

CGA Legal

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The GST Bulletin

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GST Compliance Calendar - March 2021

| Statutory Due Date | Type of Return & Tax Period | Period | Type of Taxpayer |
|--------------------|-----------------------------------------------------------------|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10-03-21 | GSTR-7 | Feb-2021 | TDS Deductor |
| 10-03-21 | GSTR-8 | Feb-2021 | E-Commerce Operator |
| 11-03-21 | GSTR-1 | Feb-2021 | GSTR 1 filing by the registered person with an aggregate turnover of more than 5 crores or who is not opting for QRMP Scheme having Turnover up to 5 crores. |
| 13-03-21 | Details of Outward Supplies through Invoice Furnishing Facility | Feb-2021 (For the Quarter January-2021 to March 2021) | Taxpayer who are under QRMP Scheme |
| 13-03-21 | GSTR-6 | Feb-2021 | ISD |
| 20-03-21 | GSTR-3B | Feb-2021 | Taxpayers opted for Monthly Filing |
| 20-03-21 | GSTR-5 | Feb-2021 | Non-Resident Taxable Person |
| 20-03-21 | GSTR-5A | Feb-2021 | OIDAR |
| 25-03-21 | GST PMT-06 | PMT-06 | Taxpayer who is opting 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 |
| 31-03-21 | GSTR-9 | FY 2019-20 | Registered Person with Agg Turn> INR 2Cr – Extended vide NN 04/2021-CT dated 28-02-21 Others- Option not to file |
| 31-03-21 | GSTR-9C | FY 2019-20 | Registered person with Agg Turn> INR 5Cr - Extended vide NN 04/2021-CT dated 28-02-21 |

GST Updates - Notifications

| S. No. | Notification No. | Summary of Notifications |
|--------|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 05/2021-CT dt. 08.03.2021 | <p>E-invoicing to be applicable for Taxpayers having Agg Turnover > INR 50 crs from 01.04.2021</p> <p>Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 50 Cr from 01.04.2021.</p> |
| 2. | 04/2021- CT dt. 28.02.2021 | <p>Extension of the date of Annual Return and Reconciliation Statement for FY 2019-20</p> <p>The time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 has been extended till 31.03.2021.</p> |
| 3 | 03/2021 CT dt. 23.02.2021 | <p>Seeks to notify persons to whom provisions of sub-section (6B) or sub-section (6C) of section 25 of CGST Act will not apply.</p> <p>The following class of persons shall not be required to undergo Aadhaar Authentication or furnish proof of possession of Aadhaar number, in order to be eligible for grant of registration, who is</p> <ol style="list-style-type: none"> not a citizen of India; or a Department or establishment of the Central Government or State Government; or a local authority; or a statutory body; or a Public Sector Undertaking; or a person applying for registration under the provisions of section 25(9) of the CGST Act i.e. any specialized agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons, as may be notified by the Commissioner. |

GST Updates – CBIC Instructions

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020-Central Tax dated 21st March 2020

CBIC Circular No. 146/02/2021 Dated: 23-02-2021

Notification No. 14/2020-Central Tax dated 21st March 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 01.12.2020. Further, vide Notification No. 89/2020- Central Tax, dated 29th November 2020, penalty has been waived for non-compliance of the provisions of Notification No.14/2020 – Central Tax for the period from 01st December, 2020 to 31st March, 2021, subject to the condition that the said person complies with the provisions of the said Notification from 01st April 2021.

The key clarifications issued vide this Circular are summarized below:

- QR code is not required in case of export transaction.
- QR code should contain information as specified in the Circular. Also, the recipient should be able to scan the code for making digital payment.
- Irrespective of whether a QR code has been made available through digital display or used by recipient to make the payment, a registered person shall be deemed to have complied with the requirement of QR Code if it has provided cross reference of payment received, either through electronic mode or cash, on the invoice issued.
- In case, the supplier is making supply through the E-commerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

For more information about the Dynamic QR Code kindly refer the detailed Circular.

GST Updates – CBIC Instructions

Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017.

CBIC Circular No. 145/01/2021 Dated: 11-02-2021

Notification No. 94/2020- Central Tax, dated 22.12.2020, sub-rule (2A) has been inserted to rule 21A of the CGST Rules. The said provision provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue. The registration shall be suspended and the said person shall be intimated in FORM GST REG-31.

Till the time functionality for FORM REG-31 is made available on portal, such notice/intimation shall be made available to the taxpayer on their dashboard on common portal in FORM GST REG-17. The taxpayers will be able to view the notice in the “View/Notice and Order” tab post login.

