

WEEKLY REVIEW

A Weekly Guide to Statutory Changes & Landmark Rulings



Goods and Services Tax

Statutory Changes

- ▶ **Due date for filing of GST Annual Return (GSTR-9/9A) & GST Audit (GSTR-9C) extended to November 30, 2019**

CBIC has extended the due date for filing of GST Annual Return and GST Audit from August 31, 2019 to November 30, 2019 for the period July, 2017 to March, 2018 [Order No. 7/2019-Central Tax, dated August 26, 2019]

- ▶ **Rectification facility has been extended to match invoices with shipping bills filed by the Exporters up to 31.07.2019**

CBIC has extended the rectification facility in respect SB005 error indicating invoice mismatches in shipping bills and GST returns for Shipping Bills filed up to July 31, 2019. [Circular No. 26/2019-Customs, dated August 27, 2017]

- ▶ **Circular issued on sanction of pending refunds due to mismatches between GSTR-1 & GSTR-3B for F.Y. 2018-19**

CBIC has extended the benefit of pending refund claims of exporters arising due to mismatches between GSTR-1 and GSTR-3B for the shipping bills filed during the period April, 2018 to March, 2019. Certificate from a Chartered Accountant is required to be furnished by October 30, 2019 evidencing that no discrepancy between amount refunded and IGST paid exists. [Circular No. 25/2019-Customs, dated August 27, 2019]

- ▶ **Central Govt. notifies the GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2019**

The Central Govt. has notified the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2019. These rules shall come into force on the date of their publication in the Official Gazette [Notification having G.S.R. 584 (E), dated August 21, 2019]

Case Laws

HC through an interim order allowed assessee to manually rectify Form GSTR-3B

Panduranga Stone Crushers v. Union of India [2019] 108 taxmann.com 511 (Andhra Pradesh)

The assessee filed writ petition before High Court of Andhra Pradesh to rectify GSTR-3B for the months of August and December, 2017 and January and February 2018.

The Honorable Court observed that as per the submissions made by the assessee, it reported IGST input tax credit in a column relating to import of goods and services instead of placing the same in all other ITC column of Form GSTR-3B. Reporting of ITC in wrong column was done by mistake by the assessee. The Court further observed that the issues raised in the writ petition required detailed examination.

Therefore, the Honorable Court by way of interim order permitted the assessee to rectify GSTR-3B statements manually in respect of abovementioned periods subject to the outcome of writ petition. The revenue authorities would process rectified statements submitted by the assessee in accordance with law.

AAAR could not condone the delay for filing an appeal beyond 30 days, hence appeal dismissed, being time barred

Nuetech Solar Systems (P.) Ltd., In re [2019] 108 taxmann.com 260 (AAAR - Karnataka)

The applicant is a seller of solar water heaters. Evacuated Tube Collectors (ETC) reduce the heat loss and are used for solar water heating system. It has sought an advance ruling to determine the classification and entitlement of ETC for concessional GST rate of 5%.

The Authority for Advance Ruling, Karnataka held that the product ETC does not generate electricity at any stage and cannot be treat-

ed as solar power-based device or its part. Hence, ETC is not entitled to concessional rate of 5% GST. The applicant filed an appeal before the Appellate Authority for Advance Ruling, Karnataka.

The Appellate Authority for Advance Ruling, Karnataka observed that the applicant has filed an appeal after 145 days from the date of receipt of order of AAR. As per the CGST Act, 2017, the appeal should be filed within 30 days from the date of communication of AAR's order. However, the Appellate Authority is empowered to extend the period of filing an appeal for a further period of 30 days if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within 30 days. Therefore, the Appellate Authority could not entertain the appeal beyond the extended period of 30 days.

The Appellate Authority for Advance Ruling, Karnataka dismissed the appeal on account of getting time barred, therefore, the question of determining the eligibility to concessional rate of GST on the product ETC will not arise.

Persons Registered in a particular State can't claim credit of GST paid on hotel services availed in other State

IMF Cognitive Technology (P.) Ltd., In re [2019] 108 taxmann.com 412 (AAAR - Rajasthan)

The applicant is engaged in development, designing and trading in all types of computer softwares. It procures hotel services in the Haryana State for which hotel charges Central GST and State GST of Haryana. It is registered under GST in the State of Rajasthan. It has filed an application for advance ruling to determine the availability of input tax credit of GST paid in Haryana.

