our view, even in absence of such clarification, the dispute being raised by DGGI that such discounts qualify as 'agreeing to do an act' and should attract service tax / GST can be defended basis legal arguments supporting the view.

Please refer to our detailed update on the Circular vide **NITYA's Insight | Issue 33 | Clarifications on GST treatment of sales promotion schemes dated July 5, 2019**.

[Refer Circular No. 112/31//2019-GST dated October 3, 2019]

5. Procedural changes

- The Government has issued Circulars to remove practical difficulties in filing refund in following situations:
 - **Favorable Order-in-appeal or orders from any other forum**

The following procedure needs to be followed in case a registered person obtains a favorable order vis-à-vis a refund claim at an appellate forum:

- The registered person needs to file a fresh refund application under the category 'Refund on account of assessment / provisional assessment / appeal / any other order' (along with requisite documents) claiming refund of the amount allowed in appeal or any other forum.
- The registered person is not required to debit the said amount again in its electronic credit ledger at the time of filing of the refund application since the amount debited, if any, at the time of filing of the refund application was not re-credited.
- Upon receipt of the application, the proper officer would sanction the refund, as allowed, and shall make an order in FORM GST RFD-06 and issue payment order in FORM GST RFD-05 accordingly. The proper officer shall also ensure re-credit of any amount which remains rejected in the order of the appellate forum subject to the guideline as laid down in para 4.2 of Circular No. 59/33/2018 – GST dated September 4, 2018.

[Refer Circular No. 111/30//2019-GST dated October 3, 2019]

- **Possibility of filing another refund application for the period for which NIL refund application is inadvertently filed**

The Government has issued clarification to allow taxpayers to refile refund claim filed inadvertently with NIL amount. A registered person who has filed a NIL refund claim in GST RFD-01A / RFD-01 for a given period under a particular category, can again apply for refund for the said period under the same category if it satisfies the following two conditions:

- a) The registered person had filed a NIL refund claim in FORM GST RFD-01A / RFD-01 for a certain period under a particular category; and
- b) The registered person had not claimed refund in FORM GST RFD-01A/RFD-01 under the same category for any subsequent period.

Condition (b) shall apply only for refund claims falling under the following categories:

- Refund of unutilized credit on account of exports or supplies made to SEZ Unit / SEZ Developer without payment of tax;
- Refund of unutilized ITC on account of accumulation due to inverted tax structure.

In other cases, registered persons can re-apply even if condition (b) is not satisfied.

[Refer Circular No. 110/30//2019-GST dated October 3, 2019]

*The official notifications / circulars vis-à-vis other legislative and procedural changes (such as restriction on credits etc..) as discussed in **NITYA's Insight | Issue 47 | Update on 37th GST Council Meeting dated September 23, 2019** are yet to be notified by the Government.*

6. Online processing of refunds and single authority for disbursement

The GSTIN has issued an Advisory on September 27, 2019 relating to online processing of refunds and constitution of single authority for disbursement for refund claims. Going forward, the process for the refund process will be as follows:

S. No.	Process	Relevant Form	Procedure to be followed
1	Refund Application	RFD-01	The bank account details mentioned in the refund application, will be validated by Public Financial Management System ('PFMS') after filing of RFD-01. The taxpayer needs to ensure that the bank account details selected in the refund application, are valid and correct. The taxpayer will need to change / edit the bank account details (through non-core amendment in registration in REG-14) if there is failure of bank account validation by PFMS. After performing this step, the taxpayer needs to enter the updated bank account by clicking on 'Update Bank Account' functionality provided with the ARN of the refund application. <i>(Form RFD-01A has been disabled on the portal. The taxpayers will now be able to file refund applications in Form RFD-01 only)</i>
2	Acknowledgement	RFD-02	The tax officer will issue RFD-02 electronically to the taxpayer. The taxpayer will be able to view the acknowledgement in RFD-02 on its dashboard.
3	Deficiency Memo	RFD-03	The tax officer will issue RFD-03 electronically to the taxpayer. With the issuance of RFD-03, credit / cash will be re-credited to the electronic credit / cash ledger of the taxpayer. The taxpayer will be able to view the deficiency memo in RFD-03 on its dashboard. Once RFD-03 has been issued against an ARN, the taxpayer will be required to file a fresh refund application.
4	Provisional Refund Order	RFD-04	The tax officer will issue RFD-04 electronically to the taxpayer. The taxpayer will be able to view the provisional sanction order in RFD-04 on its dashboard.

