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Issue 6

Date: 20 February 2019

# THE MONTHLY ROUND-UP

UPDATES ON GST

**CENTRAL TAX  
BANGALORE**

For Internal Circulation Only

# EDITOR'S NOTE

The month of February witnessed the announcement of the Interim Budget by the Finance Minister Shri Piyush Goyal on February 1, 2019. In his budget speech, the Hon'ble Finance Minister mentioned that GST rates have been reduced considerably resulting in a relief of around 80,000 crores to consumers with most items of daily use for poor and middle class now being in the 0% to 5% tax bracket. A 2% interest subvention on loan of Rs 1 crore for GST registered MSME units was announced.

The GST Council held its 32nd meeting on the 10th of January 2019 and gave approval for a host of new measures which reduces the compliance burden on composition scheme taxpayers, extends the composition scheme to suppliers of services also and also recommending a two stage threshold limit for suppliers of goods i.e a threshold limit for registration and a limit for payment of GST. These measures are to take effect from 1st April 2019 on issue of necessary amendments in the law.

The 1st of February 2019 marks the coming into effect of the various amendments in the GST laws. In this issue we have detailed the law changes which have taken effect. Clarifications given by the Board on law and levy of GST have also been summarised. The details of all Notifications/Circulars issued during the month of January 2019 are covered in this issue.

As before, this issue also covers certain important High Court judgments as well as rulings of the Karnataka AAR and AAAR. We hope you find this useful. Please do share your comments and feedback on [gstcell-blr@gov.in](mailto:gstcell-blr@gov.in).



**Amitesh Bharat Singh**  
**Additional Commissioner (Pr.CCO)**

# IN THIS ISSUE

## EDITORIAL TEAM

Amitesh Bharat Singh, ADC (Pr.CCO)

Gayathri Menon, DC (Pr.CCO)

## CONTENT TEAM

Sabrina Cano, Supdt. (Pr.CCO)

Chokkalingam M, Insp. (CPC)

Aditya Sinha, Insp (Pr.CCO)

Jyoti Chotia, Insp (Pr.CCO)

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## **AMENDMENTS IN GST LAW TAKE EFFECT FROM 01.02.2019:**

The CGST, IGST, UTGST and GST (Compensation to States) Amendment Acts had received the Presidential assent on 29 August 2018. Based on decision taken by the GST Council in its 31st meeting held on 22 December 2018, the CBIC issued the following Notifications making the provisions of the GST Amendment Acts effective from 1 February 2019

**Notf No 02/2019 CT dated 29.01.2019** :- All provisions of the CGST (Amendment) Act, 2018 come into force on 1st Feb 2019, except the following provisions –

- Clause (b) of Sec 8 – inserts new Sec 43A (Procedure for furnishing return and availing ITC) in the explanation to Section 16 (2)
- Section 17 – Amends Section 39 so as to provide for prescribing the procedure for quarterly filing of returns with monthly payment of taxes.
- Section 18 – Inserts a new Section 43A which provides for a new return filing and availing ITC
- Section 20(a) – Reference to Sec 43A in Sec 49(2)
- Section 28(b)(i) and 28(c)(i)- Insertion of reference to subsection (1) of Section 140 under Explanation 1 and 2, which defines the term "eligible duties" and "eligible duties and taxes" respectively.

**Notf No 01/2019 (Integrated Tax) dated 29.01.2019**:- Notifies 1st Feb 2019 as the date on which the provisions of the IGST (Amendment) Act, 2018 comes into force.

**Notf No 01/2019 (UT) dated 29.01.2019**:- Notifies 1st Feb 2019 as the date on which the provisions of the UT GST (Amendment) Act, 2018 comes into force.

**Notf No 01/2019 (Compensation Cess) dated 29.01.2019**:- Notifies 1st Feb 2019 as the date on which the provisions of the GST Compensation to States (Amendment) Act, 2018 comes into force.

**Notf No 03/2019 CT dated 29.01.2019** – Amends the CGST Rules, 2017 to give effect to the GST Act amendments.

Some of the important amendments which come into effect on 1st Feb 2019 are as under:

Ø Upper limit of turnover for opting of composition scheme has been raised from Rs 1 cr to Rs 1.5 cr

Ø A Composition taxpayer (dealing in goods) shall be allowed to supply services (other than restaurant service) for a value not exceeding 10% of the turnover in the preceding financial year or Rs 5 lakhs whichever is higher. Rule 7 of the CGST Rules has been amended to specify the rate of tax for such composition taxpayers as  $\frac{1}{2}$ % of the turnover of taxable supplies of goods and services in the State or UT.