The Authority for Advance Ruling, Rajasthan held that the ITC of GST paid in Haryana State shall not be available to the applicant registered in Rajasthan State. The applicant

filed an appeal before Appellate Authority for Advance Ruling, Rajasthan.

The Appellate Authority observed that credit of input tax is admissible to a registered person under GST subject to some conditions and restrictions.

Central GST is levied on all intra-State supplies where the location of supplier and place of supply are in the same State. For a person registered in Rajasthan, ITC of Central GST would be available to him, if the location of supplier and place of supply of services are in the same State, *i.e.*, Rajasthan. ITC of Central GST charged from the applicant in Haryana is not available as in this case both location of supplier and place of supply of services are in Haryana.

The Appellate Authority upheld the order of AAR that ITC of GST paid in Haryana State is not admissible to the applicant registered in Rajasthan State.

▶ No ITC on inward supplies to an in-house hospital providing medical facilities to employees

Chennai Port Trust, In re [2019] 108 taxmann.com 466 (AAR - Tamil Nadu)

The applicant is notified as a major port by the Central Government. It is a supplier of port services. It is maintaining in-house hospital within its port premises for providing medical facilities to its employees and pensioners. It has filed an application for advance ruling to determine the entitlement of input tax credit (ITC) on inward supplies of goods or services which are used to provide medical facilities to employees and pensioners.

The Authority for Advance Rulings, Tamil Nadu observed that under GST every registered person shall be entitled to take ITC on any supply of goods or services or both received by it which are used or intended to be used for business purposes. As per the provisions of blocked credits under GST, ITC

cannot be availed if such goods or services or both are used for personal consumption.

The applicant has its own in-house hospital where all services and medicines are provided free to the employees. These medical facilities are mandated to be provided as per Major Ports Act to its employees and pensioners. Goods and services such as medical equipments, apparatus, instruments and their repairing services are used for providing personal medical care to employees and pensioners of the applicant. Therefore, such medical facilities are for personal consumption of employees and pensioners and not for business purposes of the applicant.

The Authority for Advance Rulings, Tamil Nadu held that the applicant is not entitled to take ITC on inward supplies which are used to provide medical facilities to employees in its in-house hospital.

▶ Interest, late fee or penalty received in GST regime w.r.t. services rendered before 01.07.2017 are liable to GST

Chennai Port Trust, In re [2019] 108 taxmann.com 484 (AAR - Tamil Nadu)

The applicant is a supplier of port services. It has filed an application for advance ruling to determine the taxability under GST of interest, late fee or penalty received on or after 01.07.2017 in respect of services except continuous supply of services rendered before 01.07.2017.

The Authority for Advance Rulings, Tamil Nadu observed that the applicant leases/ rents the port space and collects lease rentals. The applicant has collected interest/late fee/ penalty for the delayed payment of consideration in the GST regime for the original service rendered before GST implementation, *i.e.*, before 01.07.2017. Separate invoices are raised by the applicant after 01.07.2017 for claiming such interest/late fee/penalty.

Payment of interest/late fee/penalty is a part of contract for supply of services to the port user in the course of business of the applicant. The applicant has tolerated the act of delayed payment of consideration of lease/rent. Therefore, this tolerance on the part of the applicant for the delayed payment of lease/rent by collecting interest/late fee/penalty is a separate supply of service. Since the payment received and invoice issued for interest/late fee/penalty is after 01.07.2017, GST is applicable on the same.

The Authority for Advance Rulings, Tamil Nadu held that interest, late fee or penalty received on or after 01.07.2017 in respect of services rendered before 01.07.2017 are liable to GST.

► **AAR rejects advance ruling application due to non-submission of technical details of goods supplied by applicant**

Prism Fluids LLP, In re [2019] 108 taxmann.com 486 (AAR - Tamil Nadu)

The applicant has filed an application for advance ruling to determine the HSN code and tax rate of the 'Oil Lubrication Systems'.

The Authority for Advance Rulings, Tamil Nadu observed that the applicant has stated that such oil systems consist of tank made of steel and built in strainer along with pumps, filters, heat exchangers, etc. To arrive at correct classification and tax rate of such oil systems, the applicant was to submit technical specifications with usage, drawings, description of each component used in oil lubrication systems. However, the applicant failed to furnish such technical details even after several opportunities of hearing were given to it.

