

# GST NEWSLETTER FEBRUARY 2019

**VINAY & KESHAVA LLP**  
CHARTERED ACCOUNTANTS

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## ARTICLES

### • APPORTIONMENT OF CREDIT – APPORTIONMENT OF ITC ON EXEMPT SUPPLIES

GST laws have undergone a major change in the form of CGST Amendment Act, 2018 and these changes were made effective from 1<sup>st</sup> February, 2019. One of the major changes that has brought relief and reduced the number of litigations is the exclusion of Schedule III activities from Exempt supplies for apportionment of Input Tax Credit purposes.

### • APPORTIONMENT OF INPUT TAX CREDIT

As per Section 17(3) of the CGST Act, 2017, for apportioning Input Tax Credit the value of exempt supplies will include the following:

1. Goods notified in notification no. 02/2017-Central Tax (Rate), dt. 28-06-2017.
2. Services notified in notification no. 12/2017-Central Tax (Rate), dt. 28-06-2017
3. The supply of goods and services on which Input Tax Credit is restricted by way of notification. Ex: Restaurant services.
4. Alcoholic liquor for human consumption
5. Crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel
6. Transactions in Securities, Sale of land, and Sale of building as per Para. 5(b) of Schedule II
7. Goods or Services specified under Schedule III of the CGST Act, 2017.

In case of points 1 – 6 above, there was clarity on ITC not being available for the same, however, in case of point 7 there was a lack of clarity which led to litigations between well-meaning tax payers and the Central Board of Indirect taxes and Customs (CBIC).

**Schedule III of CGST Act, 2017 - Activities or transactions which shall be treated neither as a supply of goods nor a supply of services**

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3.
  - a. the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
  - b. the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
  - c. the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.

Explanation — for the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

The above activities when undertaken by any person may be considered as Supply under the definition of CGST Act, 2017 but will not be a supply of goods nor a supply of services under this Schedule III.

Ex: Under Section (102) of the CGST Act, 2017 Services means anything other than goods, money or securities. Hence, transaction in securities is neither a supply of goods nor a supply of services; but the same should be considered as 'exempt supply' for apportionment of ITC related to such transactions as stated in Section 17(3) above.

This resulted in varied interpretations about what constitutes exempted supply. Hence, the CBIC, in order to provide clarification inserted the following explanation under Section 17(3) in the CGST Amendment act, 2018.

Explanation: - For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule."

By providing the above explanation the CBIC has clarified that where any registered taxable person is making any of the supplies as stated in Schedule III it would not be considered as 'exempt supply' for the purpose of apportionment of ITC.

But there is an exception to this. The explanation above specifically excludes the sale of land and sale of building on which Completion certificate or Occupancy certificate has been obtained. Hence, any registered person who is making such supply of land or building as above will have to apportion the Input Tax Credit based on the turnover on taxable goods and turnover on the land or building.

## RCM ON SUPPLY FROM UNREGISTERED PERSONS - APPLICABILITY

### CONCLUSION:

The amendment to the GST Acts has clarified a long pending issue and ensured that Input tax credit is available to registered tax payers who make those supplies as stated in Schedule III except for Sale of land and Sale of building on which Occupancy certificate or Completion certificate has been obtained.

#### 1. Original Sec. 9(4) of CGST Act, 2017

- The GST on inward supplies from Un-registered person is payable by the registered recipient.

#### 2. NN. 08/2017-CT (rate) dt. 28/06/2017

- RCM on supply from Un-registered persons is exempted up to Rs. 5,000 per day.

#### 3. NN. 38/2017-CT (rate) dt. 13/10/2017

- RCM on supply from Un-registered persons is exempted without limit till 31st March 2018.

#### 4. Notifications for extension of exemption

- NN. 10/2018, NN. 12/2018 & NN. 22/2018 extends exemption on RCM on supply from Unregistered persons to 30th June 2018, 30th September 2018 & 30th September 2019 respectively.

#### 5. NN. 01/2019-CT (rate) dt. 29/01/2019

- Rescinds NN. 08/2017 which had exempted RCM on supplies from Un-registered persons.

#### 6. Amended Sec. 9(4) of CGST Act, 2017 (w.e.f 01/02/2019)

- The GST on inward supplies from Un-registered person is payable only on notified goods or services by notified registered recipients

#### 7. CONCLUSION

- RCM is applicable on notified goods and services and is payable only by notified class of registered persons from 1st February 2019. But such persons or goods & services are not yet notified and hence the RCM on supplies from un-registered persons are deemed to be abeyance till such notification.

## CASE LAWS

### AAR on Job-work for alcohol brewing / manufacturing.

#### Facts of the Case:

Crown Beers India Private Limited (Crown) is a manufacturer of beer and has entered into a Tie-up agreement with Privilege Industries Limited (PIL) under which Crown will reimburse PIL for the costs of raw materials, labour and other charges which PIL will incur for the manufacturing and also pay PIL a fixed cost for the manufacture of Beer. Crown has approached the AAR – Maharashtra to ask whether such service provided by PIL is subject to GST and if so, what is the rate of GST applicable.

#### Provisions of the Law:

As per Section 9(1) of the CGST Act, 2017 supply of alcoholic liquor for human consumption is not subject to GST.

#### Ruling:

The AAR has ruled that the reimbursement of costs to PIL is not subject to GST as there is no supply being made. Also, the supply of beer is not considered as service but the service of manufacturing, packaging and supplying beer for a fixed fee amounts to Job-work. The 'Fixed costs' paid to PIL by Crown is consideration for the Job-work being made by PIL and is subject to GST. The AAR has not prescribed the rate for which the Job-work is chargeable.

