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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 - January 2022

Statutory Due Date	Type of Return	Period	Type of Taxpayer
10-01-22	GSTR-7	December-2021	TDS Deductor
10-01-22	GSTR-8	December-2021	E-Commerce Operator
11-01-22	GSTR-1	December-2021	Turnover more than INR 5 crore in the preceding FY & Turnover up to INR 5 crores and have opted for monthly return filing.
13-01-22	GSTR-1	October-December-2021	Turnover up to INR 5 Crores and under QRMP Scheme
13-01-22	GSTR-6	December-2021	ISD
18-01-22	CMP-08	October-December-2021	Composition Dealer
20-01-22	GSTR-3B	December-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
20-01-22	GSTR-5	December-2021	Non-Resident Taxable Person
20-01-22	GSTR-5A	December-2021	OIDAR
22-01-22	GSTR-3B	October-December-2021	Taxpayers opted for QRMP Scheme, having aggregate turnover upto INR 5 Cr for *Category A States
24-01-22	GSTR-3B	October-December-2021	Taxpayers opted for QRMP Scheme, having aggregate turnover upto INR 5 Cr for **Category B States

GST Compliance Calendar - January 2022

Notes:

Categories of Taxpayers whose Aggregate Turnover is upto INR 5 crore for the purpose of filing GSTR-3B:

* Cat A: Regular Taxpayers having an aggregate turnover of upto INR 5 crores whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.

** Cat B: Regular Taxpayers having an aggregate turnover of upto INR 5 crores whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.

GST Updates - Notifications

Notification No.	Summary of Notifications
38/2021 – CT dated 22.12.2021	<p data-bbox="368 375 1308 499">Seeks to bring into force from 01-01-2022, the amendment made in CGST Rules, 2017 vide Notification 35/2021-CT dated 24.09.2021.</p> <p data-bbox="368 534 1308 617">With effect from 01.01.2022 the following amendment shall be made effective:</p> <ul data-bbox="368 658 1308 1885" style="list-style-type: none"> <li data-bbox="368 658 1308 1100">• Linking of PAN with the Bank Account: Amendment to Rule 10A of CGST Rules to provide that a registered person shall furnish information with respect to details of bank account which is in name of the registered person and obtained on Permanent Account Number of the registered person within forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier. <li data-bbox="368 1135 1308 1307">• Linking of PAN with Aadhaar Number: In case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor. <li data-bbox="368 1342 1308 1885">• Mandatory Aadhaar Authentication for certain purposes: A registered person shall be mandatorily required to undergo Aadhaar Authentication for the following purposes: <ul style="list-style-type: none"> <li data-bbox="408 1556 1308 1638">➤ For filing of application for revocation of cancellation of registration; <li data-bbox="408 1674 1308 1757">➤ For filing of refund application in FORM RFD-01 under rule 89; <li data-bbox="408 1792 1308 1885">➤ For refund under rule 96 of the integrated tax paid on goods exported out of India.

GST Updates - Notifications

Notification No.	Summary of Notifications
38/2021 – CT dated 22.12.2021	<p>Seeks to bring into force from 01-01-2022, the amendment made in CGST Rules, 2017 vide Notification 35/2021-CT dated 24.09.2021</p> <p>Further, if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish her/his Aadhaar Enrolment ID slip along with following identification documents provided such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number:</p> <ul style="list-style-type: none"> ➤ Bank passbook with photograph; ➤ Voter identity card issued by the Election Commission of India; ➤ Passport ➤ Driving License <ul style="list-style-type: none"> • Consequential amendment in Rule 23 for mandatory Aadhaar Authentication for applying for revocation of cancellation of Registration: A registered person may submit an application for revocation of cancellation of registration if the said person has undergone with the Aadhaar Authentication.