Ø The threshold turnover for registration in special category States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand has been increased from Rs 10 lakh to Rs 20 lakh. Ø The levy of tax on reverse charge basis under Section 9(4) has been restricted to receipt of supplies of certain specified categories of goods or services or both by notified classes of registered persons from unregistered suppliers on the recommendations of the Council.

Ø Definition of supply has been retrospectively amended to provide that the activities listed in schedule II will be taxable only if there is an underlying supply, and the schedule is relevant only for classifying the supply between goods or services.

Ø Taxpayers may opt for multiple registrations within a State /UT in respect of multiple places of business located within the same State/UT on the same PAN. The concept of business verticals for separate registrations has been done away with and accordingly Rule 11 of the CGST Rules has been amended.

Ø At the option of the registered person, the unutilized ITC in the existing registration can be transferred to the newly registered places of business. For this, Form GST ITC-02A is required to be furnished within 30 days of obtaining such separate registrations. A new Rule 41A has been inserted in the CGST Rules to provide for this transfer of credit.

Ø Separate registration required for SEZ units and SEZ developer, distinct from his other units located outside the SEZ mandated in the Act. Consequently, 1st proviso to Rule 8 of the CGST Rules has been omitted.

Ø Mandatory registration is required for only those e-commerce operators who are required to collect tax at source.

Ø Registration shall remain temporarily suspended while cancellation of registration is under process, so that the taxpayer could get relief of further continued compliance under the law. (i.e taxpayer will not be required to file returns). Rule 21A of the CGST Rules has been inserted to provide for suspension of registration.

Ø A single debit/ credit note can now provide reference to corresponding multiple tax invoices issued in a financial year. Earlier, separate debit/ credit note had to be issued in respect of each invoice.

Ø The order for availing the set off of ITC has been changed and new Sections 49A and 49B have been made effective. As per the new order of set-off, IGST credit should be first fully utilised before using CGST credit and SGST credit for set off.

Ø The following transactions shall not be treated as supply under Schedule III:-

- o Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering India
- o Supply of warehoused goods to any person before clearance for home consumption
- o Supply of goods on high sea sales.

Ø ITC will now be available in respect of the following:

- o Most of the activities or transactions specified in Schedule III
- o Motor vehicles for transportation of persons having seating capacity of more than 13 (including driver), vessels and aircraft
- o Services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available
- o Goods and services which are obligatory for an employer to provide to its employees, under any law for the time being in force.

Ø With retrospective effect from 1st July 2017, the cesses and additional duty of excise (on textile and textile articles) levied under the pre-Goods and Services Tax laws shall not be a part of the transitional input tax credit under the goods and services tax.

Ø Pre-deposit for filing appeal before the Appellate Authority has been capped at an upper limit of Rs 25 cr and pre-deposit for filing appeal before Appellate Tribunal has been capped at the upper limit of Rs 50 Cr.

Ø Recovery of taxes, interest, fine, penalty etc can be made from distinct persons even if such distinct persons are present in different States/UT.

Ø if the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods

Ø Place of supply shall be outside India, in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.

Ø A service can be said to be exported even if the consideration is received in Indian rupees wherever permitted by Reserve Bank of India, if other conditions for treating a service as exports of services is fulfilled. Correspondingly, Rule 96A of the CGST Rules has also been amended.

## **REFUND:-**

The following changes in the refund provisions were made vide Notf No 03/2019 CT dated 29.01.2019:

- i) Rule 8g (2) (f) of the CGST Rules has been substituted, to provide that a registered person will have to furnish a declaration that no tax has been collected from SEZ at the time of claiming refund for supply of goods or services to SEZ. This is in line with the amendment to section 54 (8) (a) of the CGST Act which provides that proof of unjust enrichment must be furnished while claiming refund in relation to supplies to SEZ.
- ii) Rule 91(2) of the CGST Rules relating to grant of provisional refund has been amended to insert a proviso that the order issued in Form GST RFD-04 shall not be required to be revalidated by the proper officer.
- iii) Rule 91(3) of the CGST Rules relating to issue of payment advise in Form GST RFD-05 has been amended to insert a proviso that the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the payment advice was issued.
- iv) Rule 92(4) of the CGST Rules relating to issue of order sanctioning refund in Form GST RFD-06 has been amended to insert two proviso that the order issued in Form GST RFD-06 shall not be required to be revalidated by the proper officer but the payment advice in Form GST RFD-05 shall be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

