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10/18

DEBT EQUITY

GST

GOODS & SERVICES TAX

Audit

SBS



UPDATES COVERED:

1. GST UPDATES FOR THE MONTH OF SEP 2018

FEMA

**INCOME
TAX**



SBS AND COMPANY LLP
CHARTERED ACCOUNTANTS

GST UPDATES FOR THE MONTH OF SEPTEMBER 2018

- Compiled by Indirect Tax Division

CIRCULARS

1. CLARIFICATION ON LAPSING OF ITC AS ON 31st JULY 2018 IN CASE OF FABRIC MANUFACTURERS:

In Fabric manufacturing, inputs like yarn, process chemicals, packing materials and other services are subject to GST at varied rates from 5% to 18%. The finished fabrics are subject to GST at 5% which has resulted into inverted tax structure i.e. tax paid on inputs is more than the tax payable on output. Section 54(3) has provided for refund of such excess input tax in these scenarios. However, Notification No. 5/2017-Central Tax dated 28.06.2017 was issued by Government to deny refund on 10 categories of fabrics. This restriction was taken away through Notification No. 20/2018-Central Tax with effect from 01.08.2018.

In this regard, it is clarified that Section 54(3) permits refund of ITC availed on inputs alone under inverted tax structure scenario. The excess input tax credit after paying the tax for the month of July, 2018 that is attributable to inputs alone shall be lapsed out. The same shall be determined using the formula prescribed in Rule 89(5) of CGST Rules, 2017. It is also clarified that no refund of ITC availed on input services and capital goods can be claimed and need not be lapsed. It is further clarified that there no restriction with respect to claim of refund of ITC accumulated because of exports i.e. Zero-rated supplies in Notification 5/2017-Central Tax and accordingly ITC on Zero rated supplies shall not lapse.

{Circular No.56/30/2018-GST dated 24th August 2018}

2. SCOPE OF PRINCIPAL-AGENT RELATIONSHIP IN THE CONTEXT OF SCHEDULE I OF THE CGST ACT:

Para 3 of schedule I of CGST Act, 2017 provides that any movement of goods between principal and agent in situations where the agent undertakes to supply such goods on behalf of principal or receives the goods on behalf of principal shall be deemed to be a supply even in the absence of consideration. It is clarified that this concept of deemed supply is applicable only when the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. The key ingredient for determining this sought of relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry.

{Circular No. 57/31/2018-GST dated 4.09.2018}

3. RECOVERY OF WRONGLY AVAILED CENVAT CREDIT OR TRANSITIONAL CREDIT:

CBIC vide Circular No. 42/16/2018-GST dated 13th April 2018 has clarified that arrears arising under existing laws can be collected as central tax liability which shall be recorded in Part II of Electronic Liability Register. As the said functionality to record the liability in Electronic Liability Register is presently not available on GST Portal, it has been clarified now that as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of GSTR-3B. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of GSTR-3B.

{Circular No. 58/32/2018-GST dated 04.09.2018}

4. SIMPLIFICATION OF EXPORT REFUND PROCESS:

It has been clarified that there is no requirement to submit hard copy of inward invoices on which ITC was availed and are reflected in GSTR-2A statement of exporter. Hard copy of invoices is required to be submitted only in those cases where the said inward supplies are not reflected in GSTR-2A. Clarified that proper officer should not insist for hard copy of invoices for all inward supplies.

It is clarified that in case where a deficiency memo is issued for a refund claim, then the entire claim is required to be submitted afresh. In such cases where deficiency memo was issued but no fresh claim was submitted, the claims submitted need not be processed and no show cause notices are required to be issued in order to process these claims.

In terms Section 54(14) of the CGST Act, 2017 no refund shall be paid if the amount is less than Rs.1000/-. It is clarified that Rs.1000/- is to be applied per each tax head separately and not cumulatively.

