

GST NEWSLETTER MARCH 2019

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ARTICLES

• AFFORDABLE HOUSING SCHEME:

The introduction of GST reportedly resulted in a slump in the real-estate with many projects having a low take off in their construction. This was mainly due to compliance concerns, uncertainties in the and lack of clarifications in GST law. One of the most affected areas is the 'Affordable Housing Schemes' that is undertaken by various developers. The scheme is meant for lower income groups who cannot afford houses especially in urban areas. But the GST council was lenient to those in the 'Affordable Housing Scheme' as it reduced the rate of GST chargeable on such houses from 18% to 12% (effective rate after exclusion of land value is 8%). However, starting from 1st April 2019 the rate has further been reduced to 1% GST for 'Affordable Housing Scheme'

What is an 'Affordable Housing Scheme' under GST till 31st March 2019?

As per notification no. 13/06/2009 dated 30th March, 2017 granting infrastructure status to affordable housing schemes; an 'Affordable Housing Scheme' has been defined as a housing project using at least 50% of the FAR/FSI for dwelling units with carpet area of not more than 60 sqm.

Further, low cost houses up to a carpet area of 60 square metres per house in a housing project approved under the affordable housing such as:

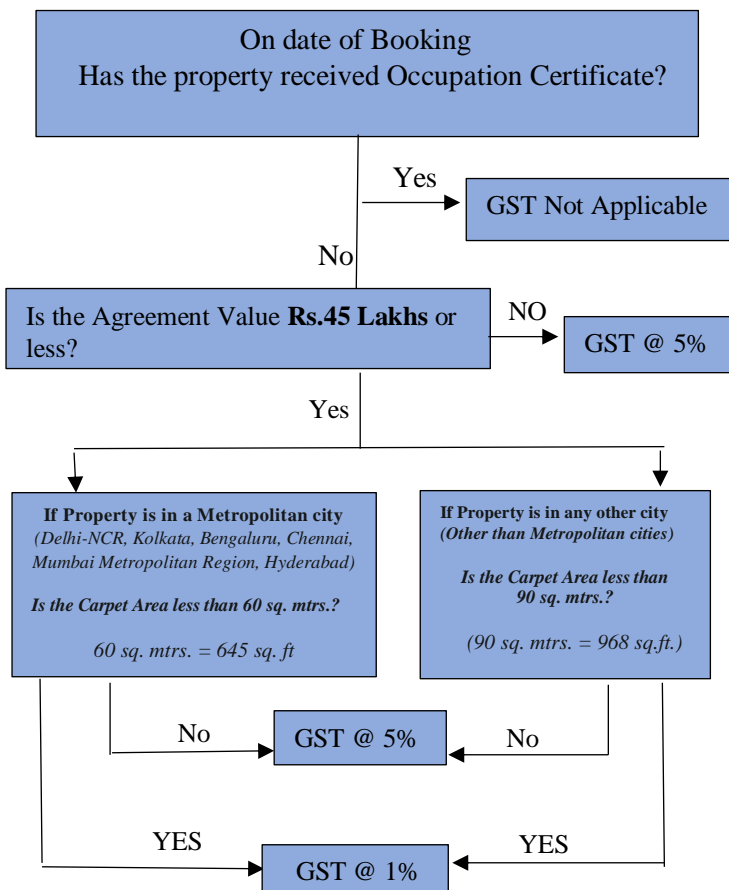
- housing schemes under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India and,
- Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; any housing scheme of a State Government.

What is an 'Affordable Housing Scheme' from 1st April 2019?

A residential house/flat of carpet area of upto 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value upto Rs. 45 lacs (both for metropolitan and non-metropolitan cities).

Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).

GST On Residential Properties w.e.f 01st April 2019



What is the GST impact on such schemes?

Up to 31st March 2019: As per notification no. 1/2018 dt. 25.01.2018 in case of low-cost houses the applicable GST rate is 12% (effective rate is 8% GST after excluding the value of land included in the price of the house) with Input Tax Credit eligibility to the developer.

From 1st April 2019: As per the recommendations of the 33rd GST Council meeting held on 24th February 2019 the GST rate in case of low-cost houses will be 1% without Input Tax Credit eligibility to the developer. It's unclear as of now, whether the 1% GST rate is excluding land value or not. If it's inclusive of land value then the effective rate after exclusion of land value of 1/3rd will be 0.67% GST.

CONCLUSION:

As seen from above, an 'Affordable Housing Scheme' under GST is now applicable to any housing scheme with carpet area up to 90 sqm / 60 sqm with value up to 45 lacs. It's to be seen whether the schemes will include various government schemes even if the value exceeds Rs. 45 lacs. Further, it's unknown what all values will be included in the calculation of Rs. 45 lacs and whether any costs such as taxes, sur-charges, registration fees etc will be excluded from such value.

CASE LAWS

Facts of the case: G. MURUGAN VERSUS GOVERNMENT OF INDIA, THE STATE TAX OFFICER

A Writ petition was filed by Mr. G. Murugan (Petitioner) with the Madras High Court challenging the Form GST MOV-6 (Order for detention) issued against him by the State Tax Officer - Roving squad (Respondent). When the petitioner was transporting goods for his customers the Respondent had carried out an inspection of the vehicle belonging to the petitioner and noticed that the vehicle number stated in the E-way bill was not the same as the vehicle carrying the goods. The vehicle was seized after issuance of Form GST MOV-06 by the respondent without giving any reasons for the same.