## **REVERSE CHARGE MECHANISM:**

Notification No 01/2019 CT (R), No 01/2019 IT (R) and No 01/2019 UT (R) all dated 29.01.2019 were issued rescinding the earlier notifications exempting the liability of a registered person from paying tax under reverse charge mechanism under Section 9(4) of the CGST Act and Section 5(4) of the IGST Act, on making procurements from unregistered person, with effect from 1 February 2019. This is done in view of the amendments to Section 9(4) of the CGST Act and Section 5(4) of the IGST Act by the Amendment Acts, 2018 whereby, reverse charge in respect of supplies from unregistered persons will apply only to specified persons. However, no such class of persons has been notified so far.

## **EXTENSION IN RETURN / TRANS 1 FILING DATES:**

**Notification No 07/2019 CT dated 31.01.2019** extends the due date for filing of GSTR 7 (TDS return) for the months of October 2018 to December 2018 till 28.02.2019

Time period for submitting the declaration in TRANS-1 for class of registered persons who could not submit the declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council has been extended till 31.03.2019 vide Order No 01/2019 dated 31.01.2019

## **GST PRACTITIONERS:**

The GST Council in its 32nd meeting held on 10th January 2019 at New Delhi gave approval for extending the last date for passing the examination for GST Practitioners till 31.12.2019. This is for those GST Practitioners who have enrolled under rule 83(1)(b) i.e. who were sales tax practitioner or tax return preparer under the existing law for a period of not less than five years.

Rule 83(3) of the CGST Rules was amended vide Notification No 03/2019 CT dated 29.01.2019 to provide that the GST Practitioner is required to pass the examination within a period of 'thirty months" from the appointed date instead of the earlier "eighteen months".

Rule 83(8) of the CGST Rules was amended vide Notification No 03/2019 CT dated 29.01.2019 to allow a GST Practitioner to perform the following additional activities:

- Furnish information for generation of e-way bill
- Furnish details of challan in Form ITC-04
- File an application for amendment or cancellation of enrolment under Rule 58
- File an intimation to pay tax under the composition scheme or withdraw from the said scheme.

## **MISCELLANEOUS CHANGES:**

**Notification No 01/2019 CT dated 15.01.2019** was issued to amend the meaning of Advance Authorisation wherein the pre-import conditions have been done away with. Further, it provides that where exports have already been made after availing ITC, goods supplied against Advance Authorisation shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant shall be submitted to jurisdictional commissioner of GST or any other officer authorized by him within 6 months of such supply.; It was further said that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.



**Notification No 06/2019 CT dated 29.01.2019** amends the proviso in Notf No 65/2017 CT dated 15.11.2017 (which deals with the computation of aggregate value of supplies by service providers through e-commerce portal in Special Category States) to sync it with the proviso to Sec 22 (1) and explanation (iii) of the said Section.

Notification No 02/2019 IT dated 29.01.2019 amends Notf No 07/2017 IT dated 14.09.2017 to state that job-workers who are involved in making supply of services in relation to goods mentioned against Sl.No 5 in the Annexure to Rule 138 of CGST Rules will not be exempted from registration.