### AAR on Transportation costs charged as part of Composite supply:

#### Facts of the Case:

EMCO Ltd. is engaged in the business of manufacturing, supply & installation of products in power transmission & distribution. They have entered into a supply contract and a service contract which includes transportation charges incurred by EMCO for transporting the goods. EMCO hires a Goods Transport Agency (GTA) for this purpose and also pays the GST on Reverse Charge Mechanism (RCM). EMCO has approached the AAR - Maharashtra with the query if whether the transportation charges are chargeable to GST and if so, at what rate should it be charged?

#### Provisions of the Law:

Works contract u/s 2(119) means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. As per notification no. 11/2017 CT (R) 2017 dt. 28/06/2017 the GST rate 18%. Also, as per notification no. 12/2017 CT (R) 2017 dt. 28/06/2017 goods transported by road by other than GTA's and courier agencies is exempt.

#### Ruling:

The AAR has ruled that EMCO is providing Composite supply of Works contract which includes transportation charges as both the supply contract & service contract are to be considered as a single contract due to the clause in the contracts which was interpreted as 'breach of one contract will be deemed as breach of the other contract as well and hence, the entire value of the works contract including the transportation charges is chargeable at 18%. Further, the transportation service provided by EMCO is not independent of the Works contract service & hence not exempted either.

## NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF JANUARY 2019

- Seven Central Tax Notification & One Central Tax (Rate) Notification.
- Three Integrated Tax Notifications & One Integrated Tax (Rate) Notification.
- One Union Territory Tax Notification & One Union Territory Tax (Rate) Notification.
- One Compensation Cess Notification.
- Five Central Tax Circulars & One Central Tax Order.

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to extend the due date for furnishing of FORM GSTR – 7 for the months of October, 2018 to December, 2018 till 28.02.2019	07/2019-Central Tax, dt. 31-01-2019
2.	Seeks to amend notification No. 65/2017-Central Tax dated 15.11.2017 in view of bringing into effect the amendments (to align Special Category States with the explanation in section 22 of CGST Act, 2017) in the GST Acts	06/2019-Central Tax, dt. 29-01-2019
3.	Seeks to amend notification No. 8/2017-Central Tax dated 27.06.2017 so as to align the rates for Composition Scheme with CGST Rules, 2017	05/2019-Central Tax, dt. 29-01-2019
4.	Seeks to amend notification No. 2/2017-Central Tax dated 19.06.2017 so as to define jurisdiction of Joint Commissioner (Appeals)	04/2019-Central Tax, dt. 29-01-2019
5.	Seeks to amend the CGST Rules, 2017	03/2019-Central Tax, dt. 29-01-2019
6.	Seeks to bring into force the CGST (Amendment) Act, 2018	02/2019-Central Tax, dt. 29-01-2019
7.	Seeks to amend notification No. 48/2017 to amend the meaning of Advance Authorisation	01/2019-Central Tax, dt. 15-01-2019
8.	Seeks to rescind notification No. 8/2017-Central Tax (Rate) dated 28.06.2017 in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts	01/2019-Central Tax (Rate), dt. 29-01-2019
9.	Seeks to amend notification No. 10/2017-Integrated Tax dated 13.10.2017 in view of bringing into effect the amendments (to align Special Category States with the explanation in section 22 of CGST Act, 2017) in the GST Acts	03/2019-Integrated Tax, dt. 29-01-2019



<b>10.</b>	Seeks to amend notification No. 7/2017-Integrated Tax dated 14.09.2017 to align with the amended Annexure to Rule 138(14) of the CGST Rules, 2017.	02/2019-Integrated Tax, dt. 29-01-2019
<b>11.</b>	Seeks to bring into force the IGST (Amendment) Act, 2018	01/2019-Integrated Tax, dt. 29-01-2019
<b>12.</b>	Seeks to rescind notification No. 32/2017-Central Tax (Rate) dated 13.10.2017 in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts	01/2019-Integrated Tax (Rate), dt. 29-01-2019
<b>13.</b>	Seeks to bring into force the UTGST (Amendment) Act, 2018	01/2019-Union Territory Tax, dt. 29-01-2019
<b>14.</b>	Seeks to rescind notification No. 8/2017-Union Territory Tax (Rate) dated 28.06.2017 in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts	01/2019-Union Territory tax (rate), dt. 29-01-2019
<b>15.</b>	Seeks to bring into force the GST (Compensation to States) Amendment Act, 2018	01/2019-Compensation Cess, dt. 29-01-2019
<b>16.</b>	GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company.	86/2019- Circular number, dt 01-01-2019
<b>17.</b>	Clarification on GST rate applicable on supply of food and beverage services by educational institution.	85/2019- Circular number, dt 01-01-2019
<b>18.</b>	Clarification on issue of classification of service of printing of pictures covered under 998386.	84/2019- Circular number, dt 01-01-2019
<b>19.</b>	Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC).	83/2019 – Circular number, dt 01-01-2019
<b>20.</b>	Applicability of GST on various programmes conducted by the Indian Institutes of Managements (IIMs).	82/2019 – Circular number, dt 01-01-2019
<b>21.</b>	Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases.	Order-01/2019-GST, dt 31-01-2019

## DUE DATES OF GST FOR THE MONTH OF FEBRUARY 2019

FEBRUARY						
2019						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7 * GSTR-8 (Oct/Nov/Dec 2019)	8	9
10 * GSTR-7 & * GSTR-8 (Jan 2019)	11 * GSTR - 1	12	13 * GSTR-6	14	15	16
17	18 GSTR - 4	19	20 * GSTR-3B/5/5A	21	22	23
24	25	26	27	28		
* 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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