Therefore, the Authority for Advance Rulings, Tamil Nadu rejected the advance ruling application of the applicant due to non-submission of technical details of goods supplied by it.

► **Chemical fertilizer 'Single super phosphate' exported out of India is taxable @ 18% GST**

Sai Fertilizers (P.) Ltd., In re [2019] 108 taxmann.com 509 (AAR - West Bengal)

The applicant is a manufacturer of chemical fertilizer 'single super phosphate' (SSP) used in both agriculture and industry. It intends to export SSP and pay IGST at the applicable rate. It has sought an advance ruling to determine applicable GST rate of SSP when it is exported out of India.

The Authority for Advance Rulings, West Bengal observed that under GST, SSP is taxable at 18% if it is not to be used as fertilizer, otherwise at 5% if it is to be used as fertilizer. Such benefit of concessional tax rate is not available when goods are not to be consumed in India. Therefore, SSP being exported is not to be used as fertilizer in India, as the place of supply will be the location outside India.

The Authority for Advance Rulings, West Bengal held that applicant is required to pay GST at 18% as SSP would be exported out of India.

► **Royalty paid to obtain license for mining lease from govt. for exploration of natural resources is taxed @ 18% GST**

Aravali Polyart (P.) Ltd., In re [2019] 108 taxmann.com 373 (AAAR - Rajasthan)

The applicant is engaged in mining of soapstone and dolomite in Rajasthan on the land taken on lease for which it is required to pay royalty to the State Government. It has sought an advance ruling to determine the applicable GST rate on leasing services provided by the State Government for which the applicant pays royalty.

The Authority for Advance Ruling of Rajasthan held that the applicant is required to pay GST at 18% in respect of said services under Reverse Charge Mechanism (RCM). The applicant filed an appeal before Appellate Authority for Advance Ruling of Rajasthan.

The Appellate Authority for Advance Ruling of Rajasthan observed that the said service is classified under SAC 997337 which covers licensing services for the right to use minerals including their exploration and evaluation. As per rate notification for services under GST, rate of GST in case of leasing and renting of goods, transfer of right to use any goods for any purpose or any transfer of right in goods without transfer of title shall be taxable at same rate of central tax as applicable on supply of like goods involving transfer of title in goods. However, the said services provided to the applicant by the State Government are neither related to leasing or renting of goods nor related to transfer of right to use goods or transfer of right in goods. Therefore, it should be covered under the residuary entry of the heading 9973 which attracts 18% GST.

The Appellate Authority for Advance Ruling of Rajasthan upheld the ruling by AAR that the royalty paid by the applicant to obtain license for mining lease from govt. for exploration of natural resources is taxable @ 18% GST.

► **Competent Authority to take possible steps after considering documents submitted by assessee for amendment to Tran-1**

QRS Retail Ltd. v. Commissioner Central GST Commissionerate [2019] 107 taxmann.com 441 (Ker.)

The assessee had filed writ petition before High Court of Kerala so as to enable it to amend Form GST Tran-1 and to claim eligible credit.

The Honorable Court directed the petitioner to reply along with all supporting documents in respect of communication received from the office of the Superintendent, Central GST and Central Excise, within one week. The Competent Authority after considering the reply and documents filed by the assessee should take the necessary steps within two months from the date of receipt of such reply.

► **HC directed Competent Authority to release detained goods & vehicle on furnishing of simple bond or bank guarantee**

Rai Prexim India (P.) Ltd. v. State of Kerala [2019] 108 taxmann.com 165 (Ker.)

The Competent Authority had detained the goods and vehicle of the assessee on the grounds that in the original E-way Bill there was mistake in showing place of delivery and in the revised E-way Bill incorrect value of the goods was shown. The assessee filed writ petition before High Court of Kerala.

According to High Court if the assessee had paid the tax as per the value shown in the original E-way Bill then, the goods could not be detained and would be released to the assessee.

The Honorable Court held that if it was found on verification that the assessee had paid the tax as per the value shown in the original E-way Bill, the goods and the vehicle would be released to the assessee on execution of simple bond. However, if the tax had not been paid as per the value shown in the original E-way Bill in that case, the goods and vehicle of the assessee would be released only on furnishing bank guarantee.