## **CLARIFICATIONS ON LAW AND LEVY OF GST:**

- 1) **Circular No 82/2019 dated 01.01.2019** clarified that with effect from 31.01.2018, all IIMs have become eligible for exemption benefit under SL.No 66 of Notf No 12/2017 CT(R) dated 28.06.2017 as an 'educational institution'. SL.No 67 of the said Notf which becomes redundant with effect from 31.01.2018 was deleted vide Notf No 28/2018 CT(R) dated 31.12.2018. For the period between 31.01.2018 to 31.12.2018, 2 exemptions i.e under SL.No 66 and 67 were available to the IIMs. The IIMs can avail exemption either under SL.No 66 or SL.No 67.
- 2) **Circular No 83/2019 dated 01.01.2019** clarifies that services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.
- 3) **Circular No 84/2019 dated 01.01.2019** clarifies that the service of "printing of pictures" falls under Service Code 998386 as "Photographic and video graphic processing service" and not under 998912 as "Printing and reproduction services of recorded media on a fee or contract basis". The service of printing of pictures attracts GST at 18%.
- 4) **Circular No 85/2019 dated 01.01.2019** clarifies that supply of all services by an educational institution to its students, faculty and staff is exempt under Notf No 12/2017 CT(R) dated 28.06.2017. Supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself is exempt from GST under Notf No 12/2017 CT(R). However, such supply of food and beverages by any person other than the educational institution, based on a contractual agreement with such institutions is leviable to GST at 5%.

5) **Circular No 86/2019 dated 01.01.2019** clarifies that the banking company is the service provider in the Business Facilitator (BF) model or the Business Correspondent (BC) model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF or BC.

Further, it is clarified that for the purpose of availing exemption from GST under SL.No 39 of Notf No 12/2017 CT, the following conditions should be satisfied viz:

- (i) The services provided by a BF/BC to a banking company in their respective individual capacities should fall under Heading 9971, and
- (ii) Such services should be with respect to accounts in a branch located in the rural area of the banking company. Since the procedure for classification of branches of a bank as located in rural area is governed by RBI guidelines, the classification adopted by a bank in this regard should be accepted.

6) **Circular No 87/2019 dated 02.01.2019** clarifies that the retrospective amendment of Section 140(1) of the CGST Act by the 2018 Amendment Act allowing transition of CENVAT credit under the existing law only in respect of 'eligible duties' would include CENVAT credit of Service Tax within its scope. The word "duties" is used interchangeably with the word 'taxes' and in the present context, the two words should not be read in a disharmonious manner. Further, it is clarified that no transition of credit of cesses, including cess which is collected as additional duty of customs would be allowed in terms of explanation 3 to Section 140 which was inserted vide the 2018 Amendment Act.

## **REMOVAL OF DIFFICULTIES:**

In order to remove difficulties, Order No 02/2018 CT dated 31.12.2018 was issued wherein it is provided that the registered person shall be entitled to take ITC after the due date of furnishing of the Sept 2018 GSTR 3B return till the due date of furnishing the March 2019 GSTR 3B return, in respect of any invoice or invoice relating to such debit note for supply of goods or services made during the financial year 2017-18, the details of which have been uploaded by the supplier in the GSTR 1 till the due date for filing the March 2019 GSTR 1.

Further, amendments or omissions in respect of details furnished in the GSTR 1 for the financial year 2017-18 shall be allowed after furnishing the GSTR 3B for September 2018 till the due date for filing the GSTR 1 for the month of March 2019 or quarter Jan-Mar 2019.

# CASE LAW UPDATES

## **M/S PALAK DESIGNER DIAMOND JEWELLERY VS UOI**

In the case of **M/s Palak Designer Diamond Jewellery vs UOI reported in 2019-TIOL-26-HC-AHM-GST**, Petitioner is engaged in the manufacture of jewellery from gold, diamond and precious metals on its own account as well as on job work basis - Search came to be carried out at the factory premises to ascertain whether the petitioner had paid GST correctly - officers seized the excess stock of finished goods under seizure memo and handed over the same to petitioner for safe custody - petitioner requested the Additional Commissioner of Anti Evasion, GST and Central Excise, to provisionally release the finished goods which belonged to the principal suppliers and had to be returned at the earliest.

Petitioner informed the respondent that they had paid appropriate amounts of CGST and SGST on the seized goods and penalty equal to 15% of CGST and SGST under the provisions of section 74(5) of the Act and requested the release of the goods in terms of the provisions of section 67 (6) of the CGST Act - respondents once again searched the premises of the petitioner and seized all the raw materials and finished goods lying on the first, second and third floors under the seizure memo - petitioner furnished various documents from time to time and vide letter dated 29.5.2018 provided the reasons as to why the goods were not required to be seized, inter alia, stating that the petitioner being a job worker was not responsible for payment of GST on the value of supply of goods and that it was liable to pay GST only on job work charges - competent authority extended the period of seizure in terms of section 67 (7) of the CGST Act for a further period of six months - Since the respondents failed to provisionally release the seized goods causing immense hardship to the petitioner, it has filed the present petition seeking the relief.

