



## GST NEWSLETTER

**CA SUMIT KEDIA**

Goods & Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. The GST Law has gone through various changes.

We, through this issue, seek to put light on the recent updates, amendments & notifications in GST Law.

**"GST – One Nation, One Tax, One Market."**

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## 1. 37<sup>th</sup> GST COUNCIL MEETING, GOA (20<sup>th</sup> SEPTEMBER 2019)

As per the press release of the meeting, the following changes have been recommended:

### No input available if the Supplier has not filed details of outwards supply

The GST Council has recommended to impose restrictions on availment of input tax credit by the recipients if the supplier has not filed statement under **Section 37 of the CGST Act, 2017**.

To implement timely filing of details of outwards supplies, the GST Council recommends to impose restrictions on input tax credit availability to the recipients.

### GST rate changes:

#### Hotel Sector

| Tariff / per night | GST rate |
|--------------------|----------|
| INR 1000 and below | Exempt   |
| INR 1001-7500      | 12%      |
| INR above 7500     | 18%      |



#### Others

#### Outdoor catering

| Catering in Premise with Daily tariff of accommodation | GST rate |
|--|----------|
| INR 7500 and below                                     | 5%       |
| INR above 7500   | 18%      |

| Goods                                      | Old rates | New rates |
|--|-----------|-----------|
| Slide fasteners                            | 18%       | 12%       |
| Marine Fuel                                | 18%       | 5%        |
| Wet Grinders (consisting stone as grinder) | 12%       | 5%        |

#### Job-work services

To reduce rate of GST from 5% to 1.5% on supply of job work services in relation to diamonds.

To reduce rate of GST from 18% to 12% on supply of machine job work such as in engineering industry, except supply of job work in relation to bus body building which would remain at 18%

### Issuance of Circular relating to Refunds:

The taxpayers will now be able to file refund applications in form **GST RFD-01A** for periods under which NIL returns have already been filed wrongly.

## Sector-wise Exemption

- To increase the validity of conditional exemption of GST on export freight by air or sea by another year, i.e. till 30.09.2020

### Transportation



- Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea.

### Warehousing



- To exempt "BANGLA SHASYA BIMA" (BSB) crop insurance scheme of West Bengal Govt.

- To exempt services of life insurance business provided or agreed to be provided by the Central Armed Paramilitary Forces (under Ministry of Home Affairs) Group

### Insurance



## Applicability of GST under Reverse Charge Mechanism:

### Securities Lending Services

GST shall be payable @18% on security lending services.

GST is to be paid under forward charge till notification date and on reverse charge after the issuance of the notification.

IGST shall be payable on payment for such services and in cases where CGST/SGST/UTGST have been paid, such taxpayers will not be required to pay tax again.



### Renting of Vehicles

GST is payable under RCM @ 5% by body corporates in case of renting of vehicles from registered person other than body corporate (LLP, proprietorship).

## Introduction of New GST returns:

New return system now to be introduced from **April, 2020** (earlier proposed from October, 2019), in order to give ample opportunity to taxpayers as well as the system to adapt accordingly.

## Revocation of Circular on Post-sales Discount:

The GST Council recommends rescindment of **Circular No.105/24/2019-GST** which was issued on 28<sup>th</sup> June 2019, for clarifying issues relating to post-sales discount as ab-initio in the 37<sup>th</sup> GST Council meeting.





## 2. RECENT UPDATES ON ANNUAL RETURN & GST AUDIT

The GST Council, in public interest, have further extended the due date for filing GSTR 9, 9A & 9C vide **Order No. 07/2019** dated 26<sup>th</sup> August, 2019.

The last date for filing Annual return in form GSTR 9 / 9A and Reconciliation Statement / GST Audit Certification in form GSTR 9C for the FY 2017-18 has been further extended by 3 months i.e, **till 30<sup>th</sup> November 2019**.

Also, as per the press release on 37<sup>th</sup> GST Council meeting, the Council recommends to **relax Annual return filing for MSMEs for FY 2017-18 & 2018-19** as:

- a. Waiver of the requirement of filing FORM GSTR-9A for Composition Taxpayers for the said tax periods; and
- b. Filing of FORM GSTR-9 for those taxpayers who (are required to file the said return but) have aggregate turnover up to Rs. 2 Crores has been **made optional** for the said tax periods.

The Council has also recommended simplification of Annual return and reconciliation statement forms.

### About Annual Return & GST Audit

GSTR 9 is an Annual return to be filed yearly by every registered taxpayer. It consists of various details pertaining to outward & inward supplies made/received during the relevant PY under different tax heads and HSN codes.