Provisions of the law:

As per Section 129 of the CGST Act, 2017 *Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-*

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.'

Ruling:

The Learned Judge held that the detention u/s 129 is only for cases where the Department is *prima facie* convinced that there is a contravention of the provisions of the Act and the Rules. The order of detention has to reflect the reasons for which the seizure of the conveyance/goods has been affected. The impugned order reveals that none of the relevant fields have been ticked and almost all fields have been left blank. It is thus entirely unclear as to what statutory provision or rule the petitioner has contravened. Further, the mistake of the incorrect Vehicle number being stated in the E-way bill may have crept in but the respondent is required to specify the contravention of the laws provided in the field of the order for the purpose. Hence, the present order of detention cannot be sustained and the same is quashed.

Facts of the case: M/S. ASEAN AROMATICS PRIVATE LIMITED VERSUS ASSISTANT COMMISSIONER (CIRCLE) GST, TAMIL NADU STATE GST

A Writ petition was filed by ASEAN (Petitioner) with the Madras High Court challenging the cancellation of their registration for non-filing of GST returns. The petitioner had replied to the Show-cause notice for cancellation by stating that the delay was due to severe working capital shortage and that the tax dues would be settled shortly. The petitioner has requested to pay the dues in six monthly installments but the registration was cancelled without giving due consideration to the petitioner's objections or requests.

Provisions of the law:

As per Section 29 of the CGST Act, 2017 the proper officer may cancel the registration of a person if they have failed to file the applicable returns for a period of six months or more. As per Section 30 of the CGST Act, 2017 read with Rule 23 of the CGST Rules, 2017 the cancellation can be revoked only if the returns have been filed along with the payment of any taxes, interest and penalty.

Ruling:

The learned Judge ruled that the GST act was still in its nascent stages and that the interests of small traders must be considered in granting relaxation in time limits. The learned Judge further ruled that the petitioner has already paid the first installment of Rs. 10,00,000 and thus directed the Commissioner of Central Taxes to consider the petitioner's circumstances and to pass orders on the petitioner for seeking leave to pay the pending dues within six installments.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF FEBRUARY 2019

- TWO CENTRAL TAX NOTIFICATION.
- ONE INTEGRATED TAX(RATE) NOTIFICATION.
- FOUR CENTRAL TAX CIRCULARS
- ONE INTEGRATED TAX CIRCULAR
- TWO CENTRAL TAX ORDER AND ONE UNION TERRITORIES TAX ORDER.

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to extend the due date for furnishing FORM GSTR-3B for the month of January, 2019 to 28.02.2019 for registered persons having principal place of business in the state of J&K; and 22.02.2019 for the rest of the States.	09/2019-Central Tax, dt. 20-02-2019
2.	Seeks to extend the due date for furnishing of FORM GSTR – 7 for the month of January, 2019 till 28.02.2019	08/2019-Central Tax, dt. 08-02-2019
3.	Seeks to rescind Sl. No. 10D of Notification No. 09/2017-Integrated Tax (Rate) dated 28.06.2017 in relation to exemption of IGST on supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.	02/2019-Integrated Tax (Rate), dt. 04-02-2019
4.	Seeks to give clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018.	91/2019-Circular no, dt.18-02-2019
5.	Seeks to clarify situations of compliance of rule 46(n) of the CGST Rules, 2017 while issuing invoices in case of inter- State supply.	90/2019 Circular no, dt. 18-02-2019
6.	Seeks to clarify situations of mentioning details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1.	89/2019 Circular no, dt. 18-02-2019
7.	Seeks to make amendments in the earlier issued circulars in wake of amendments in the CGST Act, 2017 (which shall come into force w.e.f. 01.02.2019).	88/2019- Circular no, dt.01-02-2019
8.	Seeks to make amendments in the earlier issued circulars in wake of amendments in the CGST Act, 2017 (which shall come into force w.e.f. 01.02.2019).	04/01/2019-GST, Circular no, dt 01-02-2019
9.	Seeks to amend Removal of Difficulties Order no 4/2018-CT to extend the due date for furnishing of FORM GSTR – 8 for the months of October, 2018 to December, 2018 till 07.02.2019	Order No. 2/2019 - Central Tax dt 01-02-2019
10.	Seeks to supersede Removal of Difficulties Order No. 1/2017 - Central Tax dated 13.10.2017 in view of the amendment to Section 10 of the CGST Act, 2017 (regarding allowing registered persons opting for Composition Scheme to supply services up to a limit) coming into force w.e.f. 01.02.2019	Order No. 1/2019 - Central Tax dt 01-02-2019
11.	Seeks to supersede Removal of Difficulties Order No. 1/2017 - Union Territory Tax dated 13.10.2017 in view of the amendment to Section 10 of the CGST Act, 2017 (regarding allowing registered persons opting for Composition Scheme to supply services up to a limit) coming into force w.e.f. 01.02.2019.	Order No. 1/2019 - Union Territories Tax dt 01-02-2019

DUE DATES OF GST FOR THE MONTH OF MARCH 2019

MARCH

2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10 *GSTR-7 & GSTR-8	11 *GSTR-1	12	13 *GSTR-6	14	15	16
17	18	19	20 *GSTR-3B/5/5A	21	22	23
24	25	26	27	28	29	30
31						

*Monthly return for taxpayer with Annual turnover more than Rs.1.50 Crores or Taxpayer who has opted Monthly return option.

Disclaimer:

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