{Circular No. 59/33/2018-GST dated 4.09.2018}

5. PROCEDURAL ASPECTS RELATING TO REFUNDS FILED BY CANTEEN STORES DEPARTMENT:

Canteen Stores Department(CSD) are entitled to claim refund of fifty percent of the central tax or integrated tax or union territory tax paid on all inward supplies of goods for subsequent supply in such stores. With a view to expediate the refund process, it has been clarified that refund is not for accumulated input tax credit but is based on invoices of inward supplies of goods received by them. CSD are required to make manual claims in GST RFD-10A on quarterly basis until the online utility is made available on GST portal. It is also clarified that the officer may rely on GSTR-2A as an evidence of the accountal of the supply made by the corresponding suppliers to the CSD in relation to which the refund has been claimed.

{Circular No. 60/34/2018-GST dated 04.09.2018}

6. E-WAY BILLS FOR STORING GOODS IN GODOWN OF TRNSPORTER:

The transporters engaged in transportation of textiles are also providing godown facilities for storage. Transporters are facing difficulty in taking registration and maintain details of goods stored in their godown and raise e-way bills for sending them to recipient. To avoid their registration, it has been clarified that the consignee/ recipient taxpayer can declare such transporter's godown as additional place of business. In such cases, the transportation under the e-way bill issued by supplier shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer' additional place of business). Hence, e-way bill validity in such cases will not be required to be extended.

{Circular No. 61/35/2018-GST dated 04.09.2018}

7. CLARIFICATION ON TAX LIABILITY OF PRIORITY SECTOR LENDING CERTIFICATES (PSLC):

It is clarified that GST on PSLCs for the period 01.07.2017 to 27.05.2018 will be paid by seller bank on forward charge basis and GST rate of 12% will be applicable on such supply.

{Circular No. 62/36/2018-GST dated 12.09.2018}

8. CLARIFICATIONS REGARDING REFUND CLAIMS BY UIN ENTITIES:

It is clarified that UIN entities are eligible to claim refund of tax paid on inward supplies based on letter of reciprocity issued by Ministry of External Officers (MEA). In several cases, it was observed that refund claims are filed on all inward supplies including those which are not eligible based on letter of reciprocity. UIN entities are required to submit a Statement of Invoices along with hard copies. UIN entities are also required to submit prior permission letter obtained from MEA at the time of filing application for refund of GST paid on vehicles purchased by such entities. The requirement of mentioning UIN Number in the invoices issued by suppliers to these entities has been waived for the period April 2018 to March 2018. It is further clarified that personnel of UIN entities are not eligible to claim any refund.

{Circular No. 63/37/2018-GST dated 14.09.2018}

9. MODIFICATION OF PROCEDURE FOR INTERCEPTION OF CONVEYANCE:

It has been clarified that Part B of the E way bill need to be filled to become a valid e way bill except where transportation is within 50 Km within the same state or Union Territory. It is clarified that in case of a consignment accompanied by invoice or any other specified document but not an e-way bill, proceedings under section 129 of the CGST Ac may be initiated. Further, clarified that in case of consignment accompanied by invoice or any other specified document and an e-way bill, proceedings under section 129 cannot be initiated for minor lapses like spelling mistakes, errors in pincode, address, HSN etc. In such cases, general penalty of Rs 1000/- per consignment can be imposed under section 125 of CGST Act, 2017 and the corresponding section of respective state SGST Act.

{Circular No. 64/38/2018-GST dated 14.09.2018}

NOTIFICATIONS

10. AMENDMENTS IN CENTRAL GOODS AND SERVICES TAX RULES, 2017

In terms of Rule 22, the proper officer can cancel the registration of a registered person if no returns are filed for a continuous period of six months or three consecutive tax periods in case of composition tax payer. A show cause notice is required to be issued prior to cancellation which is to be replied within seven working days. This rule is amended to provide that such taxpayers can furnish all the pending returns and make full payment of tax dues along with applicable interest and late fee in lieu of reply to the notice, then proper officer shall drop the proceedings and pass an order in FORM GST REG-20.