GSTR 9C is a reconciliation between GST Annual Return and books of accounts and involves certification.



| Form    | Applicability  |
|---------|--|
| GSTR 9  | Annual return for Normal registered persons  |
| GSTR 9A | Annual return for Composition taxpayers  |
| GSTR 9C | Reconciliation form to be certified by CA/CMA for persons with aggregate turnover > 2 Crores |



### 3. REFUND CLAIMS MADE EASIER THROUGH SINGLE AUTHORITY MECHANISM



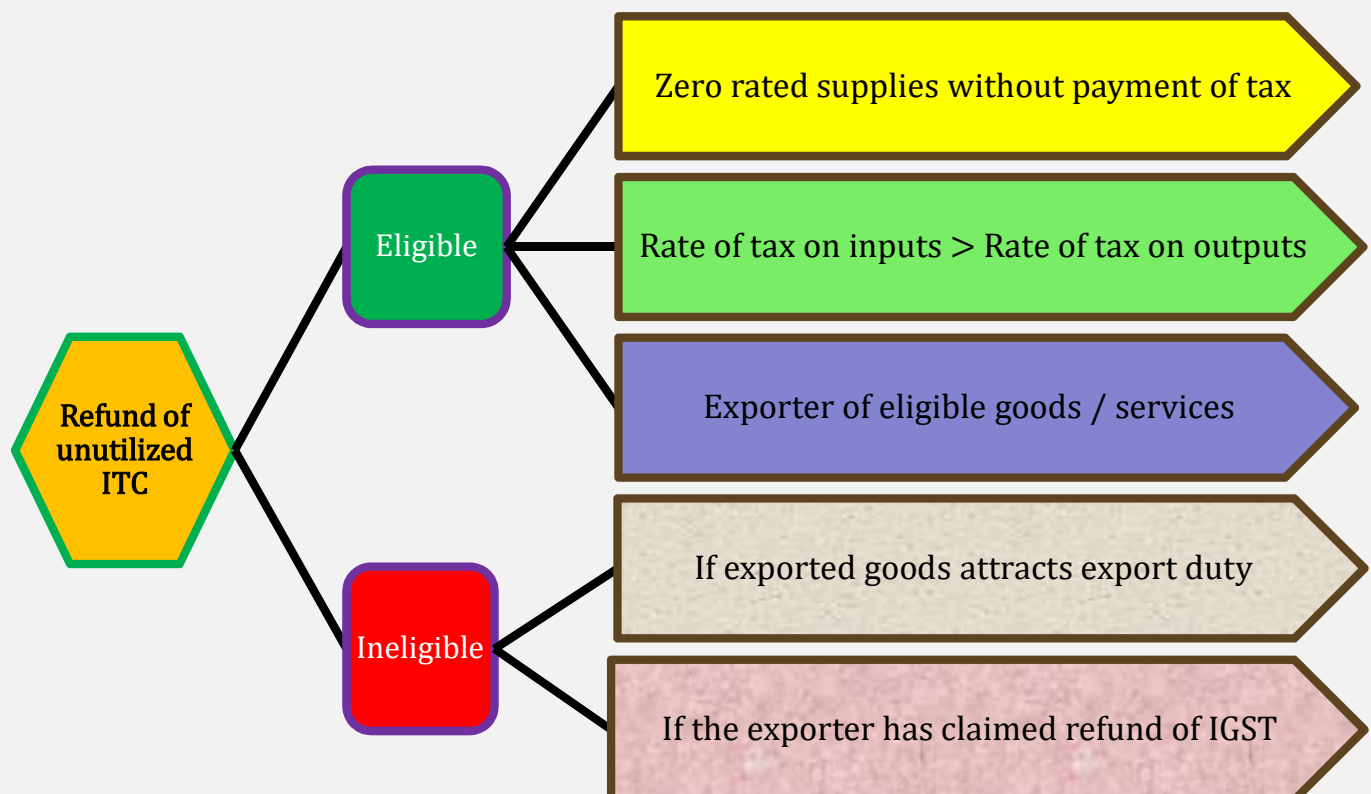
The Government seeks Disbursement of refund by single authority vide **Notification No. 39/2019 dated 31<sup>st</sup> August 2019** by inserting **Sub-section 8A in Section 54** of the CGST Act, whereby it seeks to disburse refund of state tax in the manner prescribed with effect from 1<sup>st</sup> September 2019.

The recent **press release** has recommended integrated refund system with disbursal by single authority to be introduced from **24<sup>th</sup> September, 2019**. Further, it decides to **link Aadhar** with registration of taxpayers under GST and examine the possibility of making Aadhar mandatory for claiming refunds.



#### Background

Section 54 of the CGST Act provides for claiming refund of tax and interest paid, if any within 2 years from the relevant date.



