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CGA LEGAL

Your GST Knowledge Partner

The GST Bulletin

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About The GST Bulletin

The GST Bulletin is a Weekly Newsletter from Team CGA Legal, a leading Indirect Tax Consultancy firm . The Newsletter is intending to keep its readers updated with all important legal and judicial updates in Goods & Services Tax and other Indirect Tax laws. The Newsletter also has a special column of GST Compliance Calendar for the Month. Along with it, CGA Legal also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

All editions of our newsletters can be referred from below link below;
<https://www.cgalegal.co.in/home/newsletters.php>

Other Offerings from Team CGA Legal

- **CGA Legal GST Compliance Calendar:** Our Monthly Calendar detailing all GST related compliances for the month so that you never miss of any of the compliances.
- **CGA Legal Meet:** Our Monthly Webinar series discussing various trending GST legal and compliance issues

All the previous editions can be accessed on our website
www.cgalegal.co.in

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GST Compliance Calendar - December 2021

Statutory Due Date	Type of Return	Period	Type of Taxpayer
10-12-21	GSTR-7	November-2021	TDS Deductor
10-12-21	GSTR-8	November-2021	E-Commerce Operator
11-12-21	GSTR-1	November-2021	Turnover more than INR 5 crore in the preceding FY & Turnover up to INR 5 crores and have opted for monthly return filing.
13-12-21	Details of Outward Supplies through Invoice Furnishing Facility [IFF]	November-2021	Taxpayers who are under QRMP Scheme
13-12-21	GSTR-6	November-2021	ISD
20-12-21	GSTR-3B	November-2021	Turnover more than INR 5 crore in the preceding FY or Turnover upto INR 5 crore in the preceding FY but opted for monthly return filing
20-12-21	GSTR-5	November-2021	Non-Resident Taxable Person
20-12-21	GSTR-5A	November-2021	OIDAR
25-12-21	GST PMT-06	November-2021	Taxpayer who has opted for QRMP Scheme has to deposit tax using form GST PMT-06 by the 25th of the following month, for the first and second months of the quarter.
31-12-21	GSTR-9	FY 2020-21	Annual Return to be filed by every registered persons
31-12-21	GSTR-9C	FY 2020-21	Reconciliation statement to be filed by registered person with Agg Turn > INR 5Cr

GST Compliance Calendar - December 2021

Statutory Due Date	Type of Return	Period	Type of Taxpayer
31-12-21	GSTR-9A	FY 2020-21	Annual Return by registered person paying tax under Composition Scheme
31-12-21	GSTR-9B	FY 2020-21	Annual Return by electronic commerce operator required to collect tax at source under section 52.

GST Updates - Kerala SGST Circular

Instructions/Guidelines regarding the procedure to be followed in scrutiny of returns and thenceforth actions.

Circular No. 07/2021 Dated: 07-11-2021

Government of Kerala (Office of the Commissioner of State Goods and Services Tax Department) had issued Circular regarding Instructions/Guidelines regarding the procedure to be followed in scrutiny of returns and thenceforth actions. The Important points from this circular are as below:

For 2017-18 and 2018-19, if the ITC availed is more than invoices/debit notes particulars reflected in Form GSTR 2A, then notice for non-compliance of Section 16(2)(c) shall be issued. - Recipient has to prove the eligibility of ITC as per Section 155, which means that burden of proof will be on the recipient.

In the aforementioned cases, if the missing invoices/debit notes were later on added to Form GSTR2A, then the recipient is eligible for ITC.

If the ITC for 2017-18 was availed on or before October 25, 2018 on the strength of invoices/debit notes which were not reflected in Table 8A of Form GSTR 9 and the same is now reflected in Form GSTR 2A, then such ITC can be allowed after ensuring that respective suppliers had filed Form GSTR 1 and Form GSTR 3B.

If the ITC for 2017-18 was availed during the extended time i.e. October 26, 2018 to April 23, 2019 on the strength of invoices/debit notes, then the ITC shall be eligible only to the extent of invoices/debit notes reflected in Form GSTR 2A on or before April 30, 2019.