Petitioner has challenged the validity of seizure orders and seeks directions to the respondent to forthwith allow provisional release of the seized goods - Referring to the show cause notice dated 8.1.2019, it was pointed out that, the respondents have computed the total amount of tax payable on the seized goods at Rs.46,75,791/- - It is further submitted that, at best the penalty thereon would come to Rs.23 lakhs and, therefore, the total amount would come to approximately Rs.70 lakhs; that since the goods are still lying with the respondent no interest would be payable thereon; that the petitioner having already paid Rs.14,16,868/- and having reversed credit of Rs.7,90,793/-, the respondents may be directed to provisionally release the seized goods under sub-section (6) of section 67 of the CGST Act upon the petitioner furnishing a bank guarantee of Rs.50 lakhs.

**The Gujarat High Court held that** the Respondents are duly empowered to provisionally release the seized goods, if the requirements of section 67(6) of the CGST Act

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read with rule 140 of the CGST Rules are satisfied - In the present case, adding 50% towards penalty, the total amount would come to approximately Rs.70 lakhs - petitioner has already deposited Rs.14,16,868/- by way of challan and has reversed credit of SGST to the tune of Rs.7,90,793/-, which comes to approximately Rs.22 lakhs - Under the circumstances, if the petitioner furnishes bank guarantee of Rs.50 lakhs and a bond for the value of the goods in FORM GST INS-04, the interest of justice would be served - without entering into the merits of the controversy, the petition is partly allowed - respondents are directed to forthwith provisionally release the seized goods of the petitioner under sub-section (6) of section 67 of the CGST Act, upon the petitioner executing a bond in FORM GST INS-04 for the total value of the seized goods, and furnishing a bank guarantee of Rs.50 lakhs.

## **M/s R K Motors vs State Tax Officer, Sattur Road Moving Squad, Virudanagar**

In the case of **M/s R K Motors vs State Tax Officer, Sattur Road Moving Squad, Virudanagar reported in 2019-TIOL-27-HC-MAD-GST**, the petitioner had placed orders with their principal for delivery of 40 numbers of two wheelers [Pulsar Bike]. The goods were shipped from Pune to be delivered at Branch Office of the writ petitioner at Virudhunagar. The goods were moved from Pune on 23.12.2018. the vehicle transporting two wheelers instead of halting at Virudhunagar, had moved towards Sivakasi. When the vehicle was enroute to Sivakasi and 7 km away from Virudhunagar, it was intercepted by the respondent roving squad. The respondent seized the vehicle and called upon the driver of the vehicle to cooperate.

It appears that the driver of the vehicle did not extend proper cooperation. In these circumstances, the impugned order of the detention came to be passed. The respondent had also passed release order putting the writ petitioner on terms. A sum of Rs.18,96,000/- had been levied as a penalty. The vehicle has also been seized and detained. Unless the writ petitioner remitted the said penalty amount, it has been made clear that the goods as well as the vehicle would not be released. It has been further made clear that the goods would be liable for confiscation and further proceedings under Section 130 of the Tamil Nadu Goods and Services Tax Act, 2017 would be taken. Hence, this writ petition has been filed questioning the detention order dated 28.12.2018 and the order dated 11.01.2019 passed under Section 129(3) of the Tamil Nadu Goods and Services Tax Act, 2017.

**The High Court held that** it is not in dispute that the writ petitioner is an authorised dealer of Bajaj Auto Limited. It is also not in dispute that the goods are covered by appropriate documents. The tax payable has also been paid by the writ petitioner's principal. Thus, it is not a case of any evasion of tax. The driver, who drove the vehicle in question is not a Tamilian. The driver without knowing the correct route had taken a wrong turn and headed

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towards Sivakasi. The only question that the respondent ought to have posed is whether there is any attempt at evasion. It is not as if the goods had already been offloaded. The vehicle was intercepted when it was in transit. The respondent ought to have directed the driver of the vehicle to move back towards Virudhunagar. Instead adopting such a procedure, the respondent had chosen to be harsh and vindictive. When the writ petitioner is a registered dealer, when the tax in respect of the goods have already been remitted and when the transportation of goods is duly covered by proper documentation, the respondent ought to have taken a sympathetic and indulgent view of the lapse committed by the driver of the vehicle. The detention order dated 28.12.2018 and the order dated 11.01.2019 suffer from vice of gross unreasonableness and disproportionality. When a power is conferred on a statutory authority, it should be exercised in a reasonable manner.