The taxpayers, whose registrations are suspended, would be required to furnish reply, in FORM GST REG-18 online through Common Portal to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/anomalies, if any, and shall furnish the details of compliances made or/and the reasons as to why their registration shouldn't be cancelled:

In case the intimation for suspension and notice for cancellation of registration is issued on ground of non -filing of returns, the said person may file all the due returns and submit the response.

For more information/ procedure about the suspension of Registration under Rule 21A kindly refer the detailed Circular.

GST Technical Updates – GSTN

Advisory on Selection of Core Business on GST Portal

Date: 06-03-2021

GSTN has enabled new feature to select One Core Business Activity on GST Portal.

Post login, a window will appear asking to select Core Business Activity from the following options:

- Manufacturer
- Trader
- Service Providers and others

Core Business means kind of business one primarily deal in.

If one falls in all the above categories, the option which has the largest component in the business activities need to be opted.

Advisory on Annual Return (GSTR-9)

Date: 24-02-2021

The taxpayers are advised to ensure that values are reported upto two decimal places in the GSTR-9 offline utility. The error “Error! Invalid Summary payload” after uploading the JSON created from the Offline Utility of GSTR-9 is reported due to reporting values upto three decimal places instead of two decimals.

Advisory on Reconciliation Statement (GSTR-9C)

Date: 22-02-2021

Reconciliation statement to be filed in Form GSTR-9C requires the tax rate wise declaration of transactions for the concerned financial year. In the said form, tax amount pertaining to tax rates 1%, 1.5% and 7.5% in section III (table 9 and 11) and section V may be made in row/ under label ‘Others’ of the said tables, wherever applicable.

GST – Judicial Precedents

1. Levy

Classification of Services by way of renting of e-bikes and bicycles without operator

In **Re: M/s. Yulu Bikes Pvt Ltd [2021 (2) TMI 994 – Appellate Authority for Advance Ruling, Karnataka]**, the appellant is engaged in renting of vehicles like e-bikes (Miracle), bicycles (Move) in Bengaluru, Karnataka through a technology driven mobility platform. The Appellant is charging GST at 18% on the renting of e-bikes Miracle and Move under HSN Code 9966. The Appellant was of the understanding that the services of renting of e-bikes to customers would be more correctly classifiable under HSN Code 9973 as “Leasing or rental services without operator”.

In this regard, the Appellant approached the AAR seeking a ruling on the question “Whether renting of e-bikes(Miracle), bicycles(Move) without operator can be classified under the SAC 9973 - Leasing or rental services without operator - Sl.No.17 (viiia) of Notification No.11/2017-Central Tax (Rate) dated 28th June 2017 as amended?”

The AAR vide its order held that “Renting of e-bikes/bicycles without operator cannot be classified under SAC 9973 - Leasing or rental services without operator and Sl.no.17 (viiia) of Notification no. 11/2017 CT(R) dated 28th June 2017 as amended is not applicable to the instant case.”

Aggrieved by the ruling given by the AAR, the Appellant has filed this appeal.

Held that: The agreement provides the rider access to use the vehicles (e-bikes and bicycles). Once access is provided, the rider uses the vehicle. However, while using such vehicle, there is no transfer of any interest in the vehicle in favour of the rider. What is used by the rider is the service which is provided by the Appellant. The rider never gets the possession of the vehicle. Getting access to use the vehicle does not tantamount putting the rider in possession of the vehicle. Except having access to the facility which the Appellant is providing by virtue of possessing such goods, no such right in the goods is transferred to the rider. Providing access does not amount to right to use goods. What is permitted under the User Agreement is a permission to have access to the vehicles and use the same in designated regions / areas for the designated period of time. In other words, the Appellant retains the effective control of the goods in all respects - there are no transfer in the right to use the goods and we hold that in the absence of any such transfer of the right to use the goods, the Appellant does not get covered under entry Sl.No 17(iii) of the Rate Notification. The appropriate correct entry is Sl. No. 17(viiia) i.e Leasing or renting of goods and the rate of tax will be the same rate of tax as applicable on supply of like goods involving transfer of title in goods.

GST – Judicial Precedents

2. Exemption

Exemption on transmission and distribution of electricity

In **Jodhpur Vidyut Vitran Nigam Ltd. v Union Of India**, [2021 (2) TMI 557 – Rajasthan High Court], the petitioner is a Public Sector Undertaking engaged in distribution and supply of electricity in various Districts of Rajasthan.

