

GST Update

Weekly Update
10.11.2018

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 03.11.2018. It supplements the earlier GST Updates.
- This presentation is based on CGST Act/Rules/ Notifications. Similar parallel provisions in State Laws may be referred to as required

- One Central Tax Notification amending CGST Rules, 2017 issued
- Two Press releases – one on refunds and another on advisory for UINs for declaring proper place of supply in GSTR-11 issued

Advisory for UINs

- http://www.cbic.gov.in/resources//htdocs-cbec/press-release/20181109_Advisory%20to%20UIN%20Entities.pdf;jsessionid=D60D2AB85F6669A2F790CA7B4F7D0751
- FORM GSTR-11 under Rule 82 of the CGST Rules, 2017 mandates reporting “Place of Supply” for every invoice on which refund is applied for.
- UINs advised to be careful in filling Place of Supply in invoice level in GSTR-11 on the common portal
- Wrong reporting of invoice level data in FORM GSTR-11 or in the statement of invoice submitted may lead to delay in processing / rejection of refund claims.

Assurance on Refunds

- <http://www.cbic.gov.in/resources//htdocs-cbec/press-release/Press%20Release%20GST%20refunds%208.11.18.pdf;jsessionid=35686A08E63F49171D7CC38D9501B206>
- As on 31st October, 2018, total GST refunds to the tune of Rs 82,775 crore have been disposed by CBIC and State authorities out of the total refund claims of Rs 88,175 crore received so far. Thus, the disposal rate of 93.8 % has been achieved as on 31.10.2018.
- In case of IGST refunds, about 93.27 % (Rs 42,935 crore) of the total IGST refund claims (Rs. 46,032 crore) transmitted to Customs from GSTN as on 31st October, 2018 have already been disposed. The remaining claims amounting to Rs. 3,096 crores are held up on account of various deficiencies which have been communicated to exporters for remedial action.

- In the case of RFD-01A (ITC Refund) claims, out of the total refund claims of Rs. 42,145 Crore the pendency as on 31st October, 2018 is Rs 159 Crore with Centre and Rs 2,146 crore with States. Provisional/final order has been issued in case of refunds amounting to Rs. 34,602 Crore. In claims amounting to Rs. 5,239 Crore, deficiency memos have been issued by respective GST authorities.
- Co-operation of the exporter community is solicited to ensure that they respond to the deficiency memos and errors communicated by Centre and State GST as well as Customs Authorities and also exercise due diligence while filing GSTR 1 and GSTR 3B returns as well as Shipping Bills.

Collection of tax at source by Tea Board of India

- <http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-74.pdf;jsessionid=1A06A67B3174C46E0966E8952BBD5B30>
- Tea Board of India being the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of electronic commerce operator liable to collect TCS
- The participants in the said auction are the sellers i.e. the tea producers and auctioneers who carry out the auction on behalf of such sellers and buyers.

Collection of tax at source by Tea Board of India (Contd)

- The buyers in the said auction make payment of a consolidated amount to an escrow Account maintained by the Tea Board. The said consolidated amount is towards the value of the tea, the selling and buying brokerages charged by the auctioneers and also the amount charged by the Tea Board from sellers, auctioneers and buyers.
- Thereafter, Tea Board pays to the sellers (i.e. tea producers), from the said escrow account, for the supply of goods made by them (i.e. tea) and to the auctioneers for the supply of services made by them (i.e. brokerage). Under no circumstances, the payment is made by the Tea Board to the auctioneers on account of supply of goods i.e., tea sold at auction.

Collection of tax at source by Tea Board of India (Contd)

- In exercise of the powers conferred under sub-section (1) of section 168 of the CGST Act, for the purpose of uniformity in the implementation of the Act, it is hereby clarified, that
- TCS in terms of section 52 of the CGST Act, shall be collected by Tea Board respectively from the –
 - (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
 - (ii) auctioneers on the net value of supply of services (i.e. brokerage).

Scope of principal and agent relationship in the context of del-credere agent

- <http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-73.pdf;jsessionid=224D03E5BAA08863E6063A3F0AA83337>
- In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal.
- The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier.
- In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.