The proper officer may, on receipt of any such application along with documentary evidences within 60 days, may make an order for refund of tax in manner as may be prescribed.

Once a taxpayer files refund claim with the jurisdictional tax authority, say the central tax officer, then he would clear a portion of the claims, and the remaining is cleared by the state tax officers.

### **Need for a New System**

Two authorities settling the same refund claims adds to increased compliances and delay in processing the refunds.

Thus, the time taken to clear the entire refund amount gets longer, leading to liquidity crunch for exporters. A single authority for sanctioning and processing GST refunds is in the offing as the Finance Ministry looks to speed up and simplify the process for exporters.

### **Amendment notified**

Under the proposed '**Single Authority Mechanism**', once a refund claim is filed with a tax officer, whether Centre or state, the officer will check, assess and sanction full tax refund (both Central GST and State GST portion), thereby removing difficulties faced by the taxpayers. This will later get adjusted / settled amongst the two tax authorities through internal account adjustments.

## **4. NO LONGER REQUIRED TO FURNISH DETAILS IN FORM ITC-04 FOR FY 17-18 & 18-19**

The Central Board of Indirect taxes & Customs (CBIC), on the recommendation of GST Council, vide **Notification No. 38/2019** dated 31<sup>st</sup> August 2019, notifies that the registered persons are not required to furnish details of challans in form GST ITC-04 for the period July 2017 to March 2019.

However, the registered persons shall furnish details of challans in respect of inputs or capital goods sent for job work during the aforesaid period (July 2017 to March 2019) but not received from job worker or not supplied from the place of business of the job worker as on the 31<sup>st</sup> March, 2019, in form GST ITC-04 for the quarter April 2019 to June 2019.

### **Background**

"**Job Work**" means any treatment or process undertaken by a person on goods belonging to another registered person.

As per **Section 143** of the CGST Act, where a registered person sends any inputs or capital goods, without payment of tax, on intimation to a job worker for job work and



from there subsequently send to another job worker and likewise shall receive back such goods after completion of Job work within 1 year in case of inputs and 3 years in case of capital goods respectively.

Provided that where such inputs or capital goods are not received back within the prescribed time limit as mentioned above (1 or 3 years as the case may be), the said inputs or capital goods shall be liable to output tax which is to be paid in the manner as may be prescribed.

The intimation specified in the above section is through ITC-04 which is a quarterly form. It must be furnished on or before 25th day of the month succeeding the quarter.

### **Need for scrapping ITC-04**

The below mentioned may be the reasons which paved the way for the need of scrapping GST ITC-04 by the Central Board of Indirect taxes & Customs (CBIC).

FORM GST ITC-04 must be submitted by the principal every quarter. He must include the details of challans in respect of the following-

- a. Goods dispatched to a job worker or
- b. Received from a job worker or
- c. Sent from one job worker to another

However, the persons (principal) were unable to gather and furnish details such as Qty, UOM etc. of goods sent and received back against original challans.

Discrepancies relating to original challan date in GST ITC-04 offline tool

Even after various extension of due dates, non-filing of ITC -04 by various taxpayers