## **M/S JAYAM GLOBAL FOOD PVT LTD VS UOI**

In the case of **M/s Jayam Global Food Pvt Ltd vs UOI & ors reported in 2019-TIOL-28-HC-MAD-GST**, the petitioner is a manufacturer of dried chick peas, gram flour, pulses and grams. The petitioner's claim is that they purchase chick peas, dry them by heating them to a certain degree and the resultant product is known as "Dried Chick Peas". According to the petitioner, this would have to be classified only under Chapter 0713 of HSN. The petitioner had transported the dried chick peas from Salem to Dindigul. The petitioner had not filed any E-Way bill in view of the exemption statutorily granted. While so, the consignment of the dried chick peas sent by the petitioner was intercepted by the fourth respondent on 21.12.2018. The fourth respondent seized the goods and also detained the vehicle in which the goods were being transported. The fourth respondent took the view that what was transported by the petitioner comes under the classification (fried or roasted grams) falling under Chapter 2106 of HSN.

**The High Court held that** the issue that arises for consideration is whether the inspecting squad officer is entitled to rule on the appropriate classification. On a similar issue, the Hon'ble Kerala High Court held that in such cases at best the inspecting authority can alert the assessing authority to initiate the proceedings "for assessment of any alleged sale, at which the petitioner will have all his opportunities to put forward his pleas on law and on fact." The process of detention of the goods cannot be resorted to when the dispute is bona fide, especially, concerning the exigibility of tax and, more particularly, the rate of tax. the squad officer can intercept the goods, detain them for the purpose of preparing the relevant papers for effective transmission to the jurisdictional assessing officer. The final call will have to be taken only by the jurisdictional assessing officer. The High Court directed the Commissioner of Commercial Taxes, Chennai to issue a circular to all the inspecting squad officers in Tamil Nadu not to detain goods or vehicles where there is a bonafide dispute as regards the exigibility of tax or rate of tax.

## **M/S XIAOMI TECHNOLOGY INDIA PVT LTD**

M/s Xiaomi Technology India Pvt Ltd applied for an Advance Ruling on whether the "Power Bank" traded by them is classifiable under heading 8504 40 90 as "Static Convertor – Others"? It was the contention of the Applicant that the Power Bank consists primarily of a battery and a static convertor. While the battery accumulates the electrical energy, it is the convertor which essentially converts the electric charge of a known frequency and voltage (input) into one having different frequency and voltage (output) and provide regulated output to the devices. Therefore in terms of Section Note 4 to Section XVI of Customs Tariff Act, 1975, the Power Bank has 2 or more components (i.e static convertors and batteries) and has a clear defined function of charging a device and accordingly Power Bank is classified under Tariff entry 8504 40 90 as Static Convertor – Others.

The AAR vide **Ruling No KAR/ADRG/01/2019 dated 22.01.2019** held that the principle function of the Power Bank at any point of time is to charge the devices connected to it and not for any conversion. It is in the nature of an accumulator and is classifiable under Chapter Heading 8507.

# APPELLATE AAR RULINGS

## **M/s TOSHNIWAL BROTHERS (SR) PRIVATE LIMITED**

**M/s Toshniwal Brothers (SR) Private Limited had sought a ruling before the Authority for Advance Ruling, Karnataka as to whether:**

- (i) the 'promotion and marketing services' supplied by them will be termed as 'intermediary service' and;
- (ii) whether the 'after-sale support service' which is provided under a composite contract will be termed as a composite supply. If so, what will be the principal supply?
- (iii) whether the contracts in question would qualify as exports in terms of Section 2(6) of the IGST Act and whether they will be treated as 'zero-rated supply' in terms of Section 16 of the said Act.

The Authority for Advance Ruling in their order dated 19th Sept 2018, held that the 'promotion and marketing services' provided is in the nature of facilitating the supply of goods and hence would amount to 'intermediary service'. Further, the AAR held that the 'after-sale support service' is independent from the promotion and marketing service and is not a composite supply. On the third question, the AAR refrained from giving a ruling on the grounds that the question warrants determination of place of supply, which aspect is outside the purview of the AAR.

