

GST NEWSLETTER DECEMBER 2019



INDEX

1. Articles

- **Recent changes in E-way Bill.....1**

2. Case Laws

- **Ruling on accommodation service to SEZ -AAR Karnataka.....4**
- **Ruling on E-commerce operators - AAR Karnataka.....4**

3. Notifications and circulars for the month of November 2019.....5

4. Due dates of GST for the month of December 2019.....7

ARTICLES

Recent changes in E-way Bill

The CBIC notified the date for blocking of E-way bills on non-filing of GST returns as 21st November, 2019. The rule for blocking of E-way bills was inserted in Notification no. 74/2018 – Central Tax dated 31st December, 2018. The restriction on E-way bills is intended by the CBIC as a way of disciplining tax payers who were irregular in filing GST returns and delaying payment of GST liability.

Rule 138E - Restriction on furnishing of information in PART A of FORM GST EWB-01:

The following is a gist of Rule 138E for better understanding:

1. It's applicable to all registered persons being consignor, consignee, transporter, an e-commerce operator or a courier agency.
2. Ability to raise E-way bills on E-way bill portal will be restricted till the returns are filed.
3. The CBIC has clarified that only non-filing of only GSTR 3B returns and CMP-08 (composition returns) will result in restriction on E-way bills.
4. The restriction will immediately take effect after GSTR 3B returns is not filed for a consecutive period of two months.

5. E-way bill cannot be raised if either the supplier, the recipient or even the transporter has not filed GSTR 3B / CMP-08 for consecutive two months.

Power to allow raising E-way bills even after non-filing of returns:

The Rule 138E provides power to the Commissioner of GST (Central / State / UT) to permit tax payers to raise E-way bills in spite of not filing their returns provided that sufficient cause and reasons are provided for the non-filing. The permission is to be applied for in writing to the jurisdictional GST Commissioner and can be granted at their discretion. However, currently these powers of the Commissioner are being used to unblock E-way bill only in cases relating to 'technical issues' such as returns being unable to be filed but E-way bill has been blocked or where E-way bill has not been unblocked even after filing of returns.

Who all should have filed returns for raising the E-way bill?

All the registered parties involved in a transaction. This includes the supplier of goods who will usually raise the E-way bill, the registered customer or recipient and the registered transporter. Hence, even if one of the parties in the transaction has not filed returns, then E-way bill cannot be raised.

How to address issues arising due to non-filing of returns?

1. The first step that any taxpayer, who's E-way bill profile is blocked, has to do is to file their returns immediately. This unblocks the E-way bill profile.
2. The returns to be filed are all the returns due for filing currently. Hence, filing one month's return will not unblock the E-way bill profile.
3. Once, the returns are filed, the E-way bill is unblocked automatically. However, the tax payer may unblock the E-way bill manually by selecting the option 'Search > Update Block Status' enter the GSTIN' and then click 'Update'.

What if one of the parties to the transaction is not registered?

Then E-way bill may be raised for such transactions and their details can also be updated in the E-way bill.

What about E-way bills raised before the date of blocking?

These E-way bills are valid and can be used for transportation of those goods.

Which party will be the most affected due to this new rule?

Transporters will be the most affected as they send various good consignments belonging to multiple parties in a single vehicle. When even one of the parties has not filed the returns, then E-way bills cannot be generated. Hence, transporters who generate E-way bills on behalf of clients will not be able to raise the same. This will result in either delay of goods delivery or off-loading and rescheduling of the delivery till the E-way bill is unblocked.

Some examples of E-way bills and blocking:

- A. Company X, a registered tax payer sends goods having consignment value of Rs. 65,000. The E-way bill is generated by him on 30th October, 2019. However, he has not filed GSTR 3B for September 2019 which was due on 20th October, 2019. Company X can generate the E-way bill.
- B. Company X, a registered tax payer sends goods having consignment value of Rs. 65,000. The E-way bill is generated by him on 19th November, 2019. However, he has not filed GSTR 3B for September 2019 and October 2019 which were due by 20th October and 20th November respectively. Company X can generate the E-way bill.
- C. Company X, a registered tax payer sends goods having consignment value of Rs. 65,000. The E-way bill is generated by him on 21ST November, 2019. However, he has not filed GSTR 3B for September 2019 and October 2019 which were

due by 20th October and 20th November respectively. Company X cannot generate the E-way bill.