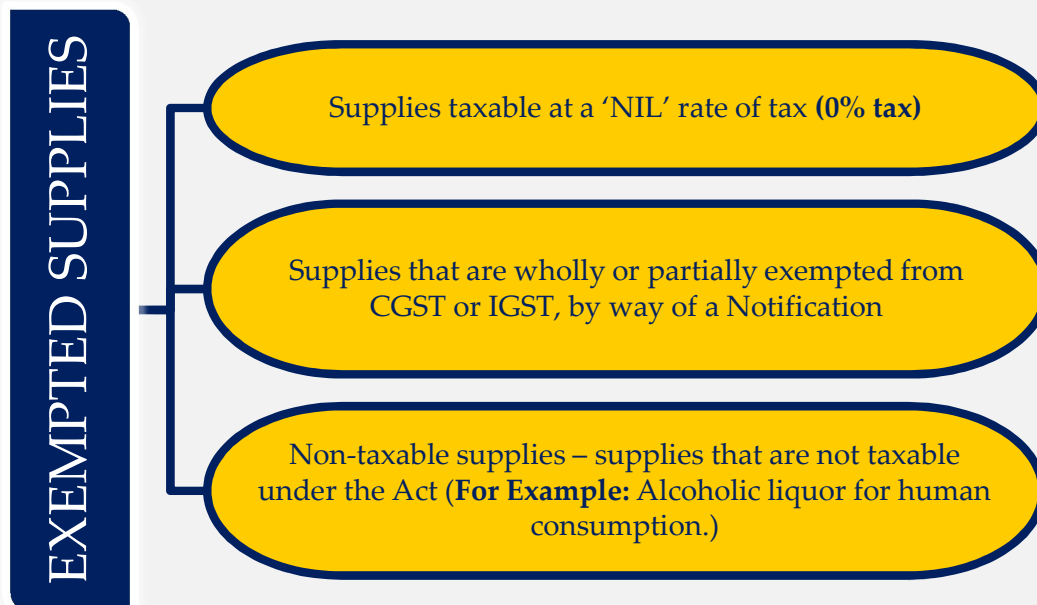


## 5. THE BANANA STORY - A STORY BEHIND TWO BANANAS COSTING RS. 442/-

A recent social media news of Indian actor Mr. Rahul Bose in a prominent hotel ordering “Fruit platter” for which the hotel charging a bill of Rs. 442/- inclusive of GST@18% got viral when the fruit platter contained only 2 bananas.

The GST Department swung into action and served a show cause notice to the hotel and imposed a **penalty of Rs. 25,000/-** for levying GST on sale of bananas.

### Background



GST is not chargeable on the above type of goods as they are all included under the definition of exempted supplies.

### Why penalty was imposed?

The perplexity arose as the hotel treated serving fruit platter as a “supply of service” and charged GST on it accordingly.

However, the department was of the view that serving bananas to the customer in a hotel room was an exempt supply of goods, not involving any element of service as it was purely sale of exempted goods, being bananas.

Thus, the taxpayer shall be clearly aware of the GST rates and classification of supplies as “Goods” or “Services” accordingly before levying any taxes.



## **6. BILL TRADERS ALERT! – NO ESCAPE FROM TAX EVASION**

“GST officers have booked **535 cases** of fake invoices involving a total fraudulent claim of **Rs 2,565 crore** of input tax credit (ITC) and **arrested 40 persons** so far in the FY 2017-18”, sources say.



In FY 2018-19, **1,620 cases** of fake invoices were registered involving fraudulent ITC claim of **Rs 11,251 crore** under the Goods and Services Tax (GST). As many as **154 persons** were arrested.

The Government has taken various measures to prevent GST evasion. These include a specialized directorate within the CBIC, which is engaged in data analytics and risk management. It disseminates analytical reports and intelligence inputs to field formations of CBIC for the purpose of scrutiny, audit and enforcement to prevent GST evasion

Another recent case which has come into light is of a businessman named Bhavin Bharat Shah, who was arrested by GST Officials in Thane for allegedly **evading taxes through bill trading amounting Rs. 24.55 Crores.**

### **Background**

Mr. Bhavin Bharat Shah floated 3 firms viz. M/s C B Shah and Co, M/s Padmavati Enterprise and M/s Maanya Impex, which were involved in bill trading by receiving fake bills and issuance of tax invoices without actual supply of goods for commission.

### **How the offence took place**

Shah admitted – “The payment for such invoices was made through RTGS and the cash was received back after deduction of commission of 50% of the GST involved. He has also admitted that he had issued invoices to various companies without supplying goods or services on commission basis of 2% to 3 % of the value of goods.”

It was found that, **on inadmissible invoices amounting Rs 136.38 crore, erroneous ITC of Rs 24.55 crore was availed.**

### **Consequence**

Bhavin Shah was **arrested on August 27, 2019** and was produced before the Chief Metropolitan Magistrate who remanded him in judicial custody for 14 days. Further investigations in the case are in progress.



### **Conclusion**

To prevent any kind of tax evasion and corruption, GST has introduced strict provisions for offenders regarding penalties, prosecution, and even arrest. The submission of false information while registering under GST or supply of any goods/services without any invoice or issuing a false invoice is considered a major offense.

## 7. COURT JUDGEMENTS

### I. Challenging the denial of refund of ITC on “input services” under “Inverted Rate Refund” structure

**M/s. Raymond UCO Denim Pvt. Ltd.**

#### Facts of the case:

The application of the Petitioner for refund of Rs. 39.28 lakhs being the amount of ITC on input services, has been rejected on the basis of the provisions of **Rule 89(5)** of the CGST Rules read with **Notification No. 5/2017 dated June 28, 2017**.



M/s Raymond UCO Denim Pvt. Ltd, approached the Hon'ble Bombay High Court challenging the vires of **Rule 89(5) of the CGST Rules, 2017**.

#### Issue involved:

Whether **Rule 89(5)** of the CGST Rules denying refund of ITC on account of input services in case of inverted duty structure is contrary to **Section 54(3)** of the CGST Act?