Rule 36(2) provides that ITC can be availed only if the document contains all the applicable particulars as specified for Tax invoice, debit and credit notes as the case may be. This rule is now amended to provide that ITC can be claimed based on a document even if it does not contain all the specified particulars but contains particulars of amount charged, total value of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-state supply.

Rule 55 provides in case of goods being transported in a semi or completely knocked down condition, the supplier is required to raise an invoice at the time of dispatch of first consignment. All other consignments can be moved on the basis of a delivery challan with certified copy of invoice. Now this rule is amended to prescribe similar procedure even for goods transported in batches or lots.

Rule 89 provides for refund of accumulated ITC on account of zero-rated supplies. This rule prescribes the formula as mentioned below to determine the ITC that is attributable to zero-rated supplies.

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

In the said formula, the term 'turnover of zero-rated supply of services' (appearing in numerator) is defined to include services for which money is received in advance and invoices are issued in current tax period and services for which money is not received in advance, invoices are issued prior to or during current tax period and money has received during the current tax period. On the other hand, the term in denominator 'Adjusted Total Turnover' was defined on accrual basis (invoice basis). Hence there was confusion in arriving at 'Adjusted Total Turnover' whether to include the turnover of services export on invoice basis or as per the numerator. It is clarified that the 'Adjusted Total Turnover' shall be arrived at by including turnover of services export on the basis of numerator not on accrual basis (invoice basis).

Rule 138A prescribes the documents and devices to be carried by a person in charge of conveyance. This rule is amended to provide that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.

Annual Return form has been notified by including this form as annexure to the rules. Accordingly, Annual return form in FORM GSTR-9 for registered persons other than ISD, TCS, TDS, Causal Taxable person and non-resident taxable persons and FORM GSTR-9A for Composition Taxpayers have been notified.

{Notification no.39/2018 – Central Tax dated 04.09.2018}

11. EXTENSION OF DUE DATE FOR FILING FORM GST ITC-04 UP TO 30TH SEPTEMBER 2018:

Under GST Laws, the Principal is required to declare the goods sent to or received from Job Worker on a quarterly basis in Form GST ITC-04 by 25th of the month succeeding the quarter. However, since implementation of GST, the due dates for filing this form for various quarters has been extended due to inadequate preparedness of the GST Portal. In view of this reason, the requirement of filing this form for the period July 2017 to June 2018 has been extended one more time up to 30th September 2018.

{Notification no.40/2018 – Central Tax dated 04.09.2018}

12. WAIVER OF LATE FEE IN FILING GSTR-3B, GSTR-4 AND GSTR-6 FOR CERTAIN SPECIFIED CASES:

The late fee payable for delay in filing GSTR-3B for the month of October 2017 has been waived off in all cases where the return has been submitted in GST portal but not filed after the generation of ARN. Further, in certain cases, the GST portal has erroneously calculated late fee with respect to filing of GSTR-4 (return to be filed by composition taxpayer) for the period October to December 2017. Such erroneous charge of late fee has been waived off. Further, the late fee paid by input service distributors for filing GSTR-6 for any tax period between 01st January 2018 to 23rd January 2018 has also been waived off.

{Notification no.41/2018 – Central Tax dated 04.09.2018}

13. EXTENSION OF TIME LIMIT TO FILE ITC-01 IN SPECIFIED CASE:

The registered person who has withdrawn from Composition Scheme is required to file FORM ITC-01 within 30 days to avail input tax credit on the closing stocks. If any registered person has withdrawn from composition scheme in between 02.03.2018 and 31.03.2018, the time limit for filing the FORM ITC-01 for the said persons has been extended till 03.10.2018 (i.e. 30 days from issue of Notification).

{Notification no.42/2018 – Central Tax dated 04.09.2018}

14. EXTENSION OF DUE DATE FOR FILING GSTR-1 BY TAXPAYERS HAVING TURNOVER UPTO 1.5 CR:

In case of registered persons having aggregate turnover of up to 1.5 Crores in the preceding financial year or the current financial year, the due date for filing GSTR-1 has been extended in the following manner.