Aggrieved by the above ruling of the AAR, the Appellant filed an appeal before the AAAR who vide order dated 09.01.2019 upheld the decision of the AAR that the service of promotion and marketing of the products of the overseas client is in the nature of facilitating the supply of the products of the overseas client and is appropriately classified as an 'intermediary service' as defined under Section 2(13) of the IGST Act. On the second question, the AAAR held that the after sales support service, although rendered in a composite manner with the promotion and marketing service is not a composite supply.

On the third issue, the AAAR held that the Authority for Advance Ruling has been constituted in exercise of the powers conferred by section 96 of the Karnataka Goods and Services Tax Act, 2017, which Act extends to the whole of the state of Karnataka. The AAR is a creature of statute and has to function within the legal boundary mandated by the Act. As the 'place of supply' is not covered by Section 97(2) of the Acts, the AAR was right in refraining from answering this question on the grounds of lack of jurisdiction.

# GST PORTAL UPDATES

New functionalities /enhancements deployed on GST portal recently is given below:

## **(A) Assessment and Adjudication:**

(i) Rectification of mistake in the order by the Adjudicating Authority: Errors or mistakes apparent on face of record can be rectified by the Adjudicating Authority, on basis of suo-moto rectification or upon receipt of an application from taxpayer, within a period of six months from the date of issue of such order. In these type of cases, an application for Rectification can be filed by the taxpayer on GST portal within 3 months from date of issue of order.

(ii) Furnishing details of security/ surety : Taxpayer can now furnish details of security/ surety in prescribed form on GST Portal. After submitting the form online, they are required to furnish hard copy of original bank guarantee/ surety/ security to the proper officer.

## **(B) Refund Module (Filing of Monthly Refund applications by Quarterly GSTR-1 filers)**

As of now, taxpayers filing Form GSTR 1 quarterly, can file refund application on quarterly basis only. The system validates whether the tax payer has filed Form GSTR-1 and Form GSTR-3B for the corresponding period or not. Now, the restriction for applying refund on quarterly basis for quarterly GSTR 1 filers is removed, so that these tax payer would also be able to file refund application on monthly basis. This implies that the taxpayer can file monthly refund application, but Form GSTR 1 for the quarter must be filed.

**(C) Appeal (Preparation of Form GST APL-01 by GSTP, on behalf of taxpayer) :** Tax payers can now select a GST Practitioner, to prepare an appeal in Form GST APL-01, to be filed by them. The GSTP can save draft of the appeal application form. The taxpayer and GSTP would be able to continue on the saved drafts of the appeal application form, saved by either of them.

(D) Appeal : An application, for rectification of an order, passed by an appellate authority, by a taxpayer, has been made available on GST Portal

(E) Composition Scheme: If proceedings for compulsory withdrawal from Composition Scheme is initiated by a Tax Official, against a composition taxpayer, then composition taxpayer can now reply to such SCN issued on GST Portal.

(F) Payment Module (Preferred banks list for taxpayer for making payment) : Now upto 6 preferred banks will be shown to a taxpayer while making e-Payment on GST Portal. When Taxpayer makes the first payment from GST portal, the selected bank will automatically get updated in the Preferred Banks list. Every time Taxpayer will make payment from a different bank it will be updated in the Preferred Banks list. In case, a Taxpayer already having 6 banks



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in its preferred banks list, makes a payment with 7th bank, then that 7th bank will be added in the preferred banks and the least used bank will be removed from the list. Taxpayer can delete any of the preferred banks at any point of time.

## **(G) Advance Ruling:**

(i) Appeal against Advance Ruling given the Authority: Once an advance ruling is issued by an authority and if the applicant or the taxpayer is aggrieved by such an advance ruling, then they can file an appeal before the appellate authority.

(ii) Rectification of mistake in the order by the advance ruling authority or its appellate authority : If there is any mistake in the order passed under Section 98 or 101, by the authority or the appellate authority, which is apparent from the record, the authority or the appellate authority can pass a rectification order, for rectifying such mistake, within a period of six months from the date of the order. The applicant / appellant / taxpayer can make an application to the authority/ appellate authority for rectification of the mistake.