#### Held by the Court:

The Hon'ble Bombay HC issued notice in **WP. No. 5676 dated 13<sup>th</sup> August 2019**, have observed:

The provisions of Section 54(3) of the CGST Act entitles the Petitioner to claim refund of unutilized ITC which is defined under Section 2(63) and the input tax is defined under Section 2(62) of the CGST Act to mean the tax charged on any supply of goods or services or both made to him.

Rule 89(5) of the CGST Rules gives the formula for computation of refund of ITC and explanation (a) therein excludes ITC on input services from the definition of 'Net ITC', though it is shown under the turnover of inverted supply of goods and services therein.

**The matter is now listed on October 9, 2019.**

#### Similar cases listed:

- Gujarat HC in **Shree Rama Newsprint Ltd. vs. Union of India** [TS-486-HC-2018(GUJ)-NT];
- Gujarat HC in **Quarry Owners Association vs. Union of India** [TS-588-HC-2019(GUJ)-NT];
- Patna HC in **AFCONS-SIBMOST Joint Venture vs. Union of India** and Other [TS-596-HC-2019(PAT)-NT].

## II. HC permits manual rectification of GSTR-3B

### **M/s. Panduranga Stone Crushers vs Union of India**

#### **Facts of the case:**

The applicant has filed a petition for making manual changes in filed GSTR-3B for months of August & December 2017 and January & February 2018.



#### **Petitioner's contention:**

For the months of July, 2017 to March, 2018 i.e., for the financial year 2017-18, the petitioner submitted GSTR-3B returns through GST portal. However, while claiming IGST input, the petitioner has inadvertently and by mistake reported IGST input tax credit in a column relating to import of goods and services instead of placing it in IGST input tax credit in all other ITC column.

Therefore, the petitioner, inter alia, contending that "In the absence of any provision in Section 39 of GST Act, 2017 or the relevant rules, the petitioner is entitled to rectify the mistake that has crept in GSTR-3B returns."

#### **Held by the Court:**

Petitioner is **permitted to rectify GSTR-3B** statements for the months of August & December, 2017 and January & February, 2018 manually subject to the outcome of the writ petition.

It is made clear that if the petitioner submits a rectified statements, the respondents shall process the same in accordance with the procedure established by Law.

## III. Time limit for availing ITC for F.Y. 2017-18 is last date of filing Annual return

### **M/s. AAP & Co. Chartered Accountants vs Union of India**

#### **Judgement given by the Court:**

The Hon'ble Gujarat HC issued order stating that the form of return **specified for Section 39 is FORM GSTR-3** and not FORM GSTR-3B.

Therefore last date for availing input tax credit relating to invoices and debit note issued during the period July 2017 to March 2018 should be

- a. Due date of filing of return under section 39 in FORM GSTR-3 for the month of March 2019 or
- b. Actual date of filing annual return; whichever is earlier.

Form GSTR-3B is not a substitute of FORM GSTR-3. It is only a temporary arrangement till due date of filing the return in FORM GSTR-3 is notified.

**Notification No.44/2018** Central Tax dated **10th September 2018** states that the due date of filing return under Section 39 of CGST Act, 2017 (FORM GSTR-3) for the months of July 2017 to March 2019 will be notified in future.

Hence, the last date to avail ITC of FY 2017-18 shall be the last date of filing Annual return i.e, **30<sup>th</sup> November 2019**.



## 8. ADVANCE RULING – A USEFUL TOOL TO OBTAIN TAX CERTAINTY

Advance ruling is a **written interpretation of tax laws**. It is issued by tax authorities to those who request for clarification of certain matters as specified in **Section 97(2) or Section 100(1)** of the CGST Act. An advance ruling is requested when the taxpayer is confused and uncertain about certain provisions. We have analyzed a few of the important advance rulings issued in recent times



## SOME OF THE POPULAR & INTERESTING ADVANCE RULINGS ISSUED TILL DATE

### GST on supply of food to employees for consideration in company's canteen

**Applicant: M/s. Caltech Polymers Pvt. Ltd. (GST AAR Kerala)**

**Order No.** CT/531118-C3 **dated** 26<sup>th</sup> March 2018.

#### **Facts of the case:**

1. The applicant is engaged in the manufacture and sale of footwear. It is providing canteen services exclusively for their employees for which it is incurring the canteen running expenses and is recovering the same from its employees without any profit margin.
2. The said service is provided according to the Section 46 of the Factories Act, 1948.
3. The canteen is inside the factory premises and the cook hired is paid monthly salary.
4. The vegetables and other items required are purchased by the Company directly from the suppliers.
5. The daily consumption of each employee is tracked and food cost is recovered without any profit margin.



#### **Question raised:**

Whether GST is applicable on reimbursement of food expenses from employees for the canteen provided by company?