The petitioner has challenged Circular dated 01.03.2018, particularly Clause 4(1) thereof. It is to be noted that by way of this clarification following services provided by the DISCOMS have been held to be taxable:-

- Application fee for releasing connection of electricity;
- Rental Charges against metering equipment;
- Testing fee for meters/ transformers, capacitors etc.;
- Labour charges from customers for shifting of meters or shifting of service lines;
- Charges for duplicate bill.

Held that: A simple reading of Sl.No.25 of exemption Notification dated 28.06.2017 and the corresponding notification leaves no room for ambiguity that entire package of services namely transmission or distribution of electricity has been exempted - Whereas a perusal of impugned Circular dated 01.03.2018, particularly para No.4(1) reveals that the Circular has sought to bring in tax-net five services enumerated therein, regardless of the fact that complete bundle or package of services namely transmission and distribution of electricity by an electricity transmission or distribution utility have been exempted.

Attempt of chipping out some of the services, out of the complete package and treating them to be taxable is not only arbitrary and unreasonable but such exercise is also violative of provisions of Section 8 of the CGST Act - A circular cannot seek to clarify provisions of statutory notification dated 28.06.2017, which is otherwise unequivocal. There is no room for ambiguity or doubt, for which the GST Council was required to issue the circular. Respondents have as a matter of fact, levied tax on some of the services by carving them out that too by way of a circular under the cloak of a clarification.

The writ petition succeeds - para 4(1) of the impugned Circular dated 01.03.2018 is hereby quashed.

Comments:

The same view has been taken in case of Torrent Power Ltd. Versus Union of India – [2019 (1) TMI 1092 - Gujarat High Court].

GST – Judicial Precedents

3. Exemption

Supply of manpower services to University established by an Act of the State legislature is taxable under forward charge mechanism

In Re: KSF-9 Corporate Services Pvt. Ltd. [2021 (2) TMI 197 - Authority for Advance Ruling, Karnataka], the applicant is engaged in the business of security services such as providing guards and manpower services and housekeeping services to its customers. The taxpayer has secured a contract to supply security guards and housekeeping services to Kuvempu University against consideration of 3% of the wage of each worker deployed in the university.

The applicant contended that the service provided to University is exempted and not liable to discharge tax as provided under entry no. 3 of the notification no. 12/2017-CT(R) dated 28 June 2017 on account of the fact that University is being established by an Act of the Karnataka State legislature and therefore it qualifies to be a Government Authority.

Questions before the AAR: *Whether the taxpayer is liable to charge GST at the rate of 18% for providing security guards and housekeeping services to University?*

Held that: The nature of service provided by the taxpayer is supply of manpower and not pertaining to cleaning & other services and it shall be covered under SAC 99851 “employment services including personnel search, referral service and labour supply service”.

Such Service does not fall under the list of specified activities under article 243G of the Constitution (activity in relation to any function entrusted to a panchayat) or article 243W of the Constitution (activity in relation to any function entrusted to a municipality) therefore not exempted under entry no. 3 of the notification no. 12/2017-CT(R) dated 28 June 2017.

Further, supply of manpower service (other than security or cleaning or housekeeping services) provided to University (other than pre-school and education up to higher secondary school or equivalent) is not exempted under entry no. 66 of notification no. 12/2017-CT(R) dated 28 June 2017.

The University is an establishment of the State Government and therefore security services provided shall not attract tax under reverse charge basis under notification no. 29/2018-CT(R) dated 31 October 2018.

Based on the above observations, the taxpayer is liable to discharge the tax at the rate of 18% on the supply of manpower services under forward charge mechanism.

GST – Judicial Precedents

4. Valuation

Tax on manpower services only on the services charges or on the total bill amount

In **Re: M/s. KSF-9 Corporate Services Pvt. Ltd. [2021 (1) TMI 549 - Authority for Advance Ruling, Gujarat]**, the Applicant company is a Private Limited Company incorporated under the Companies Act, 1956 and entered into an agreement with the Karnataka State Rural Development & Panchayat Raj University, Karnataka State Warehouse Corporation for provision of manpower supply services. The recipients of the service instructed the applicant to charge GST @ 18% only on the service charges but not on total billed amount. Hence the applicant has sought advance ruling in respect of the following question:

Whether applicant should charge GST @ 18% for providing manpower services only on the services charges or on the total bill amount?

