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GST NEWSLETTER

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CA SUMIT KEDIA

The GST Law has undergone rapid transformation being in the adoption stage. Recently the much awaited relaxations were notified in the forms of GST Annual Return and GST Audit (GSTR 9 and 9C). Infact the relief provided on the reporting requirements of these forms were more than expected by the Industry. This issue covers the amendments and the notifications which have been issued in the last two months along with key advance rulings.

We have also made an attempt to put light on the recent notification governing the 20% restriction on Input tax credit for those supplies not reflecting in GSTR-2A.

Notification No.49/2019 – Central Tax

ITC can exceed only 20% of the eligible credit reflecting in GSTR-2A

As per rule 36 under CGST Rules 2017, input tax credit can only be availed if the returns have been filed by the supplier and the same is thus reflecting in GSTR-2A.

However CBIC, through Notification No. 49/2019- Central Tax a new sub-rule has been inserted stating that a registered person can claim input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-01 (i.e. not getting reflected in Form GSTR-2A) to the extent of 20% of the eligible credit available in respect such invoices or debit notes, the details of which have been uploaded by the suppliers.



Illustration:

A taxpayer "X" receives 10 invoices (for inward supply of goods or services) involving ITC of Rs.10 lakhs, from various suppliers during the month of Oct, 2019 and has to claim ITC in his FORM GSTR-3B of October, to be filed by 20th Nov, 2019.

Case 1:

Suppliers have furnished in FORM GSTR-1, 8 invoices involving ITC of Rs.6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers

Eligible ITC

Rs.6,00,000 (i.e. amount of eligible ITC available, as per details uploaded by the suppliers) + **Rs.1,20,000** (i.e. 20% of amount of eligible ITC available, as per details uploaded by the suppliers) = **Rs.7,20,000/-**

Case 2:

Suppliers have furnished in FORM GSTR-1, 7 invoices having ITC of Rs. 8.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers

Eligible ITC

Rs.8,50,000 + Rs.1,50,000* = Rs.10,00,000

**The additional amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.*

Example:

S No.	Particulars	Before	After
A	Eligible ITC available in purchase register	28,000	28,000
B	Total ITC available in GSTR-2A	20,000	20,000
C	ITC ineligible in GSTR-2A	2,000	2,000
D=B-C	Net eligible ITC as per GSTR-2A	18,000	18,000
E=A-D	ITC not available in GSTR-2A	10,000	10,000
F	Actual ITC (supported by GSTR-2A)	18,000	18,000
G	Provisional ITC	10,000	Lower of E and 20% of D = 3600
H=F+G	ITC that can be taken in GSTR-3B of October 2019	28,000	21,600
	ITC not allowed in GSTR-3B of October 2019	None	6,400 (28,000 – 21,600)

The restriction does not apply to the following category of Input Tax Credits:

- IGST paid on Imports
- ITC availed for documents issued under RCM
- Credit received from Input Service Distributor (ISD)

The restriction is only against ITC availed on invoices/debit notes after 9th October 2019 and not prior to that period.

Restriction shall not apply for each supplier but shall be on consolidated value of invoices (i.e. total value of invoices and not on count of suppliers)

Notification No.04/2019 – Integrated Tax

Place of Supply in case of Specified R&D Services in Pharma Sector w.e.f. 01.10.2019

CBIC has notified that for supply of research and development services pertaining to pharmaceutical sector, the place of supply shall be the place of effective use and enjoyment of a service.

The place of supply of R&D Services shall be **location of the recipient** if-

- Contract for service is between the supplier located in taxable territory and recipient located in the non-taxable territory ; and
- Such supply of services fulfils all other conditions in the definition of export of services, excepting the requirement of place of supply being outside India.

The specified services which shall come under the scope of R&D services have been given in the notification along with its relevant explanation.

Notification No. 25/2019 - Central Tax (Rate)

Taxability of Alcoholic liquor license

The following service has been notified to be neither a supply of goods nor a supply of service:

“Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called”



Hence, Grant of alcoholic liquor license for human consumption is out of the scope of GST.

Notification No.18/2019 – Central Tax (Rate)

Excludes manufacturers of aerated waters from composition scheme

Composition scheme is a simple and easy scheme under GST for taxpayers. Small taxpayers shall not be required to follow the regular GST procedures and shall pay GST at a fixed rate on the turnover. This scheme can be opted by any taxpayer whose turnover is less than Rs. 1.5 Crores.



This notification excludes the manufacturers of aerated water from opting the composition scheme.

Effectively, the following persons cannot opt for composition scheme:

- Persons dealing with supply of aerated water;
- Manufacturer of ice cream, pan masala, or tobacco;
- A casual taxable person or a non-resident taxable person;
- Businesses trading through an e-commerce operator;
- Inter-state supplier.