#### **RULING:**

Schedule II to the GST Act describes the activities to be treated as supply of goods or supply of services. As per clause 6 of the Schedule, the following composite supply is declared as supply of service

"Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such –supply or service is-for cash, deferred payment or other valuable consideration."

Even though there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" as provided in **Section 7(1)(a) of the CGST Act, 2017** and hence, the applicant would definitely come under the definition of "Supplier" as provided in **Section 2(105)** of the CGST Act, 2017.



Since the applicant recovers the cost of food from its employees, there is consideration.

It is hereby clarified that recovery of food expenses from the employees for the canteen services provided by company would come under the definition of '**outward supply**' as defined in **Sec. 2(83)** of the CGST Act, 2017 and therefore **taxable as supply of service** under GST.



## Taxability of services provided by Head office to Branch Office:

**Applicant: M/s. Columbia Asia Hospitals Pvt. Ltd.**

**Advance Ruling No. KAR ADRG 15/2018 dated 27<sup>th</sup> July 2018.**



### **Facts of the case:**

1. The applicant is a private limited company currently operating across 6 different states having 11 hospitals out of which 6 units are in Karnataka. The Hospitals owned by the applicant are engaged in providing secondary and tertiary Healthcare services which in turn categorizes as In-patient (IP) and Out-patient (OP) services.
2. The applicant has its India Management Office (“IMO”) i.e Corporate Office in Karnataka and some of the activities for all the units with respect to accounting, administration and maintenance of IT system are carried out by the employees from IMO which forms part of the registered person in Karnataka.
3. Further, GST paid on certain expenses such as rent paid on immovable property and other equipment, travel expenses, consultancy services, etc., which are incurred towards services used by the IMO are availed by the registered person in Karnataka and subsequently, it is discharging IGST on the expenses proportionately attributable to the other units located outside Karnataka.
4. However, the applicant states that with respect to employee cost there are no invoices raised by the head office treating the same as activities carried out by employees in the course of or in relation to his employment which does not amount to supply of services.

### **Question on which Advance ruling is sought:**

“Whether the activities performed by the employees at the corporate office for the units located in the other states as well i.e. distinct persons as per **Section 25(4)** of the CGST Act, 2017 shall be treated as “**Supply between related or distinct persons** made in the course or furtherance of business or **Services by an employee to the employer** in the course of or in relation to his employment of the CGST Act?”



### **RULING**

The activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. **distinct persons as per Section 25(4)** of the CGST Act, 2017 shall be treated as “**Supply as per Entry 2 of Schedule I**” (**Supply between distinct persons as specified in Sec. 25, made in the course or furtherance of business**) of the CGST Act.

## GST on refundable interest-free security deposit & free transactions

**Applicant: M/s. Rajkot Nagarik Sahakari Bank Ltd (GST AAR Gujarat)**

**Advance Ruling No.** GUJ/GAAR/R/9/2019 **dated** 15<sup>th</sup> May 2019.

### **Facts of the case:**

The applicant is multi-state Schedule Co-operative Bank, providing various classifiable under SAC 9971.

Among other services, it is also providing service for operation of Demat account to various account holder as well as to the persons who intends to operate only their Demat account.

Rs.2500/- is collected as a security deposit for opening the Demat account.

### **Submission of issues on which Advance ruling is sought:**

- Deposit received could be treated as Supply under the provisions of GST Act, 2017? And chargeable to tax in the hands of the applicant?
- In the facts and circumstances of the case whether the amount of Rs. 2500/- being Refundable interest free deposit, which allows depositor same benefits, would attract GST?
- In the facts and circumstances of the case, whether first 10 free transactions subject to maximum of Rs. 5 Lakh allowed to the Demat account holder depositing Refundable interest free deposit would attract GST?

### **RULINGS PASSED**

- In the facts and circumstances of the case whether Refundable Interest Free Deposit received could be treated as Supply under the provisions of GST Act, 2017? And chargeable to tax in the hands of the applicant?

**Ruling:** The monetary value of the act of providing refundable interest free deposit is the consideration for the services provided by the RNSB.

Deposit is excluded from definition of the consideration by the proviso to Section 2(31) of CGST & GGST Act, 2017.

However, the notional interest/monetary value of the act of providing refundable interest free deposit will be considered as consideration. In our opinion it is covered in the definition of consideration.



1. **“Any payment made or to be made, whether in money or otherwise”**. It is included in the phrase “or otherwise”.
2. **“The monetary value of any act or forbearance”** It is included in the phrase “the monetary value of any act”

Further, it appears that the Refundable Interest Free Deposit are an additional commercial consideration to cover risk of the Demat account. It appears that the main purpose of the deposits is not only security but also collection of capital.