GST Updates - Notifications

Notification No.	Summary of Notifications
38/2021 – CT dated 22.12.2021	<p>Seeks to bring into force from 01-01-2022, the amendment made in CGST Rules, 2017 vide Notification 35/2021-CT dated 24.09.2021</p> <p>Consequential amendment in Rule 89 and 96 for mandatory Aadhaar Authentication for application for refund:</p> <ul style="list-style-type: none"> ➤ A registered person may submit an application for refund of any tax, interest, penalty, fees or any other amount paid by him if the said person has undergone with the Aadhaar Authentication. ➤ A registered person may submit an application for refund of integrated tax paid on goods or services exported out of India if the said person has undergone with the Aadhaar Authentication.
39/2021 – CT dated 22.12.2021	<p>Seeks to bring into force the amendment made in Finance Act, 2021 w.e.f. 01-01-2022</p> <p>Seeks to appoints the 1st day of January, 2022, as the date on which the provisions of sections 108, 109 and 113 to 122 of the Finance Act, 2021 shall come into force which are discussed in brief as below:</p> <ul style="list-style-type: none"> • Definition of Supply Amended Retrospectively: Transaction between a person (other than an individual) and its members for consideration to be treated as a supply.

GST Updates - Notifications

Notification No.	Summary of Notifications
39/2021 – CT dated 22.12.2021	<p data-bbox="368 389 1308 472">Seeks to bring into force the amendment made in Finance Act, 2021 w.e.f. 01-01-2022</p> <ul data-bbox="368 507 1308 1939" style="list-style-type: none"> <li data-bbox="368 507 1308 638">• Omission of entry of supply of goods by unincorporated association in light of the new insertion in the definition of supply. <li data-bbox="368 673 1308 756">• Appearance of transaction in GSTR-2A/ GSTR-2B – A Mandatory condition for availment of ITC. <li data-bbox="368 791 1308 874">• Section 50: Interest on net tax liability made applicable retrospectively. <li data-bbox="368 909 1308 1040">• Detention and Seizure or confiscation to be a separate proceeding from the Demand / Recovery provisions. <li data-bbox="368 1075 1308 1164">• Direct recovery without SCN upon furnishing of details in GSTR-1 without tax payment in GSTR-3B. <li data-bbox="368 1199 1308 1288">• Provisional Attachment is now valid from initiation of proceedings. <li data-bbox="368 1324 1308 1413">• Filing of appeal against detention order upon payment of 25% penalty. <li data-bbox="368 1448 1308 1578">• Payment of only increased penalty for release of goods on account of Detention and Seizure under Section 129. <li data-bbox="368 1614 1308 1703">• Specified time limit for issuance of notice and order u/s 129. <li data-bbox="368 1738 1308 1827">• Delinking of Section 67(6) from Section 129 of CGST Act. <li data-bbox="368 1862 1308 1939">• Sell or dispose of goods upon non-payment of penalty for detention.

GST Updates - Notifications

Notification No.	Summary of Notifications
39/2021 – CT dated 22.12.2021	<p>Seeks to bring into force the amendment made in Finance Act, 2021 w.e.f. 01-01-2022</p> <ul style="list-style-type: none"> • Delinking of Detention and Confiscation proceedings. • Empowerment of Commissioner to call for information under Section 151 of CGST Act, 2017. • Providing of opportunity of being heard before using the called for information in any proceedings under Section 152 of CGST Act, 2017. • Power under Section 151 to call for information transferred from the Board to the Jurisdictional Commissioner. • Following amendments made to Section 16 of IGST Act: <ul style="list-style-type: none"> ➤ Supply to SEZ for authorized operations only to be treated as a zero rated supply ➤ Specification of time limit for realization of Foreign Exchange in case of Exports ➤ Export with payment of tax to be allowed to notified persons or notified goods /services only

GST Updates - CBIC Circulars

Clarification in respect of GST on service supplied by restaurants through e-commerce operators

Circular No. 167/23/2021-GST dated 17-12-2021

Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO). Clarifications are as follows:

- **Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?**
 - As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
- **Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?**
 - As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
- **Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?**
 - Yes. ECOs will be liable to pay GST on any restaurant service supplied through the including by an unregistered person.

GST Updates - CBIC Circulars

Clarification in respect of GST on service supplied by restaurants through e-commerce operators

Circular No. 167/23/2021-GST dated 17-12-2021

- **What would be the aggregate turnover of person supplying 'restaurant service through ECOs?**
 - It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act the person providing restaurant service through ECO shall account such services in his aggregate turnover
- **Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?**
 - No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
- **Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?**
 - ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO).