Notification No.22/2019-Central Tax (Rate)

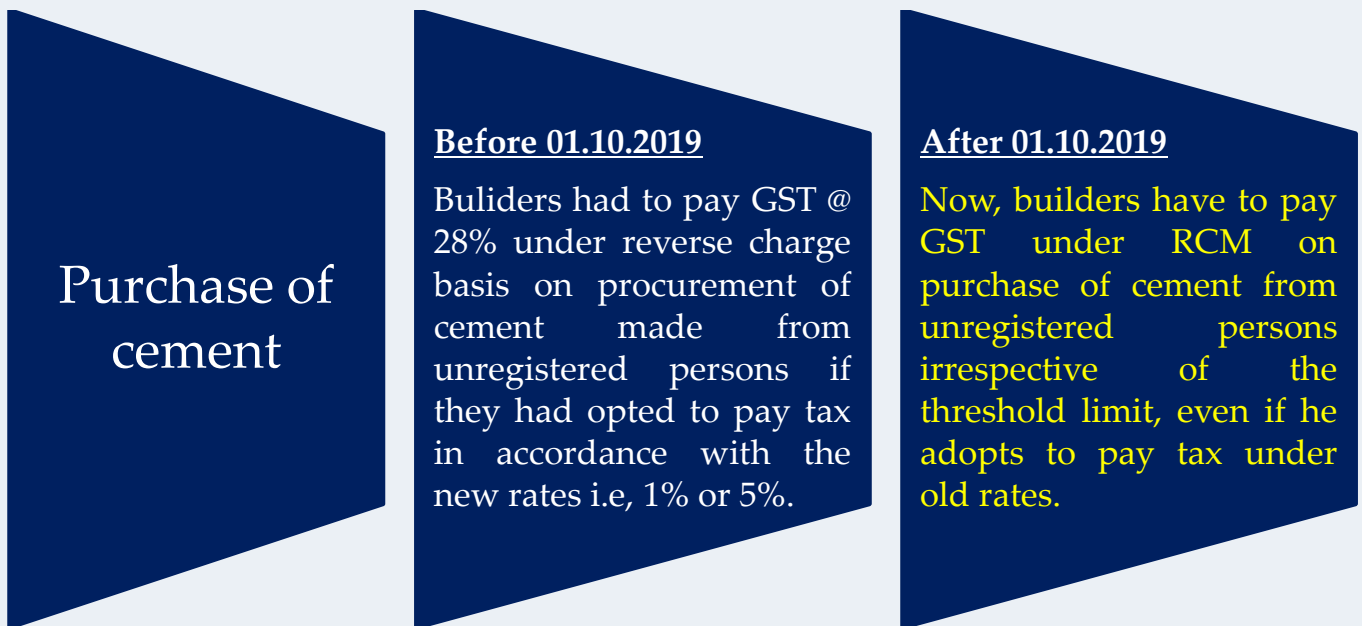
RCM on Renting of Vehicles

Services provided by way of renting of a motor vehicle provided to a body corporate is covered under reverse charge mechanism with effect from 1st Oct 2019. However it shall be applicable only if the provider is any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business and recipient is any body corporate located in the taxable territory.

Amendments applicable to Builders

Notification No. 24/2019- Central Tax (Rate)

RCM on purchase of cement from unregistered persons:



Note:

The aforesaid rule is applicable only for cement. For other unregistered purchases, the RCM liability shall arise only where the builder opts to pay tax @ 1% or 5% and purchase from registered dealers during the year falls short of 80% of total purchases.

Notification No. 23/2019 – Central Tax (Rate)

As per Notification No. 4/2018, for the following class of registered persons, namely:

- a) registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and



b) registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,

the liability to pay central tax on supply of the said services, on the consideration received shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument.

*However as per Notification No. 23/2019, the time of supply for transfer of development right under Notification No. 4 is restricted to agreements entered prior to **01.04.2019**.*

Notification No. 47/2019 – Central Tax

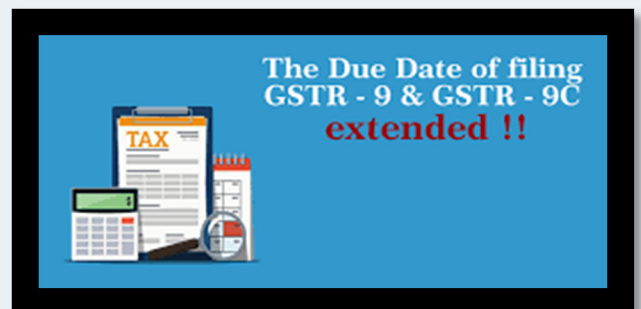
Annual Return made optional for specified tax payers:

This notification has made it optional to furnish the annual return for FY 2017-18 and 2018-19 for those registered persons whose aggregate turnover in a financial year does not exceed **two crore** rupees.