Held that: We proceed to examine the valuation of the manpower services. We invite reference to Section 9 of the CGST Act 2017, which is relevant to levy and collection of GST - Section 9(1) of the CGST Act 2017 stipulates that CGST shall be levied on all intra-state supplies of goods or services or both, on the value determined under Section 15. Thus, the value of the instant service need to be decided in terms of Section 15. Section 15 of the CGST Act 2017 deals with value of taxable supply and Section 15 (1) stipulates that “the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration of the supply”.

In the instant case, the applicant (supplier) and the recipients are not related and the price is the sole consideration. Therefore, the value of the taxable supply of manpower services of the applicant shall be the transaction value i.e. the total bill amount inclusive of actual wages of the manpower supplied and the additional 2% amount paid to the applicant.

GST – Judicial Precedents

5. Detention and Confiscation of Goods

E-way bill in which Clearing Agent of the petitioner erroneously entered its own name in the column of consignee

In **Robbins Tunnelling and Trenchless Technology (India) Pvt. Ltd. Versus the State of MP and others** [2021 (2) TMI 381 - Authority for Advance Ruling, Gujarat], the petitioner has imported boring machine cutter parts from its parent company from the United States of America (USA). Its clearing agent while shipping the goods from Custom Station, Mumbai to the Registered Office of the petitioner, generated E-way bill in which by mistake erroneously entered its own name in the column of consignee. During the movement of goods, the State Tax Officer of Anti Evasion Bureau, detained the vehicle and levied tax and penalty against the petitioner. Being aggrieved by the said order an appeal was preferred before the Joint Commissioner S.G.S.T. (Appeals), Bhopal and the concerned officer affirmed the order of tax and penalty levied by the State Tax Officer and rejected the appeal.

Held that: It is vehemently argued that the CBIC received various representations regarding imposition of penalty, in case of minor discrepancies in the details mentioned in the E-way bill, although there are no major lapses in the invoices accompanying the goods in movement. Consequently, a circular was issued, vide No. CBEC/20/16/03/2017-GST, dated 14-9-2018 by the Ministry of Finance, specifically stating that it has been informed that proceedings under Section 129 of the GST Act are being initiated for every mistake in the documents mentioned in para 3 of the said Circular. It is clarified that in case, a consignment of goods is accompanied with an invoice or any other specified documents and not with an E-way bill, proceedings under Section 129 of the GST Act may be initiated. Para 5 of the Circular further clarifies, that in case a consignment of goods is accompanied with an invoice or any other specified document and also with an E-way bill, proceedings under Section 129 of the GST Act may not be initiated. It is strenuously urged that the respondent/Appellate Authority is not justified in rejecting the appeal on the ground that the petitioner has not discharged its liability of payment of IGST Tax at the time of import. It is put forth that the point raised on behalf of the respondents, is totally incorrect because at the time of making of a Bill of Entry for home consumption, a sum of ₹ 11,12,134/- was paid accordingly along with Custom Duty.

The respondents are not justified in rejecting the appeal of the petitioner on the ground that the mistake committed while generating the E-way bill, was not a clerical error or a small mistake. The impugned orders passed by the respondents, confirming the tax and penalty are hereby quashed.

GST – Judicial Precedents

6. Transitional Provisions

Petitioner instead of submitting TRAN-1 form for claiming ITC submitted GSTR-3B

In **M/s. Neptune Plastics and Jai Enterprises Versus Union of India And Others** [2021 (2) TMI 434 – Jammu and Kashmir High Court], the petitioner, because of the lack of awareness about the procedure to claim the benefit, could not submit TRAN-1 within prescribed time but the respondents are denying the same to the petitioner though the petitioner had mentioned about the credit sought to be claimed, in GSTR-3B return submitted by the petitioner within the prescribed period. The respondents have neither disputed that the petitioner is not entitled to carry forward the said credit nor they have disputed the correctness of the amount. Even they have not disputed that the petitioner has not reflected the said credit in GSTR-3B filed within the stipulated time. Only objection that has been raised by the respondents is that TRAN-1 form was required to be submitted within the prescribed period but was not submitted by the petitioner. Learned counsel for the petitioner at this stage informs that the portal for submitting TRAN-1 is lying closed and it is not possible for the petitioner to submit the claim in TRAN-1.

Held that: The petitioner cannot be deprived of the benefit of claiming the credit lying in its account on the stipulated date only on the basis of procedural or technical wrangles that one form TRAN-1 was not filled by the petitioner particularly when the petitioner has reflected the said credit in its return GSTR-3B.

