

The background of the entire page is a warm, golden-brown image featuring a traditional Indian Diya (oil lamp) with several lit candles. The flames are bright yellow and orange, creating a soft, bokeh effect in the background. The Diya itself is dark and textured, with the wax of the candles visible.

VINAY & KESHAHA LLP

CHARTERED ACCOUNTANTS

Newsletter November 2018

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## ARTICLES:

### GST ANNUAL RETURN

The conclusion of September 2018 GST returns was a major landmark in the GST regime. It ended with reconciliations with GSTR 2A & Books of Accounts, contacting suppliers to upload B2B invoices and claiming ITC remaining unclaimed. However, it was just the beginning as the next major and maybe the biggest landmark is about to start, the GST Annual Returns and Audit. The GST Annual returns were notified by the CBIC in Notification no. 39/2018 – Central Tax and has to be filed by every registered tax payer by 31<sup>st</sup> December 2018 for the Financial year 2017-18.

Let us examine some of the important aspects that are relevant for GSTR 9 i.e Annual Return.

1. The annual return requires disclosure of B2B and B2C supplies made for FY 2017-18; both taxable and non-taxable supplies.
2. Details of supplies of FY 2017-18 have to be disclosed in two different manners:
  - a. The total of supplies disclosed in GSTR 1 in FY 2017-18 returns
  - b. The total of supplies disclosed in GSTR 1 in FY 2018-19 returns, but only up to September 2018.
3. Amendments made due to undisclosed / wrong invoices in GSTR 1 shall also be disclosed separately. *This shows that the Annual return relies more on GSTR 1 than GSTR 3B for supplies made by the tax payer.*
4. Reconciliation of the books of accounts and GST returns is paramount as any differences are to be reported and tax liability arising out of such differences are to be paid along with interest. Reconciliation is required for the following:
  - a. Between Invoices raised and books of accounts
  - b. Between books of accounts and GSTR 3B
  - c. Between books of accounts and GSTR 1
  - d. Between GSTR 3B and GSTR 1
  - e. Between Invoices raised and GSTR 1
5. Input Tax Credit in Annual return is auto-populated i.e it's taken from the GSTR 3B details filed by the tax payer for FY 2017-18. Hence, ITC of FY 2017-18 claimed in FY 2018-19 has to be disclosed separately. *Since, such ITC pertains to FY 2017-18 proper reconciliation with the books of accounts for FY 2018-19 is required especially as these details are to be excluded in the Annual return of FY 2018-19 next year.*
6. Details of ITC to be disclosed includes ITC reversed u/r 42 & 42 of CGST Rules, 2017 and Ineligible ITC disclosed u/s 17 (5) of CGST Act, 2017. This throws up some challenges depending on the level of disclosure and accounting by the tax payer:
  - a. In cases where ITC is not accounted by the tax payer separately and included in the cost of the expenses but not disclosed in GSTR 3B then such ITC reconciliation will not be possible as the figures in GSTR 3B and books of accounts will vary. Hence, it'll be best to rely on the information in GSTR 3B.
  - b. In cases where ITC is accounted by the tax payer separately but not disclosed in GSTR 3B, then there is no option to disclose that in Annual return. Hence, ITC figures will remain un-reconciled.
  - c. In cases where ITC is not accounted by the tax payer separately but included in the cost of the expenses and also not disclosed in GSTR 3B, then no issues will arise for disclosure or reconciliation.
7. Disclosure of ITC includes even the credit claimed in TRANS I & TRANS II as well. Hence, such ITC so claimed has to be accounted in the tax payer's books.

.....to be contd.

#### **Delay in Filing Annual Return**

Rs. 100 per day during which such failure continues subject to a maximum of 0.25% of the turnover in the State/UT

## CASE LAWS:

### 1. ADVANCE RULING ON CLASSIFICATION OF LIQUIDATED DAMAGES ON BREACH OF CONTRACT:

The applicant, Maharashtra State Power Generation Company Limited which had engaged various contractors for construction of power plants. In case of any delay in completion of projects the applicant deducted payment to be made for such projects as 'Liquidated Damages' as agreed in the contract. The applicant has approached the AAR, Maharashtra asking if such liquidated damages are subject to GST

**Law:** Clause 5(e) of Schedule II of the CGST Act, 2017 provides for 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;'

**Ruling:** It was held by the AAR, Maharashtra that held that liquidated damages being payment of damages or forfeiture of deposit received for breach of contract shall be subject to GST at 18% and classified as per Sl. No. 35 of notification no. 11/2017 – Central Tax (Rate) under the heading 9997 – 'Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).

### 2. ADVANCE RULING ON INTERMEDIARY SERVICES:

The applicant, M/s Toshniwal Brothers (SR) Private Limited, is engaged in providing marketing and agency services to an overseas company. It intends to classify the service being provided by them as 'Marketing services' which would be exports with zero-rate and not 'Intermediary services' which would be local supply.

**Law:** As per Section 13(8) of the IGST Act, the place of supply in case of Intermediary services shall be the location of supplier.

**Ruling:** The AAR, after examining the contract between the applicant and the overseas company stated that the contract clearly provides that the applicant shall receive 12% of the value of goods negotiated by the applicant. Hence this amounts to being an agent and is thus classified as intermediary services. Though the AAR has not given any judgement for place of supply, as per IGST Act, 2017 the place of supply shall be in India and hence shall be a local supply with 18% GST.