GST Updates - CBIC Circulars

Clarification in respect of GST on service supplied by restaurants through e-commerce operators

Circular No. 167/23/2021-GST dated 17-12-2021

- **Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?**
 - No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
- **Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?**
 - ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
- **Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?**
 - Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
- **Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?**
 - The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

GST Updates - CBIC Circulars

Clarification in respect of GST on service supplied by restaurants through e-commerce operators

Circular No. 167/23/2021-GST dated 17-12-2021

- **Clarification may be issued as regard reporting of restaurant services, value and tax liability etc. in the GST return**
 - A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

GST Updates - GST Technical Updates

Mandatory Aadhaar authentication for registered person

Dated 22-12-2021

The Central Government vide Notification No. 38/2021-CT dated 21.12.2021 has notified January 1, 2022 as the implementation date for Rule 10B of CGST Rules, 2017.

In the said rule, it is mandatory for the registered person to undergo Aadhaar authentication for the below purposes,

- Filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23 of CGST Rules, 2017
- Filing of refund application in FORM RFD-01 under Rule 89 of CGST Rules, 2017
- Refund of the IGST paid on goods exported out of India under Rule 96 of CGST Rules, 2017.

The taxable person, who have not yet authenticated their Aadhaar, may like to go through this authentication process before filing the above two applications and enabling GST system to validate and transmit the IGST refund data from GST system to ICEGATE system.

If Aadhaar number has not been assigned to the concern person for Aadhaar authentication as specified above, such person may undergo e-KYC verification by furnishing the following:

- a) She/he will feed Aadhaar Enrolment ID and upload the acknowledgement; and
- b) She/he shall also upload any one of the following documents:
 - i. Bank passbook with photograph; or
 - ii. Voter identity card issued by the Election Commission of India; or
 - iii. Passport; or
 - iv. Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988):

Provided further that such person shall undergo the Aadhaar authentication within a period of thirty days from allotment of the Aadhaar number.

Aadhaar authentication or e-KYC verification before filing of refund may be completed by navigating to "Dashboard > My Profile > Aadhaar Authentication Status"

GST News

Textiles ministry to approach GST Secretariat for restoration to 5% rate

Dated 16-12-2021

Union Ministry of Textiles, after receiving inputs from industry associations, has now decided to approach the GST secretariat seeking restoration of the rate of Goods and Services Tax (GST) to 5 percent, CNBC-TV18 reported.

“The industry is of the view that textile fabric manufacturers or fabric weavers will see a significant rise in their working capital requirements due to the disparity, as raw material will be taxed at 5 percent and the finished product will be taxed at 12 percent. So, they are seeking a restoration of the old rate of percent,” the source was quoted as saying by the report.

Officials told that, “The textiles ministry is opposed to the rate hike and feels that the industry needs relief. Any decision which adds to their troubles needs to be flagged. So, our communication to the GST secretariat is very clear maintain status quo on rates and make any change only after a detailed discussion with the ministry and the industry stakeholders”.

The industry has been clamoring for a reversal as it feels the move will make its products costlier, which will impact the sale.

Earlier this month, Raymond Group CFO Amit Agarwal told ETCFO that GST rate hike will deter demand, and that the company has plans to pass on the full increase.

GST – Judicial Precedents

1. Supply

Whether part recovery of cab services from employees in respect of the transport facility provided to them would be treated as supply?

Integrated Decisions and Systems India Pvt. Ltd. [AAR Maharashtra]

Facts: Applicant is primarily engaged in providing software development and support services to its holding company located outside India, provides transportation facility to its employees. The applicant, seeking an advance ruling whether part recovery of 'renting of motor vehicles services'/'cab services' from employees in respect of the transport facility provided to them would be treated as 'supply' as per provision of GST and whether GST is leviable on the same. What shall be valuation of said services and whether Input Tax Credit is admissible in respect of GST paid on such inward supply?

