

Recent Amendments in GST law

CA. Annapurna D Kabra
Annapurna@hskaadvisors.com
9972077441

Key Contents

- Budgetary Amendments 2019- GST
- Other Technical/Procedural Amendments- GST

BUDGET AMENDMENTS

Composition scheme

- Exclusion of Interest while determining turnover in a state of 10%
- also while calculating eligibility of aggregate turnover of state (Order No 1/2019 dated 01.2.2019)-
- Rule 5a of CGST Rules- he is neither CTP/Non resident taxable person
- Composition scheme for service providers (Section 10 (2A)) and the turnover not exceeding 50 lakhs in PY.
- Option to pay tax at 6% - Notification 2/2019
- Form GST – CMP-02 option extended to 30.9.2019

Composition scheme

- **Inclusion and exclusion for Aggregate Turnover/Turnover in state**

Inclusion turnover from 01st April till date of registration

Exclusion interest on loans and advances

Increase in threshold limits

- **Notification 10/2019 Central Tax- 07.3.2019-**

- Exclusive supply of Goods 23(2) of CGST Act and
- brought in section 22 of the CGST Act – Beyond not exceeding 40 lakhs
- Services by way of interest – No disentitlement.
- Compulsory Registration- Above not applicable

Aadhar Authentication

- S.25 (6A)- Existing Registered Person
 - Undergo Authentication/Furnish proof of possession
 - Persons not assigned Aadhar – Alternate viable identification- yet to notified
 - Failure to go Authentication- Registration deemed to be invalid
- S.25 (6B)- New Registered Person
 - Aadhar Authentication for Individual- Pre condition for Registration
- S.25 (6C)- New Registered Person
 - Aadhar Authentication for other than Individual- Karta, MD, Partners, Trustees, Authorized Representatives
- S.25 (6D)- Inapplicability to Section – Such class of persons/State/UT may be notified

Compulsory digital payment

- Section 31A-
- Prescribe class of RP who shall provide prescribed modes of electronic payment
- Option to make payment by Recipient according to prescribe mode like Debit card, Electronic wallets, Internet Banking
-

New Return System

- Section 39(1)

Applicability- other than ISD, NRTP, Section 10, Section 51 and Section 52

Periodicity – every calendar month

Details- Inward and Outward supply, ITC, Tax payable, Tax paid, such other particulars

Proviso- Periodicity every quarter (below 5 Crore)

- Section 39(2)

- Applicability- Composition dealers

- Periodicity- Financial Year

- Details- Turnover in a state, Inward supplies, Tax payable and Tax paid, Such other particulars

Date of payment of Tax

- Section 39(7)

- Applicability- Every RP (other than section 10)whose turnover is more than 5 Crore, Section 51 and NRTP,

Periodicity – Due Date of filing Return

- Applicability- Every RP (other than section 10) whose turnover is less than 5 Crore,

Periodicity- Such time as may be prescribed (Quarterly)

- Applicability- Composition dealer

Periodicity- Such time as may be prescribed (Quarterly payment)

Notification 35/2019- Form GST-CMP- 08 for April to June 2019 till 31.8.2019

Transfer of cash between ledgers/Interest/Refund

- Section 49(10)

Transfer of money in cash ledger from one tax account to another

Deemed Refund/ Deemed deposit

- Section 50- proviso

Interest payable on portion of tax paid by debiting cash ledger

Non applicability- Interest paid after commencement of proceedings under Section 73/Section 74

- Section 54(8A)

- CG may disburse Refund of state taxes in such manner as may be prescribed

National Appellate Authority

- Section 101B

Applicability- Conflicting Advance Ruling given by AAAR of two or more states

Applicant- Assessee being distinct person (section 25) aggrieved by such Advance Ruling/Officer Authorised by commissioner

Time limit- 30 days from date of communication of AAAR Ruling/ For Revenue it is 90 days

Extension- Further 90 days

Bench- President/Technical Member state/ Centre

- Section 101B

Applicability- Conflicting Advance Ruling given by AAAR of two or more states

Applicant- Assessee being distinct person (section 25) aggrieved by such Advance Ruling/Officer Authorised by commissioner

Time limit- 30 days from date of communication of AAAR Ruling/ For Revenue it is 90 days

Extension- Further 90 days

Bench- President/Technical Member state/ Centre

- **Exemption- Service Tax on**
- Salami /development charges for granting long term lease of 30 years or more or for development of plots
- Period -October 2013 to June 2017
- Service Provider- State Government Industrial Development Corporation/ Entities having 50% or more of ownership by CG/SG/UT
- Service receiver- Developers of Industrial/Financial Business Area

- Legacy Dispute Resolution Scheme

- Applicability- CEA, Finance Act, and other relevant Act based on Central Excise Act as specified

- Tax Dues-

- A. Appeal pending as on 30.6.2019 before SC, HC, Tribunal, Commissioner Appeals.