# CBIC UPDATES

## **Clarification on the Scheme of Budgetary Support to eligible industrial units:**

The CBIC issued a Circular No 1068/1/2019-CX dated 10th Jan 2019 clarifying certain issues regarding implementation of the Scheme of Budgetary Support to eligible industrial units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim.

Under the Central Excise regime as it existed prior to 01.07.2017, the units located in the states of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim were eligible to avail exemption from payment of Central Excise duty in terms of area based exemption notifications. While ab-initio exemption was available to the units located in the States of Uttarakhand and Himachal Pradesh, the units located in other aforesaid areas were required to pay Central Excise duty and avail exemption by way of refund of cash component of such duty paid.

Under GST regime there is no such exemption and the existing units which were availing exemption from payment of Central Excise duty prior to 01.07.2017 are required to pay CGST&SGST/IGST like a normal unit. Thus, at present, no exemption is available to these units by way of either ab-initio exemption or by way of refund.

In order to obviate the hardships faced by such units, Central Government has decided to provide budgetary support to the eligible units which were operating under erstwhile Area Based Exemption Schemes, for the residual period for which the units would have operated under the schemes, by way of refund of the Goods and Services tax, limited to its share of CGST and/or IGST retained after devolution of taxes to the states.

The new scheme is introduced as a measure of goodwill, only to the units which were eligible for availing benefits under the earlier excise duty exemption/refund schemes but has otherwise no relation to the erstwhile schemes. The scheme of budgetary support has come into operation w.e.f. 01.07.2017 for an eligible unit and shall remain in operation for residual period in respect of specified goods.

A doubt arose about the provision for appeal in case the unit is aggrieved with the findings of sanctioning authority/Inspection team. The CBIC vide the Circular dated 10th Jan 2019, clarified, the support under the scheme is in the nature of grant and not refund of duty under taxation law. As such there is no requirement for any appellate forum as the decision of the sanctioning authority is final.

## **GST on Haulage and Maintenance services provided by Indian Railways to Private Container Train Operators:**

As recommended by the GST Council in its 31st meeting held on 22.12.2018, the CBIC vide Office

# CBIC UPDATES

Memorandum dated 16.01.2019 has clarified that supply of the services of haulage and maintenance of wagons by Indian Railway to Container Train Operators (CTOs) satisfies all criteria of the definition of composite supply. The same should be considered as a composite supply with the haulage of wagons as the principal supply.

## **Key Takeaways from the 32nd GST Council meeting:**

The GST Council in its 32nd meeting held on 10th January 2019 at New Delhi gave approval for the following:

1. Compliance simplification under Composition Scheme: The compliance under Composition Scheme shall be simplified as now they would need to file one Annual Return but Payment of Taxes would remain Quarterly (along with a simple declaration).
2. Higher Exemption Threshold Limit for Supplier of Goods: There would be two Threshold Limits for exemption from Registration and Payment of GST for the suppliers of Goods i.e. Rs 40 lakhs and Rs 20 lakhs. States would have an option to decide about one of the limits within a weeks' time. The Threshold for Registration for Service Providers would continue to be Rs 20 lakhs and in case of Special Category States at Rs 10 lakhs.
3. Composition Scheme for Services: A Composition Scheme shall be made available for Suppliers of Services (or Mixed Suppliers) with a Tax Rate of 6% (3% CGST +3% SGST) having an Annual Turnover in the preceding Financial Year up to Rs 50 lakhs. The said Scheme Shall be applicable to both Service Providers as well as Suppliers of Goods and Services, who are not eligible for the presently available Composition Scheme for Goods.
4. Effective date: The decisions at Sl. No. 1 to 3 above shall be made operational from the 1st of April, 2019.
5. Free Accounting and Billing Software shall be provided to Small Taxpayers by GSTN.
6. Matters referred to Group of Ministers:
  - i. A seven Member Group of Ministers shall be constituted to examine the proposal of giving a Composition Scheme to Boost the Residential Segment of the Real Estate Sector.
  - ii. A Group of Ministers shall be constituted to examine the GST Rate Structure on Lotteries.
7. Revenue Mobilization for Natural Calamities: GST Council approved Levy of Cess on Intra-State Supply of Goods and Services within the State of Kerala at a rate not exceeding 1% for a period not exceeding 2 years.

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