Held: GST is discharged on the gross value of bills raised on the applicant by the third party vendors. We also observe that the partial amounts recovered by the applicant from its employees in respect of use of such transport facility are a part of the amount paid to the third party vendors which has already suffered GST. Therefore, in the subject case, the applicant is not providing transportation facility to its employees, in fact the applicant is a receiver of such services.

For applicant, arranging the transport facility for their employees is definitely not an activity which is incidental or ancillary to the activity of software development, nor can it be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function. Thus, arranging transport facility to its employee is not a supply of service, accordingly the remaining questions become redundant and merit no discussion.

GST – Judicial Precedents

2. Input Tax Credit

Whether ITC to recipient is allowed when the supplier has not deposited the tax with the government collected from the recipient?

M/s LGW Industries Limited Vs Union of India [Calcutta High Court]

Facts: Petitioner filed Writ Petition challenging constitutional validity and vires of Section 16(2)(c) of CGST Act, 2017 which allow ITC only upon payment of tax by the supplier.

Held: The High Court observed that issue in present case was not regarding payment of tax by supplier. The department issued Notices contending that suppliers were fake and non-existing, the Petitioner did not verify genuineness and identity of suppliers before undertaking transactions with them, registration of suppliers was cancelled retrospectively etc. The Petitioner contended that it undertook necessary due diligence to the extent possible and all purchase invoices were duly reflected in GSTR-2A.

The Court remanded the matter back to department to consider documents relied on by the Petitioner to prove genuineness of its purchases (including payment of value of goods and GST thereon to suppliers).

The Court held that if purchases are found to be genuine and purchases were undertaken prior to cancellation of registration, benefit of ITC shall be allowed to the Petitioner.

CGA Comment: *Though the Honorable Court did not hold Section 16(2)(c) unconstitutional. However, this Judgment has perfectly laid down the proposition held that if purchases are found to be genuine, benefit of ITC shall be allowed to the Petitioner.*

GST – Judicial Precedents

3. Input Tax Credit

Whether GSTR-3B is a return or not under the provisions of GST Laws?

UOI Vs AAP And Company [Supreme Court]

Facts: The Hon'ble Gujarat High Court in AAP and Co. v. Union of India had held that, Form GSTR-3B is not a return under Section 39 of the CGST Act and it is only a temporary stop gap arrangement till due date of filing the return in Form GSTR-3 is notified. Further the Court held that the press release dated 18th October 2018 could be said to be illegal to the extent that its para-3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B.

Held: The judgement of the High Court has been expressly overruled by a three-Judge Bench decision of this Court in Civil Appeal - Learned counsel for the respondent was at pains to persuade us that the three-Judge Bench judgment can be distinguished, without realising that the three-Judge Bench judgment expressly overrules the impugned judgment. - Decided in favor of Revenue.

GST – Judicial Precedents

4. Supply

Whether GST is applicable on payment of notice pay recovery, medical insurance policy and telephone charges from an employees

M/s. Bharat Oman Refineries Limited [AAAR MP]

Facts: The AAR, Madhya Pradesh in the matter of M/s. Bharat Oman Refineries Limited held that, GST is applicable on payment of notice pay by an employee to employer in lieu of notice period and telephone charges, Group Medical Insurance Policy (“the Policy”) recovered from employees and free of cost canteen facility provided to employees. Further, Input Tax Credit (“ITC”) is not available with respect to canteen services provided by the employer to their employees. Aggrieved by the said Order, appellant filed appeal with AAAR.

Held: The AAR, Madhya Pradesh held as under:

Services by an employee to the employer in the course of or in relation to his employment have been placed out of the purview of GST. In present case also the said compensation which accrues to the employer is in relation to the services provided by the employee. Such compensation is related to the services not provided by him to the employer during the course of employment. In other words, the employer is being compensated for the employee's sudden exit. Merely because the employer is being compensated does not mean that any services have been provided by him or that he has 'tolerated' any act of the employee for premature exit - the Ld. AAR had erred in concluding that such activity was leviable to GST.

GST – Judicial Precedents

4. Supply

Whether GST is applicable on payment of notice pay recovery, medical insurance policy and telephone charges from an employees?