- B. SCN Received by declarant before 30.6.2019

- C. Enquiry/Audit/Investigation stage

- D. Voluntary disclosure by declarant- Amount declared

- E. Amount in arrears

- Legacy Dispute Resolution Scheme

- Amount in arrears:

- A. Appeal not filed before expiry of limitation period

- B. Order attaining Finality

- C. Amount declared in return not paid

- Amount- Total amount of duty disputed/SCN amount/Amount quantified in Audit Note before 30.6.2019.

- Exceptions: Final hearing concluded before 30.6.2019

- Pre deposit- It will be Adjusted and if greater than tax dues then lapsed

- Legacy Dispute Resolution Scheme

- **Amount**- Total amount of duty disputed/SCN amount/Amount quantified in Audit Note before 30.6.2019.
- **Exceptions:** Final hearing concluded before 30.6.2019
- **Amount in arrears:**
 - A. Appeal not filed before expiry of limitation period
 - B. Order attaining Finality
 - C. Amount declared in return not paid

Relief available to declarant

	Disputed Tax upto Rs 50 Lakhs	Disputed Tax exceeds Rs 50 Lakhs
Stage of Dispute	Relief from Payment of Disputed Tax Amount	
Enquiry, Investigation or Audit	70%	50%
Issuance of SCN		
Appeal against the SCN		
Amount in Arrears (incl tax liability admitted by filing returns)	60%	40%
SCN for Penalty / Late Fee (Full tax paid)	100%	100%
Voluntary Disclosure of Liability	No Relief	No Relief

- Legacy Dispute Resolution Scheme

- In applicability
- Appeal has been heard finally before 30.6.2019
- Conviction in any offence (above 2 crore)
- SCN final hearing before 30.6.2019
- Erroneous Refund
- Audit/Enquiry/Investigation- Amount not quantified
- Application to Settlement Commission
- Excisable Goods as noted in Schedule IV of Central Excise Tariff Act 1944

- Circular No.109/28/2019- GST- Residential Welfare Association

- **Exemption-** Less than Rs. 7500/- per member and per flat

- **No registration:** Turnover less than 20 lakhs

- **Exemption-**

A. If Maintenance Amount less than 7500 and turnover less than 20 lakhs

B. If Maintenance amount more than 7500 but turnover less than 20 lakhs

C. If Maintenance amount less than 7500 but turnover above than 20 lakhs

- **Liability:**

- If Maintenance Amount more than 7500 and turnover above than 20 lakhs

- **Input Tax Credit**

- ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services

- CBEC Flyer No 41 dated 1/1/2018

- Circular No.105/24/2019- Discount

Post Sale discount- Taxability

Further Action/Obligation required at dealers end for getting such discount-

Service from dealer to supplier – Such discounts actually in nature of consideration

No further action/Obligation for getting post sale discounts- discount value reduced subject to satisfaction of section 15(3) conditions

- **Special reduced price to customers-**
- *Additional consideration flowing from Supplier to dealers.*
- Discount value- to be added to customer price for computation of GST
- Reduced price+ GST on Reduced price + Additional consideration

Financial/Commercial Credit Note- Even 15(3) conditions not satisfied

- No reduction in Tax liability/ Recipient is eligible for Credit.

- Circular No. 102/21/2019-GST: GST on additional / penal interest on the overdue loan
- Two transaction options involving EMI
- **Case-1** : X sells mobile phone to Y and gives an option to pay the amount in instalments every month, whereby interest is charged. In case of delayed payment a penal interest shall be charged by X. Amount of Penal interest is to be included in the value of supply..
- **Case-2** : X sells mobile phone to Y and Y has an option to avail a loan from M/S. ABC Ltd. for purchase of mobile phones. In this case, M/S. ABC Ltd shall charge interest and penal interest if any for delayed payment. The additional Penal Interest charged is covered under S.I.No. 27, Notification, No. 12/2017.-CT. Dated 28/06/2017. No GST shall be paid on the penal interest in this case