Quarter	Revised Due Date
July 2017 to September 2018	31-10-2018
October 2018 to December 2018	31-01-2019
January 2019 to March 2019	30-04-2019

The due date for filing the GSTR-1 for the period July 2017 to September 2018 is notified as 15.11.2018 for all the registered persons located in the state of Kerala, having place of business in Kodagu district in the state of Karnataka and Mahe in the Union territory of Puducherry.

{Notification no.43/2018 – Central Tax dated 10.09.2018}

15. EXTENSION OF DUE DATE FOR FILING GSTR-1 BY TAXPAYERS HAVING TURNOVER MORE THAN 1.5 CRORES

In the said notification the due date for filing the GSTR-1 return has been extended for the registered persons having aggregate turnover of more than 1.5 Crores in the preceding financial year or the current financial year.

Period	Revised Due Date
July 2017 to September 2018	31-10-2018
October 2018	11-11-2018
November 2018	11-12-2018
December 2018	11-01-2019
January 2018	11-02-2019
February 2018	11-03-2019
March 2018	11-04-2019

{Notification no.44/2018 – Central Tax dated 10.09.2018}

16. TDS AND TCS PROVISIONS ARE NOTIFIED:

Section 51 of CGST Act, 2017 provides for obligation of Tax Deducted at Source (TDS) on Government Departments and Agencies where the total value of supply under a contract exceeds two lakh and fifty thousand rupees. Similarly, Section 52 of CGST Act, 2017 provides for obligation of Tax Collected at Source (TCS) by e-Commerce Operator on the taxable supplies made through it. The provisions of TDS and TCS are notified to be effective from 1st October,2018. The rate of TDS is provided in Section 51 as 2% while the rate of TCS has been notified at 1%.

{Notifications 50/2018-CT, 51/2018-CT and 52/2018-CT dated 13.09.2018}

17. RECONCILIATION STATEMENT AND GST AUDIT REPORT IN FORM GSTR-9C IS NOTIFIED:

As per rule 80 of the CGST Rules,2017 every registered person whose aggregate turnover in excess of Rs 2 crores in a financial year shall get the books audited under GST Law. Such persons are required to furnish a reconciliation statement and auditors' report in form GSTR-9C. The format of the reconciliation statement is notified in the Forms of the CGST Rules, 2017.

{Notifications 49/2018-CT dated 13.09.2018}

18. AMENDMENT OF CGST RULES, 2017 TO EXTEND THE DUE DATE FOR TRAN-01 FOR SPECIFIED CASES:

A new sub-rule (1A) has been inserted in Rule 117 of CGST Rules, 2017 to empower the Government to extend the due date for TRAN-1 for further period not beyond 31.03.2019 for those registered persons who could not submit the said declaration by the due date on account of technical difficulties on the portal and in respect of whom the Council has made a recommendation for such extension. Further, a proviso has been inserted in sub-rule (4) of the said rule to provide that the registered persons filing the declaration in GST Tran-01 as per the above-mentioned sub-rule (1A) are allowed to submit the statement in GST TRAN-2 by 30th April 2019.

{Notification no.48/2018 – Central Tax dated 10.09.2018 read with Order No. 4/2018 – GST dated 17.09.2018}

19. EXPLANATION TO EXPAND THE SCOPE OF GOVERNMENT ENTITY TO EXEMPT LONGTERM LEASES:

Entry 41 of Notification 12/2017-CT(R) exempts the GST payable on upfront amount payable in respect of long-term lease of thirty years, or more of industrial plots or plots for development of infrastructure by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.

Now an explanation inserted to clarify that Central Government, State Government or Union territory shall be said to have 50 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory

{Notification 23/2018-CT(R) and Notification 24/2018-IT(R) dated 20.09.2018}

The updates are - Compiled by Indirect Tax Division

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