Scope of principal and agent relationship in the context of del-credere agent (Contd)

- **Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?**
- Whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios:
 - In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent.
 - In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.

Scope of principal and agent relationship in the context of del-credere agent (Contd)

- Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?
- In such a scenario following activities are taking place:
 1. Supply of goods from supplier (principal) to recipient;
 2. Supply of agency services from DCA to the supplier or the recipient or both;
 3. Supply of extension of loan services by the DCA to the recipient.

Scope of principal and agent relationship in the context of del-credere agent (Contd)

- It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I
- The temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply.
- Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.
- Furthermore, vide notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.

Scope of principal and agent relationship in the context of del-credere agent (Contd)

- Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?
- In such a scenario following activities are taking place:
 1. Supply of goods by the supplier (principal) to the DCA;
 2. Further supply of goods by the DCA to the recipient;
 3. Supply of agency services by the DCA to the supplier or the recipient or both;
 4. Extension of credit by the DCA to the recipient.

Scope of principal and agent relationship in the context of del-credere agent (Contd)

- It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient.
- It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.
- Therefore, the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d) of the CGST Act.

TDS not applicable for supply from PSU to PSU

- <http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-61-central-tax-english-2018.pdf;jsessionid=E5D3DA76A4436F3ADB3B6C8F70998474>
- Notification No. 50/2018-Central Tax, dated the 13th September, 2018 amended; Following Proviso inserted
- “Provided further that nothing in this notification shall apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from the 1st day of October, 2018.” .
- Thus, TDS not applicable for supply from one PSU to another PSU



GST Legal Updates

Case of **Kashi Bartan Bhandar Vs State Of UP** reported in **2018-TIOL-157-HC-ALL-GST**

Facts

Petitioner challenging the order by which its registration as a dealer has been cancelled under the UP GST Act, 2017 - Petitioner submits that the same is in gross violation of the principles of natural justice inasmuch the SCN alleged to be issued on 18.01.2018 has not been served upon the petitioner; that only on prima facie satisfaction that the petitioner is not carrying any business without coming to any final conclusion, the registration had been cancelled - Counsel for the Revenue submits that the SCN was sent to the petitioner at its email address and also sent by a messenger and affixed at a conspicuous place of business of the petitioner; that since no one was found at the place of business when the messenger had gone there, it was presumed that the business is lying close.

Decision of High Court

Notice under the GST Act is required to be served in accordance with the provisions of Section 169 of the Act - It is only if the mode of service as provided in the earlier parts of Section 169 are not practicable that the authorities can resort to service of notice by affixation - Court does not find that the Assistant Commissioner had come to any conclusion that all previous modes as prescribed under Section 169 are not practicable for the service of notice and, therefore, has directly resorted to service by affixation - accordingly, service, if any, by affixation cannot be regarded as a proper service - Assistant Commissioner could not have passed the order on the basis of prima-facie opinion until and unless he was of a definite opinion that the petitioner has closed down the business -

Decision of High Court

Notwithstanding the remedy of appeal, Court does not propose to relegate the petitioner to it for the simple reason that the petition was entertained and the parties have completed the pleadings to enable the Court to hear the matter on merits - Moreover, it is a case of clear violation of principles of natural justice and it is well accepted norm of exercising extraordinary jurisdiction that alternate remedy would not be a bar where the order is ex-facie, illegal and has been passed violating the principles of natural justice - Impugned order quashed and Writ Petition allowed - liberty granted to the respondent to pass a fresh order in accordance with law

Any ISSUES/ queries?

- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
 - 1800 1200 232
 - cbecmitra.helpdesk@icegate.gov.in
- GSTN Help Desk
 - <https://selfservice.gstsystem.in/> - Grievance redressal portal
 - Help Desk Number: 0120-4888999

Any ISSUES/ queries?

- Twitter Handles
- For General Questions
- https://twitter.com/askGST_Gol
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- https://twitter.com/NACIN_OFFICIAL

THANK YOU