S. No.	Process	Relevant Form	Procedure to be followed
5	Payment Order	RFD-05	The tax officer will issue RFD-05 electronically to the taxpayer. The tax officer is not required to send the copy of RFD-05 to the central nodal authority and state authorities. The taxpayer will be able to view the payment order in RFD-05 on its dashboard.
6	Final Refund Order	RFD-06	The tax officer will issue RFD-06 electronically to the taxpayer. The taxpayer will be able to view the final sanction / rejection order in RFD-06 on its dashboard.
7	Withholding Order	RFD-07B	The tax officer will issue RFD-07B electronically to the taxpayer. The taxpayer will be able to view the withholding order in RFD-07B on its dashboard.
8	Show-Cause Notice ('SCN')	RFD-08	The tax officer will issue RFD-08 electronically to the taxpayer. The taxpayer will be able to view the show cause notice in RFD-08 on its dashboard. The taxpayer is expected to reply to the SCN within 15 days of receipt of the SCN. If the taxpayer does not respond within 15 days of the issuance of SCN, the tax officer can take action on the refund application.
9	Reply to SCN	RFD-09	The taxpayer is required to reply to SCN electronically / online in RFD-09 form. The taxpayer will be able to upload supporting documents electronically through RFD-09. The tax officer will not process the reply to the SCN if the taxpayer does not give the same electronically.
10	Order for re-credit of Rejected Amount	PMT-03	The tax officer will issue PMT-03 electronically. With the issuance of PMT-03, inadmissible ITC will get automatically re-credited to electronic credit ledger of the taxpayer. The taxpayer is required to give an undertaking that it will not file an appeal against the refund order if it desires to get a re-credit of the rejected amount. This undertaking has to be submitted to the tax officer manually. The taxpayer will be able to view the recredit order in PMT-03 on its dashboard.

- The taxpayer will be communicated aforementioned details through e-mail / SMS.

B. CIRCULARS ISSUED UNDER CUSTOMS LAW

1. Norms for execution of bank guarantee under specified export promotion schemes

The Government has clarified that the following taxpayers can claim exemption from execution of bank guarantee based on specified conditions under **Circular No. 58/2004-Customs dated October 21, 2004**:

- Manufacturer exporters / Service Providers registered with the GST authorities who are making exports during the previous two financial years and have minimum export of Rs. 1 crore or more during the preceding financial year.
- Manufacturer exporters / Service Providers registered with the GST authorities, who have paid GST of ₹1 crore or more during the preceding financial year.

Further, the Circular relaxes the condition for furnishing proof of export performance or payment of tax certified by the jurisdictional authority. Going forward, the requirements shall be as under:

- Where the license holder is a registered member of an Export Promotion Council, it needs to produce a certificate of export performance or payment of duty / GST for the purpose of availing Bank Guarantee exemption from the concerned Export Promotion Council.
- Where the license holder is not a registered member of an Export Promotion Council, it may produce such certificate duly authenticated by a practicing Chartered Accountant who is registered with the GST Department.

[Refer Circular No. 31/2019-Customs dated September 13, 2019]

2. Duty drawback allowed in cases of short realization of export proceeds

The exporters had been facing issues regarding claim of duty drawback on account of **short realization** of export sale proceeds due to **bank charges deducted from export invoice**. In this regard, the Government has clarified that duty drawback may be permitted on FOB value of exports without deducting bank charges.

Notably, duty drawback is available on FOB value of goods in case agency commission is up to 12.5 percent of the FOB value. The Circular states that the cap of 12.5 percent will apply jointly to agency commission and bank charges.

[Refer Circular No. 33/2019-Customs dated September 13, 2019]

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