### 3. ADVANCE RULING ON ANTI-PROFITEERING BY CONSTRUCTION COMPANY:

The applicants are home buyers who had filed an application with DG (Anti-profiteering) against M/s Pyramid Infratech Pvt. Ltd. for not passing on the GST benefit accruing to the builder. The applicants were of the opinion that the builder had received huge monetary benefits after GST introduction as the builder was exempted from Service tax and could not claim ITC and were paying VAT @ 5.09% with ITC. But now the builder was claiming full ITC on all the inputs and the GST rate increase would not affect the cost of the builder as he had earned interest on the excess amount collected from them but had not utilised it for construction.

**Law:** As per section 171 of the CGST Act, 2017 provides that where any tax payer has gained due to reduction in tax liability or benefit of ITC, then it shall be passed on to the recipient.

**Ruling:** The AAR, after examination of the DG (Anti-profiteering) reports and submissions from the home-buyers and the builder held that the builder had gained from being eligible to claim ITC which he could not do before. Further, the increase in cost of raw materials would not have been a concern had the builder utilized the 62.5% of the total flat cost collected by him prior to GST implementation. However, the builder has only constructed 25% of the buildings. Also, the builder could not charge more than the agreed rate of 4,000 /sq.ft. as there was no escalation clause in the agreements and this cost has included all the price changes. Hence, the builder has to pass on the benefit to all the identifiable buyers of the flats for the disputed period and also in the future.

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## Notifications and Circulars for the period September 2018

- Eight Central Tax Notifications issued.
- One Integrated Tax & Two Union Territory Tax
- Five Circulars

SI No	Subject	Notification/ Circular No. Date of Issue
1	Seeks to make amendments (Thirteenth Amendment, 2018) to the CGST Rules, 2017.	60/2018-Central Tax, dt. 30-10-2018
2	Seeks to extends the time limit for furnishing the declaration in FORM GST ITC-04 for the period from July, 2017 to September, 2018 till 31st December, 2018	59/2018-Central Tax, dt. 26-10-2018
3	Seeks to provide taxpayers whose registration has been cancelled on or before the 30th September, 2018 time to furnish final return in FORM GSTR-10 till 31st December, 2018	58/2018-Central Tax, dt. 26-10-2018
4	Seeks to exempt post audit authorities under MoD from TDS compliance	57/2018-Central Tax, dt. 23-10-2018
5	Seeks to supersede Notification No. 32/2017-Central Tax, dated 15.09.2017	56/2018-Central Tax, dt. 23-10-2018
6	Seeks to extend the last date for filing of FORM GSTR-3B for the month of September, 2018 till 25.10.2018 for all taxpayers.	55/2018-Central Tax, dt. 21-10-2018
7	Seeks to make amendments (Twelfth Amendment, 2018) to the CGST Rules, 2017. This notification amends rule 96(10) to allow exporters who have received capital goods under the EPCG scheme to claim refund of the IGST paid on exports and align rule 89(4B) to make it consistent with rule 96(10).	54/2018-Central Tax, dt. 09-10-2018
8	Seeks to make amendments (Eleventh Amendment, 2018) to the CGST Rules, 2017. This notification restores rule 96(10) to the position that existed before the amendment carried out in the said rule by notification No. 39/2018- Central Tax dated 04.09.2018.	53/2018-Central Tax, dt. 09-10-2018
9	Seeks to supersede Notification No.8/2017 – Integrated Tax, dated 14.09.2017	03/2018-Integrated Tax, dt. 22-10-2018
10	seeks to notify the constitution of the Appellate Authority for Advance Ruling in the Union Territories (without legislature).	15/2018-Union Territory Tax, dt. 08-10-2018
11	seeks to notify the constitution of the Authority for Advance Ruling in the Union Territories (without legislature).	14/2018-Union Territory Tax, dt. 08-10-2018
12	Circular No. 72/2018 GST dated 26-10-2018 Circular to clarify the procedure in respect of return of time expired drugs or medicines	72/2018
13	Circular No 71/2018 GST dated 26-10-2018 Clarification on issues pertaining to registration as a casual taxable person & recovery of excess Input Tax Credit distributed by an Input Service distributor	71/2018
14	Circular No 70/2018 GST dated 26-10-2018 Clarification on certain issues related to refund	70/2018
15	Circular No 69/2018 GST dated 26-10-2018 Circular on Standard Operating Procedure for Processing of Applications for Cancellation of Registration submitted in FORM GST REG-16	69/2018
16	Circular No 68/2018 GST dated 05-10-2018 Notifications issued under CGST Act, 2017 applicable to Goods and Services Tax (Compensation to States) Act, 2017	68/2018



## Due dates of GST for the month of November 2018

# November 2018

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
4	5	6	7	8	9	10 GSTR-7 & GSTR-8
11 <span style="color: red;">μ</span> GSTR - 1	12	13 GSTR-6	14	15 GSR-7A	16 $\mu$	17
18	19	20 <span style="color: red;">μ</span> GSTR-3B/5/5A	21	22	23	24
25	26	27	28	29	30	
<span style="color: red;">μ</span> Monthly Return for Taxpayer with Annual Turnover more than Rs.1.50 Cr. Or Taxpayer who has opted monthly return option						

### Disclaimer:

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