GST Updates - GST Technical Updates

Improvements in GSTR-1

Dated: 26-11-2021

A revamped & enhanced version of GSTR-1/IFF is being made available on the GST Portal to improve the taxpayer experience. These enhancements, would enable the Saving of the GSTR-1 details on the GST Portal efficient and user friendly. Further, changes are being implemented incrementally in a gradual manner, to leverage the familiarity of taxpayer so as to ensure that taxpayers can adapt to the changes smoothly. The changes would be implemented in two phases, to ensure that disruption to the taxpayers is minimal, and valuable feedback received is accounted for in subsequent phase. This advisory covers the changes being brought in Phase -1 while the advisory about Phase -2 changes would follow.

For detailed advisory, kindly follow the below link:

https://tutorial.gst.gov.in/downloads/news/gstr_1_advisory.pdf

GST News

National Institute of Public Finance and Policy study says Government can rationalise the rates without losing revenues.

Date: 25-11-2021

National Institute of Public Finance and Policy study says Government can rationalise the rates without losing revenues.

The Government can rationalise the GST rate structure without losing revenues by rejigging the four major rates of 5%, 12%, 18% and 28% with a three-rate framework of 8%, 15% and 30%, as per a National Institute of Public Finance and Policy (NIPFP) study.

The findings of the NIPFP, an autonomous think tank backed by the Finance Ministry, assume significance as the GST Council has tasked a Group of Ministers, headed by Karnataka CM Basavaraj S. Bommai, to propose a rationalisation of tax rates and a possible merger of different tax slabs by December to shore up revenues.

Gold may lose sheen on govt's plan to hike bullion GST rates

Date: 24-11-2021

The government's reported proposal to hike GST on gold jewellery to five per cent from three per cent is set to derail the industry which is rebounding after series of disturbances including Covid-induced lockdowns shutting retail outlets and mandatory hallmarking putting jewellers in a tizzy.

After lying low for long, jewellery sales have picked up in last two months with the fall in gold prices boosting wedding purchases and pent-up demand.

GST – Judicial Precedents

1. Supply

Whether the amount received on account of non performance of the agreement for sale amount to supply of services?

Tirupati Balaji Furnaces Pvt Ltd. Vs Commissioner, CGST, Jaipur
[CESTAT New Delhi]

Facts: During the course of audit of records of the appellant, some miscellaneous income was observed to have been received by the appellant. The said other income was replied to have been received on account of non performance of the agreement to sale and non-compliance of the conditions of contract of supplier of goods. However, Department found that retaining said money by the appellant amounts to agreeing to the obligation to refrain from any, or to tolerate an act or a situation, or to do an act' and thus a consideration towards a 'declared service'.

Held: On perusal of the nature of the amounts received, it is clear to hold that these amounts are not received by the appellant in lieu of rendering any service. Neither the appellant is carrying on any activity to receive compensation nor can there be any presumption for intention of other party to breach or violate the contract and suffer the losses. The only purpose is for minimum compensation and of forfeiting the earnest money is to ensure that the default act is not undertaken again or repeated. However, from any stretch of imagination the retention of such amount cannot be said to be an act of receiving consideration that too towards toleration of the defaulting act of the other parties.

What only appears from retention of the money in question is the expectation of the appellant that other party should comply with the terms of the contract and such other party shall be burdened if there is any non compliance on its part. Hence question of tolerating the act of default as alleged by the Department, does not at all arises. Thus, the amount received on account of non performance of the agreement to sale does not amount to supply of services.

GST – Judicial Precedents

2. Registration

Whether registration is required in the state of execution of works contract?

M/S. Gew (India) Pvt. Ltd. [Authority of Advance Rulings, Karnataka]

Facts: The Applicant registered under U.P., got a sub-contract work from M/s L&T, claimed to be a works contract, for erecting steel structure casted and bolted on ground in the civil foundation, at the site at Karwar, Karnataka. The applicant sought advance ruling whether it is required to be registered in the state of Karnataka for execution of the work order.