- D. Transporter Y, a registered tax payer has to deliver goods having consignment value of Rs. 65,000 for Company X. However, Company X has not filed GSTR 3B returns for September 2019 and October 2019 and has asked Transporter Y to raise the E-way bill on his behalf. Transporter Y cannot able to generate E-way bills for Company X as 2 months GSTR 3B have not been filed by Company X.
- E. Company X is an un-registered supplier who has sold goods having consignment value of Rs. 65,000 to Company Z. However, Company Z has not filed GSTR 3B returns for September 2019 and October 2019. Hence, they cannot raise E-way bills as a recipient of Company X.

Recent Updates:

It has been noticed that the CBIC is blocking access to the E-way bill portal to any registered tax payer who has not filed just one month's return instead of two months. The blocking seems to happen only at the beginning of the month in which the second return is due to be filed. Example: If GSTR 3B return is not filed for the month of October 2019 by 30th November 2019, then on 1st December 2019 the E-way bill is blocked instead of on 21st Of December, 2019. This may be due a technical glitch or a deliberate move by the CBIC by interpreting that two months has being concluded on 1st December 2019 i.e. from 1st October, 2019.

Case laws:

1. Facts of the case: M/s. MAARQ SPACES PVT. LTD – AAR KARNATAKA

The applicant a property development company who has entered in a JDA with landowners for development of layouts for sale. The applicant is entitled to 25% of the sale value of a plot and the landowners will received remaining 75%. The applicant has approached the AAR to find out if Whether the activity of development and sale of land attract tax under GST? And, whether Rule 31 would apply for ascertaining the value of land and supply of service?

Provisions of law:

As per Section 7(2) – Activities and transactions specified in Schedule III shall not be treated as a supply of goods or services. Entry 5 of the Schedule III refers to Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. Further, as per Section 2(30) read with 2(90) – Composite supply is a supply consisting of two or more supplies which are naturally bundled and supplied and Principal supply is the supply which constitutes the predominant element of a composite supply.

Ruling:

The learned AAR held that, the applicant does not hold title to the land being developed as stated in the agreement. The applicant's main supply is the development of the land in order to make it marketable and entering into sale agreements for the applicant's share of 25% of the land is only ancillary. A mere agreement that the applicant will receive money only when the plots are sold is merely determining the time of receipt of consideration and does not influence the type of supply. Hence, the applicant is providing services and is liable to be taxed under GST. Rule 31 will apply on the total amount received by applicant which is 25% of the Market value.

2. Facts of the case: M/S. HUMBLE MOBILE SOLUTIONS PVT. LTD – AAR KARNATAKA

The applicant is developed an app from which interested parties can hire or appoint a driver for driving their own personal vehicles. The applicant will not provide any transportation services. The applicant also receives money from customers on behalf of the drivers, retains a percentage as service fees for using the app and pays the rest to the drivers. The applicant has approached the AAR to determine whether they are to collect tax at source (TCS) and whether they are covered under Notification No. 17/2017 Central Tax (Rate) and shall be deemed to be the supplier of services.

Provisions of law:

As per Section 52 of the CGST Act, 2017 subject to fulfilment of certain conditions, the E-commerce operator shall collect tax at 1% of the net value of taxable supplies i.e. total sales made in a month less the rejections or returns in that month. As per Notification No. 17/2017 Central Tax (Rate), only E-commerce operators being cabs, accommodation services and house-keeping services shall be liable to pay GST instead of the service providers.

Ruling:

The learned AAR held that, since the app of the applicant is used as a means of connecting a service provider and service receiver by way of digital means, the services are in the nature of E-commerce operator and hence liable to collect tax at source (TCS). However, the services provided by the applicant are not covered under Notification No. 17/2017, and hence, they are only liable to pay GST on the service charges collected from the drivers using the app to find customers and not the entire proceeds collected by them on behalf of the drivers.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF NOVEMBER 2019

- **Eleven Central Tax Notification.**
- **One Central Tax (Rate) Notification.**
- **One Integrated Tax (Rate) Notification.**
- **One Union Territory Tax (Rate) Notification.**
- **Five Central Tax Circulars.**
- **One Central Tax Order.**