Therefore, the services provided by RNSB can be **treated as supply** and chargeable to tax in the hands of the applicant

- In the facts and circumstances of the case whether the amount of Rs. 2500/- being Refundable interest free deposit, which allows depositor same benefits, would attract GST?

**Ruling:** The amount of Rs. 2500/- will not attract the GST but the monetary value of the act of providing this deposit will attract GST.

- In the facts and circumstances of the case, whether first 10 free transactions subject to maximum of rupees 5 Lakh allowed to the Demat account holders depositing Refundable interest free deposit would attract GST?

**Ruling:** The first 10 free transaction allowed to the demat account holder are in the **nature of discount and will not attract GST** subject to the fulfillment of the conditions prescribed under Section 15(3) of the CGST & GGST Act 2017.



**“As per Section 15**, the value of the supply shall not include any discount which is given —before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply

## INPUT TAX CREDIT ON PROMOTIONAL EXPENSES

**Applicant: M/s. Sanofi India Limited (GST AAR Maharashtra)**

**Advance Ruling No. GST-ARA-115/2018-19/B-43 dated 24<sup>th</sup> April 2019.**



## **Facts of the case:**

- ❖ Sanofi India Limited, is engaged in business of sale of pharmaceutical goods and services through group entities. Sanofi has its head office in Mumbai and manufacturing unit at Goa and Ankleshwar. In its business operations, Sanofi incurs various marketing and distribution expenses such as goods given as brand reminders, promotional schemes such as Shubh Labh trade loyalty program, etc.
- ❖ In case of brand reminders, product like pens, notepad, key chains etc. are distributed with their name embossed on it. The brand embossed on these product serve as an advertisement tool so as to promote products of Sanofi.
- ❖ In case of Shubh Labh trade loyalty program, the distributors/wholesalers get rewards based on the reward points earned on the basis of quantity of goods sold by them.

For example: Combiflam Tablet purchased in minimum quantity of 01 shipper/case or 14,040 tablets will be eligible for 01 reward coupon. On activation of one (01) Combiflam coupon, wholesaler will be credited with FIFTEEN (15) reward points, wholesalers who have earned 35000 points will be eligible for Singapore Trip For 2 Persons; 6 Days/5 Nights, if earned 24000 points will be eligible for claiming Raymond Weil 2760-St3-50001 Watch -For Men, etc.

When the wholesaler opts for Raymond watch, it is purchased by Sanofi and provided to the wholesaler. The invoice is raised in Sanofi's name and input tax credit on the watch is claimed by Sanofi.

## **Issues involved:**

Whether ITC is available on expenses incurred towards promotional schemes of Shubh Labh Loyalty Program and goods given as brand reminders?



## **Applicant's contention**

As per **Section 16(1)**, "Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person"

Thus, credit is available of input tax paid on goods which are used for furtherance of business.

In the present case, the brand reminders are provided to the wholesalers in furtherance of business so as to promote Sanofi brand and its products. Thus, ITC should be allowed of the GST paid on procurement of such products which are given to wholesalers as brand reminders.



**Gift, as per the Gift-Tax Act (18 of 1858)** has been defined as “transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or money’s worth.”

The Australian High Court in the case of **Commissioner of Taxation (Cth) vs McPhail [1968] 41 ALJR 346** held that to constitute a ‘gift’ the property should be transferred voluntarily and not as a result of a contractual obligation

Further, in case of Shubh Labh Loyalty program, the wholesaler earns reward points on the basis of the target achieved by them. Thus, it can be concluded that the watch given to the wholesaler is not a gift as the watch is given under the contractual obligation under the scheme. It is the consideration for achieving a particular sales target and hence, input tax credit on purchase of the said watch should be available to Sanofi. Further, the said expenditure is incurred in furtherance of business so as to increase the sales

### Analysis of the case

As per **Section 17(5)(h)** of the CGST Act, 2017, “input tax credit shall not be available in respect of the following, namely: goods lost, stolen, destroyed, written off or **disposed of by way of gift or free samples.**”

Under Shub Labh Trade Royalty Program, the applicant claims that they offer free Singapore Trip or Raymond Weil Watch as the case may be to their wholesalers on selling a pre-determined quantity of their pharma product and the said pre-determined quantity is accounted for by way of reward points. Under promotional goods given as brand reminders, the applicant distribute the products like pens, notepad, key chains etc. embossed with Sanofi’s brand.

In this way, there is no dispute about the fact that **applicant do not charge any price or value** for the said free supply.