Held: The applicant has obtained registration for the premises located at Noida, UP and hence the location of the supplier of services is the place of business of the applicant. It is also pertinent to note that the applicant has no fixed establishment in the State of Karnataka as on date.

Section 12 of the IGST Act 2017 determines the place of supply and specifically Section 12 (3) of the IGST Act is relevant to the impugned transaction & determines the place of supply of services directly in relation to immovable property in respect of any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work or any ancillary services shall be the location at which the immovable property is located or intended to be located and if the location of the immovable property is located or intended to be located outside India, the place of supply shall be the location of the recipient - in the instant case, the place of supply of services is the location at which the immovable property is located i.e. Karwar in Karnataka state.

In the instant case, the applicant has only one principal place of business (Noida, UP) for which registration has been obtained and does not/intended to have any other fixed establishment other than the principal place of business, as admitted by the applicant.

GST – Judicial Precedents

2. Registration

Whether registration is required in the state of execution of works contract?

M/S. Gew (India) Pvt. Ltd. [Authority of Advance Rulings, Karnataka]

Therefore, the location of the supplier itself is the principal place of business which is in Noida, Uttar Pradesh. Thus, there is no requirement for a separate registration in Karnataka for execution of the contract - the nature of supply is of inter-State supply and the applicant can supply the impugned services from the place of registration i.e. Noida, UP on raising the invoice from the said place by charging IGST.

GST – Judicial Precedents

3. Classification

Whether Job work services such as anodizing, plating, on goods/materials belonging to registered persons attracts 12% GST?

M/s. Alcoats [Authority of Advance Rulings, Karnataka]

Facts: The Applicant has sought an advance ruling that as per entry number 26 of Service Rate Notification, whether job work services of anodizing, plating on the materials sent by their customers i.e. registered persons, falls under item number (id) which attracts 12% tax rate or whether it falls under item number (iv) which attracts 18% tax rate.

Held: The Hon'ble KAAR observed, that CBIC has issued a clarification vide para 4 of Circular No. 126/45/2019-GST dated November 22, 2019 by making a clear demarcation between scope of the entries at item (id) and item (iv) of serial number 26 of Service Rate Notification.

Observed that, as per above-mentioned circular entry at item (id) covers only job work services as defined under Section 2(68) of the CGST Act, 2017 i.e. services by way of treatment or processing undertaken by a person on goods belonging to another registered person and on the other hand, entry at item (iv) specifically excludes service provided under entry (id) and includes only those services which are provided on goods owned by other than registered persons under the CGST Act.

Held that, the Applicant provides job work services on the goods belonging to registered persons and hence are covered under clause (id) of entry number 26 of Service Rate Notification and accordingly attracts GST rate at 12%.

GST – Judicial Precedents

4. Exemption

Whether exemption is available on the telecom services provided to Greater Hyderabad Municipal Corporation (GHMC) for general office and administrative purposes as Pure Services?

M/S. Bharti Airtel Limited [Authority of Advance Rulings, Telangana]

Facts: M/s. Bharti Airtel Limited is engaged in providing telecommunication services and in the course of its business it is also providing these services to GHMC by way of data/voice telecommunication services SAC 9984. According to their submissions, these services provided to GHMC are not related to any specific project or specific scheme of Government and are provided to GHMC to be used by employees for general office and administrative purposes. Further under serial no.3 of Notification No. 12/2017 dated 28.06.2017 their services qualify to be pure services rendered in relation to functions entrusted to a municipality under Article 243W of constitution of India. In light of the said notification the applicant finds that such services are exempt from tax under GST

Held: Under serial no. 3 of Notification No. 12/2017 pure services provided “in relation to any function” entrusted to a municipality under Article 243W of the Constitution of India is eligible for exemption from GST. Clearly the exemption should be directly related to the functions enumerated under Article 243W of the Constitution of India i.e., Responsibilities specified at Sl No.(1) or those functions listed under 12th schedule.