M/s. Bharat Oman Refineries Limited [AAAR MP]

W.r.t premium on Policy recovered Court held that the activity undertaken by the applicant like providing of mediclaim policy for the employees' non-dependent parents/ retired employees through insurance company neither satisfies conditions of Section 7 to be held as "supply of service" nor it is covered under the term "business" of Section 2(17) of CGST ACT 2017. Accordingly, facilitating medical insurance services to non dependent parents and retired employees upon recovery of premium amount on actuals cannot be considered as 'supply of service' under CGST Act or MPSGST Act.

Held that, The activity undertaken by the applicant like providing of telephone facility to employees through BSNL neither satisfies conditions of Section 7 to be held as "supply of service" nor it is covered under the term "business" of Section 2(17) of CGST ACT 2017. Accordingly, facilitating telephone connection to employees upon recovery of usage charges on actuals cannot be considered as 'supply of service' under COST Act or MPSGST Act.

Further, Canteen services would not be leviable to GST at the hands of the employer because of findings that the employer was merely a facilitator between the canteen service provider and the employee and that the employer was mandated to run a canteen under the Factories Act.

Input credit of GST paid to canteen service provider would be available to the appellant in terms of proviso under Section 17(5)(b) that the input tax credit in-respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law.

GST – Judicial Precedents

5. Input Tax Credit

Whether ITC is available on motor vehicle used for supplying services of car hire/rentals with the drivers?

M/s. New Pandian Travels Private Limited [AAR Tamil Nadu]

Facts: Applicant sought Advance Ruling on the following question:-

1. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented to customers will be available to it as ITC in terms of Section 17(5) (a)(A) of Central Goods and Service Tax Act, 2017?
2. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will be available to it as ITC in terms of Section 17(5)(a)(B) of Central Goods and Service Tax Act, 2017.
3. Whether the supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and whether ITC is admissible on Motor Vehicles procured and used commonly for such supply to SEZ and other than SEZ supplies?

Held: The contention of the applicant is that they are buying and using the vehicles for supplying services of 'Renting of Vehicles with Operators' and the same is 'further supply of such vehicles' in as much as 'Supply' as defined under Section 7 of the Act includes all forms of supply of goods or services such as rental, lease for a consideration in the course of furtherance of business - it could be construed that Section 17(5) (a) (A) of CGST Act, 2017 allows ITC of GST paid on purchase of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), only when the taxable person makes further supply of such motor vehicles.

GST – Judicial Precedents

5. Input Tax Credit

Whether ITC is available on motor vehicle used for supplying services of car hire/rentals with the drivers?

M/s. New Pandian Travels Private Limited [AAR Tamil Nadu]

The applicant in this case is a service provider, who provides service of renting/leasing motor vehicles. The taxable outward supply in this case does not include further supply of such purchased motor vehicles. Hence, the applicant is ineligible to avail ITC on motor vehicles as per section 17(5)(a) (A) of CGST Act 2017.

In the case at hand, from the various clauses of the agreement it is seen that the applicant is obligated to supply on rental/hire basis vehicles of particular standards with the drivers to their vendors - Therefore, it is evident that the supply made by the applicant is rental/hire of such vehicles and the activity of transportation of employee/associates is undertaken by the Vendor. Thus, in as much as the activity undertaken by the applicant is only renting/hiring of the Motor Vehicles with the operators and not undertaking transportation of passengers, the exception at S. 17(5)(a)(B) is not available to the applicant.

Further, according to Section 7(5)(b) read in conjunction with section 5(1) of IGST Act 2017, supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated as a supply in the course of inter-state trade or commerce and leviable to tax under IGST Act. Also, in accordance with Section 16(1) of IGST Act 2017, supply of goods or services to SEZ developer or SEZ unit is classified as "Zero rated supply". In addition, section 16(3)(a) of IGST Act 2017 enables a registered person to make zero rated supply under LUT without payment of IGST. Therefore, supply of renting/hiring of such Motor Vehicles to SEZ under LUT is a taxable supply. Further, ITC is not admissible on Motor Vehicles procured as the same is restricted at S. 17(5)(a)(A) of the Act.

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