Therefore, the said free supply is not taxable and chargeable to any GST in terms of Section 9 of the CGST Act, 2017. The said supply merit as “**exempt supply**” in terms of provisions of Section 2(47) read with Section 2(78) and therefore, any ITC is not available on the same in terms of inter-alia provisions of Section 17(2) of the CGST Act, 2017.

Further provisions of **Section 17(5)** specifically disallow availment and usage of any credit on goods disposed of by way of ‘gift’ **not withstanding anything whatsoever in Section (16)(1)**. Therefore, the question of availment of ITC, on the basis that subject gift were used in furtherance of their business, does not arise.

In the above 2 cases, there is no extra commercial consideration and since **there is no commercial value assigned to the transaction it is to be construed to be Gift**. Also, there is **no contractual obligation involved**, as it is completely up to the distributors and doctors whether he will prescribe the medicines of the company or not.





## **RULINGS PASSED**

Whether ITC is available on expenses incurred towards promotional schemes of Shubh Labh Loyalty Program and goods given as brand reminders?

As per the facts and circumstances, **input tax credit is not allowed** to be availed / utilized on the aforesaid expense.

## **GST ON PARTIALLY COMPLETED FLATS**

**Applicant: M/s. Durga Projects & Infrastructures Pvt. Ltd (GST AAR Karnataka)**

**Advance Ruling No.** KAR ADRG 17/2019 **dated** 25<sup>th</sup> July 2019.

### **Facts of the case:**

The Applicant is engaged in construction and sale of residential apartments and residential complex based under joint development agreement.

The Applicant have executed projects under JDA with Land Owners for an agreed ratio of built-up area. Construction was commenced during pre-GST regime and also continued under GST regime, out of which substantial portion of the work has been sub-contracted to another registered person.



### **Clarifications to seek on issues through Advance ruling:**

Applicability of GST on partially completed flats i.e,

- ❖ Partially completed flats, having identified customers before GST Regime.
- ❖ Partially completed flats, where customers are identified after implementation of GST.
- ❖ Partially completed flats, where no customers are identified.

## **RULING**

The rulings in the three questions are respectively as follows:

a) **In respect of Partially completed flats having identified customers before GST regime**, the Applicant is liable to pay service tax under the Finance Act 1994 proportionate to the services provided up to 30.06.2017 and from 01.07.2017 onwards liable to pay GST proportionate to the services provided effective from 01.07.2017, in terms of Section 142(11)(b) of the CGST Act, 2017.

b) **In respect of partially completed flats, where customers are identified after implementation of GST**, the Applicant is liable to pay GST on the transaction value of supply.

c) **In respect of partially completed flats, where no customers are identified**, the applicant is not liable to GST as no supply is involved. However, if the supply is made prior to the issuance of completion certificate then GST is liable to be paid.

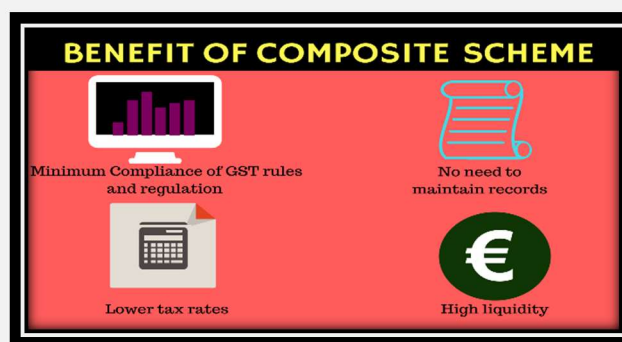
## RECENT UPDATES ON GST PORTAL

### OPTING FOR COMPOSITION SCHEME

- Option for composition scheme by taxpayers dealing with services (Upto Rs. 50 lakhs) in **Form GST CMP-02** has been made available on the GST Portal.
- Taxpayer who have filed Form GSTR -1 / GSTR 3B for April/May/June 2019 cannot opt for this now.

### Benefits under Composition Levy:

- Lower tax rates
- No need to maintain records
- High liquidity
- Minimum compliance of GST regulations



### ADDITION OF TRADE NAME UNDER SEARCH TAXPAYER OPTION

In the “**Search Taxpayer functionality**” available on GST Portal, Trade Name of the taxpayer will also be made available as part of taxpayer profile.

This will be very helpful for taxpayers for reconciliation of GSTR 2A with ITC availed as per books.

### SABKA VISHWAS (LEGAL DISPUTE RESOLUTION) SCHEME, 2019

The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, (SVLDRS) application has been made available online at “<https://cbic-gst.gov.in>” from 1<sup>st</sup> September 2019.

The declaration under Section 125 of the Finance Act, 2019 can now be made electronically in **Form SVLDRS-1** by the declarant.

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**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 taken before taking any decision based on this document.

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