Hon’ble Supreme Court of India in the case of HH Maharajadhiraja Madhav Rao Jiwaji Raoscindia Bahadur Versus Union of India observed that the expression “relating to” means to bring into relation or establish a relation. It was further clarified that there should be a direct and immediate link with a covenant and that there cannot be any independent existence outside such covenant.

GST – Judicial Precedents

4. Exemption

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M/S. Bharti Airtel Limited [Authority of Advance Rulings, Telangana]

Thus, the applicant is providing data and voice services to GHMC and to the employees of the municipalities and general purpose for office and administrative purposes. Thus, there is no direct relation between the services provided by the applicant and the functions discharged by the GHMC under Article 243W read with schedule 12 to the Constitution of India. Therefore, these services do not qualify for exemption under Notification No. 12/2017.

GST – Judicial Precedents

5. Input Tax Credit

Challenge to the vires of Section 16(2)(c) of CGST Act, 2017

Unifab Engineering Project Pvt. Ltd. and ANR. Versus the Deputy Commissioner CGST and CEX, [Bombay High Court]

Facts: The petitioners have challenged the vires of section 16(2)(c) of the Central Goods and Services Tax Act, 2017.

Held: Issue notice to the respondents, returnable on January 11, 2022. Since the vires of section 16(2)(c) of the CGST Act is under challenge, the petitioners are directed to put the Attorney General for the Union of India on notice.

As per section 16(2)(c), the recipient is entitled to input tax credit only when the tax charged in respect of such supply has been actually paid to the Government

GST – Judicial Precedents

6. Classification

Classification of Services as Business Support Services or Intermediary Services

Airbus Group India Pvt. Ltd [Appellate Authority of Advance Rulings, Karnataka]

Facts: The Appellant is a Private Limited Company and operating as a subsidiary of Airbus Invest SAS, France. The Airbus Group generally procures parts, components or services from both domestic and international markets which are required for manufacturing and assembly of aerospace products like aircrafts, helicopters, etc. Airbus France has entered into an “Intra-Group Services Agreement” with effect from April 2020 with the Appellant in terms of which the Appellant is required to perform two functions; i.e

- (i) **Procurement Operations** - rendering of various technical advisory and business support services in relation to supplier development activities; and
- (i) **Procurement Transformation & Central Services** - procurement ethics & compliance, procurement process and key projects management, strategy, business intelligence and digital procurement, flying part procurement and general procurement.

For the above said services, the Appellant would be remunerated with a service fee computed on a ‘cost plus mark-up’ basis. The Agreement specifically restricts the Appellant to decide or select any supplier and agree upon the terms and conditions of the supply and the said decisions are the prerogative of Airbus France. The Appellant is also not responsible for issuance of purchase order or payment for the supply made by the vendor.

GST – Judicial Precedents

6. Classification

Classification of Services as Business Support Services or Intermediary Services

Airbus Group India Pvt. Ltd [Appellate Authority of Advance Rulings, Karnataka]

The applicant had sought advance rulings, whether these services would be classified as “Other Support Services”, falling under Heading 9985 or as “Intermediary Service” classifiable under Heading 9961/9962 and whether these services would qualify as export of services?

The AAR vide its order KAR ADRG No 31/2021 dated 1st July 2021 held as under:

“The activities carried out in India by the Applicant would constitute a supply as “Intermediary services” classifiable under SAC 998599 and the services rendered by the Applicant do not qualify as ‘export of services’ in terms of sub-section 2 of Section 6 of the IGST 2017 and consequently, are exigible to GST.

Aggrieved by the said order applicant approached AAAR.

Held: Affirming the Order of AAR, Appellate Authority of Advance Rulings held that the Appellant is not procuring such goods on his own account and hence, the Appellant does not fall within the ambit of the exclusion contained in the definition of ‘intermediary’. Therefore, the Appellant is clearly playing the role of intermediary for Airbus France, as envisaged under Section 2(13) of the IGST Act, 2017. Further, these services shall not be classified as export of services as per the provisions relating to place of supply.

As regards the classification of the services provided by the intermediary, it is found that the services of the Appellant, who is acting as an intermediary, would aptly be classified under the Heading 998599 as ‘Other support services’.

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