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to notify the transition plan with respect to J&K reorganization w.e.f. 31.10.2019.	62/2019-Central Tax, dt. 26-11-2019
2.	Seeks to extend the due date for furnishing of return in FORM GSTR-3B for registered persons in Jammu and Kashmir for the month of October, 2019.	61/2019-Central Tax, dt. 26-11-2019
3.	Seeks to extend the due date for furnishing of return in FORM GSTR-3B for registered persons in Jammu and Kashmir for the months of July, 2019 to September, 2019.	60/2019-Central Tax, dt. 26-11-2019
4.	Seeks to extend the due date for furnishing of return in FORM GSTR-7 for registered persons in Jammu and Kashmir for the months of July, 2019 to October, 2019.	59/2019-Central Tax, dt. 26-11-2019
5.	Seeks to extend the due date for furnishing of return in FORM GSTR-1 for registered persons in Jammu and Kashmir having aggregate turnover more than 1.5 crore rupees for the month of October, 2019.	58/2019-Central Tax, dt. 26-11-2019
6.	Seeks to extend the due date for furnishing of return in FORM GSTR-1 for registered persons in Jammu and Kashmir having aggregate turnover more than 1.5 crore rupees for the months of July, 2019 to September, 2019.	57/2019-Central Tax, dt. 26-11-2019
7.	Seeks to carry out Seventh amendment (2019) in the CGST Rules, 2017. [Primarily related to Simplification of the Annual Return / Reconciliation Statement].	56/2019-Central Tax, dt. 14-11-2019
8.	Seeks to extend the due date for furnishing of return in FORM GSTR-7 for registered persons in Jammu and Kashmir for the months of July, 2019 to September, 2019.	55/2019-Central Tax, dt. 14-11-2019
9.	Seeks to extend the due date for furnishing of return in FORM GSTR-3B for registered persons in Jammu and Kashmir for the months of July, 2019 to September, 2019.	54/2019-Central Tax, dt. 14-11-2019
10.	Seeks to extend the due date for furnishing of return in FORM GSTR-1 for registered persons in Jammu and Kashmir having aggregate turnover more than 1.5 crore rupees for the months of July, 2019 to September, 2019.	53/2019-Central Tax, dt. 14-11-2019

11.	Seeks to extend the due date for furnishing FORM GSTR-1 for registered persons in Jammu and Kashmir having aggregate turnover of up to 1.5 crore rupees for the quarter July, 2019 to September, 2019.	52/2019-Central Tax, dt. 14-11-2019
12.	Seeks to insert explanation regarding Bus Body Building in Notification No. 11/2017-Central Tax (Rate) dt. 28.06.2017.	26/2019-Central Tax (Rate), dt. 22-11-2019
13.	Seeks to insert explanation regarding Bus Body Building in Notification No. 8/2017-Integrated Tax (Rate) dt. 28.06.2017.	25/2019-Integrated Tax (Rate), dt. 22-11-2019
14.	Seeks to insert explanation regarding Bus Body Building in Notification No. 11/2017-Union Territory Tax (Rate) dt. 28.06.2017.	26/2019-Union Territory tax(rate), dt. 22-11-2019
15.	Clarification on scope of the notification entry at item (id), related to job work, under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017-reg.	126/2019-Circular no dt. 22-11-2019.
16.	Seeks to clarify the fully electronic refund process through FORM GST RFD-01 and single disbursement.	125/2019-Circular no dt. 18-11-2019.
17.	Seeks to clarify optional filing of annual return under notification No. 47/2019-Central Tax dated 9th October, 2019.	124/2019-Circular no dt. 18-11-2019.
18.	Seeks to clarify restrictions in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017.	123/2019-Circular no dt.11-11-2019
19.	Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons- reg.	122/2019-Circular no dt.05-11-2019
20.	Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-18 till 31st December, 2019 and for FY 2018-19 till 31st March, 2020.	Order No.8/2019 - Central Tax dt. 14-11-2019

DUE DATES OF GST FOR THE MONTH OF DECEMBER 2019

DECEMBER							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	14	
15	16	17	18	19	20 *GSTR-3B/5/5A	21	
22	23	24	25	26	27	28	
29	30	31 *GSTR-9/9A/9C					
<p><i>*Monthly return for taxpayers with Annual Turnover more than Rs.1.50 Crores or Taxpayer who has opted Monthly return option.</i></p> <p><i>*Due dates are subject to changes by CBIC</i></p>							

Disclaimer:

The conclusions reached and views expressed in the Newsletter are matters of opinion based on our understanding of the facts, existing & anticipated tax laws and existing & anticipated rules. There can be no assurance that the tax authorities' or regulators may not take a position contrary to our views. Further, the content of this newsletter should not be used as a supporting to frame any opinions. All queries and clarifications on the content stated in this newsletter should be directed to Vinay & Keshava LLP Chartered Accountants through phone or email.

The information cited in this newsletter has been drawn from various sources & every effort has been made to keep the information cited in this newsletter error free. Vinay and Keshava LLP Chartered Accountants does not take any responsibility for typographical or clerical errors which may have occurred while compiling this newsletter.