The annual return shall be deemed to be furnished on the due date for these specified tax payers if it has not furnished the return before the due date for the financial year 2017-18 and 2018-19.

Extension of due date of GSTR-9 & 9C

The Government has extended the due dates of filing of Form GSTR-9 (Annual Return) and Form GSTR-9C (Reconciliation Statement) for *Financial Year 2017-18 to December 31, 2019* and for *Financial Year 2018-19 to March 31, 2020*.



Major relaxation in FORM GSTR-9

Table	Particulars	Relaxation
4B TO 4E	Outward taxable supply	Option to fill net of Credit / Debit notes & amendments
5D, 5E & 5F	Exempt, Nil rated, Non-GST supply	Option to fill all in Exempt
5A to 5F	Outward supply on which tax is not paid	Option to fill net of Credit / Debit notes & amendments
6A to 6E	Bifurcation of Input Tax Credit	Option to fill all credit in Input only
6C to 6D	RCM ITC	Option to fill details of RCM on supplies from registered and unregistered persons to be filled in table 6D only
7A to 7H	Credit Reversal	Except reversal pertaining to Tran-1 (7F) and Tran-2 (7G) option to fill all details in 7H only
8A to 8D	Details of ITC	Options to upload details of these tables in pdf format in GSTR 9C duly signed (without the CA certification)
12 & 13	Amendments in next year	Optional
15A to 15D	Details of Refund	Optional
15E to 15G	Details of Demands	Optional
16A	Supply received from composition tax payer	Optional
16B	Deemed supplies from principal to Job worker	Optional
16C	Deemed supplies for goods which were sent on approval basis	Optional
17	HSN wise details of outward supplies	Optional
18	HSN wise details of inward supplies	Optional

Major relaxation in FORM GSTR-9C (Reconciliation Statement)

Table	Particulars	Relaxation
5B to 5N	Various adjustments for reconciliation between Turnover as per Audited Financial Statements & GST Turnover	Optional, make adjustments in table 5O
12B	ITC booked in earlier FY but availed in current FY	Optional
12C	ITC booked in current FY but not availed	Optional
14	Expense wise ITC reconciliation	Optional

Circular No.11/2019 dated 11.10.19

Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors:



When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can

be said that there is no supply of service for a consideration (in the form of donation). There is no obligation on part of recipient of the donation or gift to do anything. **Therefore, there is no GST liability on such consideration.**

Example:

- Good wishes from Mr. Rahul printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
- Donated by Smt. Sri Devi in the memory of her father written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

In the above examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the following conditions are satisfied, GST shall not levied.

- the gift or donation is made to a charitable organization,
- the payment has the character of gift or donation and
- the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement.

ADVANCE RULINGS

I. Standalone service of arranging accommodation in a hotel- ITC and classification

Applicant: Golden Vacations Tours and Travels (GST AAR West Bengal)

Order No. 26/WBAAR/2019-20.

Facts of the case:

The Applicant is stated to be a tour operator. It seeks a ruling on the classification of the service it provides when it arranges the client's accommodation in hotels.

Question on which Advance ruling is sought:

It seeks a ruling on the classification of the service it provides when it arranges client's accommodation in hotels. It further wants to know whether the GST charged by hotels can be claimed as an input tax credit?

Applicant's contention:

✚ In the Applicant's opinion, it is not to be classified as tour operating service.

Arranging accommodation may also be a standalone business. According to S No. 23(i) the "**tour operator**" means any person engaged in the business of planning, scheduling, organizing, arranging tours by any mode of transport, and includes any person engaged in the business of operating tours

Provided the bill issued for supply of the service indicates it is inclusive of charges of accommodation and transportation required for such a tour.

As the Applicant seeks the ruling for cases where it provides the client accommodation only, SI No. 23(i) of the Rate Notification should not be applicable.

✚ The Applicant argues that accommodation service is classified under **SAC 996311**. Although SAC 996311 is limited to the accommodation service provided by the hotels, guest house etc.

✚ The Applicant further argues that his services should be classified under **SAC 998552** which includes arranging reservations for accommodation services for

domestic accommodation, accommodation abroad etc.

- ✚ Finally, the Applicant states that if not elsewhere classified, SAC 9997 can be used for classification of such services.

RULING:

The Applicant, if arranges for clients only accommodation in hotels, is supplying a service classifiable under **SAC 998552**. It is taxable and the applicant is **eligible to claim the input tax credit** as admissible under the law.