- Rule 88A
- Section 49A and Section 49B was inserted by CGST (Amendment) Act 2018 w.e.f 01.2.2019
- Rule 88A
- ITC on account of IGST should be completely exhausted before SGST and CGST can be utilised
- Allows utilisation of IGST towards payment of CGST and SGST in any order
- Rule 138E
- Consignor/consignee/transporter/E commerce operator or a Courier Agency cannot furnish Part A of E way Bill in respect of a Registered person whether as supplier or recipient has not furnished the returns for two consecutive periods
- Implemented from 21.8.2019
- Notification No 32/2019 – Central Tax
- The time limit for furnishing the declaration in FORM GST ITC-04 of the said rules, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2017 to June, 2019 till the 31 st day of August, 2019.

- Circular No. 108/27/2019-GST- Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion - reg.

- Whether goods sent out of India on Exhibition is a supply/Zero Rated Supply?
- How the goods should be sent? Delivery Challan/ Usual Export documents
- When it will be export?
- In case goods not returned within six months?
- Can the Refund be claimed?

- **Circular No. 103/22/2019-GST:**

Clarification regarding determination of place of supply in certain cases like

- Cargo handling services Provided by Ports to Clients and
- Services rendered on unpolished diamonds received from abroad, which are exported after cutting, polishing etc.

- Circular No. 108/27/2019-GST- Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion - reg.

- Whether goods sent out of India on Exhibition is a supply/Zero Rated Supply?
- How the goods should be sent? Delivery Challan/ Usual Export documents
- When it will be export?
- In case goods not returned within six months?
- Can the Refund be claimed?

- **Circular No. 103/22/2019-GST:**

Clarification regarding determination of place of supply in certain cases like

- Cargo handling services Provided by Ports to Clients and
- Services rendered on unpolished diamonds received from abroad, which are exported after cutting, polishing etc.

- Circular No. 107/26/2019-GST- Supply of Ites
- When are Ites services not in the nature of Intermediary?
 - When assessee is providing back end services on his own account – then it is not an intermediary Service like A is providing Customer care Services to C, who is client of B. Agreement for provision of service is between A and B. B pays consideration to C. A has provided services to B and not on behalf of B. Hence not an intermediary Service
- When are Ites services in the nature of Intermediary?
 - Support Services- Pre delivery/Post delivery services
 - Example: Order placement, delivery, logistical support, obtaining government clearances, etc
 - Aforesaid Services merely arranging or facilitating supply.
 - Main services not provided on his own and
 - Hence it is intermediary service

- Circular No. 106/25/2019 dated 29.6.2019- Duty Free shops
 - Whether GST is applicable on goods supplied in duty free shops?
 - IN RE ROD RETAIL PVT Ltd 2018 (12) GSTL 206 (AAR)-
 - Sale in India-
 - Not fulfilling Export condition of taking goods outside India (Counter sale)
 - Definition of India includes landmass Therefore it is not an export and liable to GST
 - Notification 10/2019- CGST/IGST- dated 29.6.2019 – Indigenous Procurements Refund of taxes (CGST/SGST/IGST) to Duty Free shops on Inward supplies – Rule 95A
 - Notification 11/2019- IGST- dated 29.6.2019
- Exemption on outward supply by DFS to International Tourist
- For Domestic Passengers – Charge the Tax
 - Imported Inward supplies- Section 58A (Special Warehousing) of Customs Act.
 - Charge the tax on Domestic Supplies and Exemption to International Tourist

Amendments

- TCS would not be includible for determination of value of supply under GST. (Circular No 20/16/4/2018- GST dated 07.3.2019)- It is an interim levy not having character of tax
- Denies refund of ITC on 'Input Service' under Inverted duty structure
- Online and offline tendering amounts to supply of services classifiable as 'residuary services' (Maharashtra Advance Ruling)
- **Safari Retreats Vs Chief commissioner of GST & CE (2019) TIOL 1088:** GST on Rental VS ITC for the inputs and inputs services consumed by him.
- **AAP and Company CA Vs Union of India Civil Application No 18962 of 2018-** Form 3B is not a Return
- **Megha Engineering and Infrastructure Ltd dated 18.4.2019-Writ petition Number 44517 of 2018-** Interest on Gross liability or not Net Liability.

•



- CA. Annapurna Kabra
- annapurna@hskaadvisors.com
- 9972077441



Q&A