It is directed that the respondents to permit the petitioner to submit the TRAN-1 either electronically or manually on or before 15.03.2021 and the petitioner shall coordinate with the respondents for the submission of TRAN-1 as directed.

Comments:

This judgment explains that the merely due to procedural lapse, the substantial benefit shall not be denied to the assessee if the assessee has acted in the bona-fide belief and disclosed the facts in one way or the other.

GST – Judicial Precedents

7. Supply

Activities of Liaison Office constitute supply of services or not

In Fraunhofer-Gesellschaft Zurforderung Der Angewandtenforschung [2021 (2) TMI 1164 – Appellate Authority for Advance Ruling, Karnataka], the Appellant is an organization incorporated in Germany and is engaged in promoting applied research and development for the benefit of industry and society. The Appellant had established a Liaison Office in Bengaluru (also referred to as LO or Head Office or HO) which is an extended arm of the Head Office to carry out activities as permitted by the Reserve Bank of India. The Annexure to the RBI permission letter stipulates a number of conditions for establishment of liaison office in India and one such condition is that the liaison office will not generate income in India and will not engage in any trade/commercial activity. The LO only receives reimbursement of expenses from head office in order to meet its daily expenses in running the LO.

In this regard, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:

“Whether the activities of a liaison office amount to supply of services?”

Whether liaison office is required to be registered under CGST Act?

Whether liaison office is liable to pay GST?”

The AAR vide its order KAR ADRG No 50/2020 dated 08th Oct 2020 = 2020 (10) TMI 809 - AUTHORITY FOR ADVANCE RULING, KARNATAKA held as under:

“The liaison activities being undertaken by the applicant (LO) in line with the conditions specified by RBI amounts to supply under Section 7 (1) (c) of the CGST Act.

The applicant (LO) is required to be registered under CGST Act.

The applicant (LO) is liable to pay GST if the place of supply of services is India.”

Aggrieved by the decision, Appellant file this appeal

HELD THAT:- Establishment of a liaison office in India by foreign entities is regulated in terms of Section 6(6) of the Foreign Exchange Management Act (FEMA), 1999. A body corporate incorporated outside India (including a firm or other association of individuals) desirous of opening a liaison office in India has to obtain permission from the Reserve Bank of India under the provisions of FEMA, 1999.

GST – Judicial Precedents

7. Supply

Activities of Liaison Office constitute supply of services or not

In this case, the Appellant has been granted permission by RBI to act as a liaison office for its Head office in Germany. We find from the records that the parent company in Germany is engaged in promoting applied research and development for the benefit of industry and society. The RBI permission has been obtained to set up a liaison office in Bangalore. As per the RBI permission, the liaison office shall undertake only permissible activities as mentioned in Schedule II of FEMA Notification No 22/2000 RB dated 3rd May 2000 as amended - The RBI permission is subject to the condition that the liaison office will not generate income in India and will not engage in any trade/commercial activity. Annexure I to the RBI permission dated 11-06-2014 lists out the terms and conditions for approval of establishing the liaison office in India.

Since the parent company in Germany and the Appellant in India cannot be treated as separate persons but as one legal entity, the liaison activity performed by the Appellant for the parent company is in the nature of a service rendered to self. A service rendered to oneself does not come within the purview of 'supply' under GST. Therefore, the activities of the Appellant as a liaison office does not amount to a supply of service. The activities of the liaison office are not a 'supply' under Section 7(1)(a) of the CGST Act and will also not be covered under the ambit of clause 2 of Schedule I of the said Act.

Requirement of registration under GST - HELD THAT:- Section 22 of the CGST Act mandates that every supplier who makes a taxable supply of goods or services or both, whose aggregate turnover in a financial year exceeds ₹ 20 lakhs is required to be registered in the State from where he makes the taxable supply. The term 'taxable supply' is defined in Section 2(108) of the CGST Act to mean a "supply of goods or services or both which is leviable to tax under this Act" - the activities of the liaison office do not amount to a 'supply' under GST. Hence, there is no taxable supply and there is no requirement for obtaining a GST registration or payment of GST. When the liaison office is not required to be registered under GST, the question of whether they are a distinct person or establishment of distinct person is irrelevant.

Comment:

This ruling seeks to give the correct interpretation of law as the parent company in foreign country and the Liaison office in India cannot be treated as separate persons but as one legal entity. The liaison activity performed by the LO for the parent company is in the nature of a service rendered to self.



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