II. GST on reimbursement of expenses by foreign company to Indian entity

Applicant: Maansmarine Cargo International LLP (GST AAR Maharashtra)

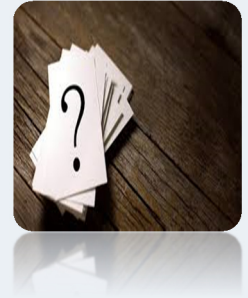
Appeal No. GST-ARA- 04/2019-20/B-97

Facts of the case:

- The applicant is engaged in providing Management consultancy services to ship owners, logistics services through water in Mumbai.
- The applicant has taken outsourcing work of managing the shipping operations of Hong Kong based shipping company MSS Marine Ltd, which is involved in worldwide shipping consultancy and logistics arrangement of cargoes.
- The assessee will be incurring following expenses to carry out the job:
 - 1) Salary to employees
 - 2) Office Rent
 - 3) Office expenses (Telephone, electricity, Internet, Furniture etc)
 - 4) Travel costs such as tickets, lodging etc
- Management fees for the work shall be charged and all the other expenses incurred shall be reimbursed on actual basis. All the payments would be received in foreign convertible exchange. However, MSS Marine Ltd. is not willing to pay GST over and above the management fees as it will make the applicant's quotation high and non-competitive.

Questions raised for advance ruling:

- ❖ Whether GST will be applicable on the management fees charged by us to the Company for managing the job outsourced to us?
- ❖ Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?



RULING:

- **Whether GST is applicable on the management fees charged by us to the Company for managing the job outsourced to us?**

The authority held that the applicant is arranging or facilitating the business of its foreign client by liaising with their customers for the purpose of commercial relationships between the service recipient and vessel Owners, shippers, consignees, various port agents.

These services are not rendered on their own account. The authority is of the view that the applicant is an intermediary in the subject transaction.

Since the applicant is an intermediary, the place of provision of the service in the subject case is the location of the supplier of services i.e. the applicant and since the place of supply is in taxable territory, we hold that they will be liable to discharge GST on such services provided by them.

Therefore we hold that **GST will be applicable on the management fees charged by the applicant.**

- **Whether GST is applicable on the reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?**

For this question, first we shall understand the meaning of **Value of supply in case of pure agent:**

The expenditure or cost incurred by a supplier as a pure agent of recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied,

- ✓ The supplier acts as a pure agent of recipient of supply, when he makes

payment to third party on authorization by such recipient.

- ✓ The payment by the pure agent on behalf of recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- ✓ The supplies procured by pure agent from third party as a pure agent of recipient of supply are in addition to the service he supplies on his own account.

The authority contended that the applicant is not a pure agent. The reimbursement received by the applicant pertains to establishment costs which would be incurred by them for running their office in India.

In the subject case, the said costs are termed as reimbursements and are recovered in addition to management fees from their clients and therefore it is nothing but additional consideration charged for the supply.

As per the provisions of CGST Act, valuation of supply will include all costs, including the employee cost provided by one distinct entity to the other distinct entities and hence, GST shall be applicable on the entire value of supply.

III. Applicability of RCM on Ocean freight:

Applicant: E-DP MARKETING PRIVATE LIMITED

Order No. 05/2019

Facts of the case:

- The applicant is engaged in trading of various edible oils.
- The applicant imports crude soyabean oil on CIF basis (Cost + Insurance + Freight) which includes the component of ocean freight in price of imported goods.
- Ocean freight will not be paid by the importer as the seller is supposed to collect the ocean freight while deciding the price of goods.

- The payment of ocean freight would be made by the seller located outside India.

Questions raised:

Whether the importer is again required to pay IGST on the component of ocean freight under RCM on deemed amount which will amount to double taxation of IGST on the deemed component of ocean freight of the imported goods?

Applicants Contention:

- The applicant submits that at the time of import of goods he is required to pay customs duties on CIF value of imported goods which includes IGST component also.
- As the CIF value of imported goods includes ocean freight, the applicant is required to pay IGST on this ocean freight component along with other duties of customs. **This is the first incidence of payment of IGST by the importer.**
- The applicant argues that he is again required to pay IGST on ocean freight incurred by them under RCM mechanism, which would lead to double taxation of IGST on same component of ocean freight.

RULINGS:

The Applicant shall be liable to pay IGST on ocean freight paid on imported goods under Reverse Charge Mechanism, irrespective of the ocean freight component having been a part of the CIF value of imported goods.

Disclaimer: This document is prepared by A.K.Lunawath & Associates solely for Clients and other Chartered Accountants to provide updates on important amendments in GST. The information is exclusively for educational purposes, professional advice shall be sought before taking any decision based on this document.

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