HAMMURABI & SOLOMON
Advocates & Corporate Law Advisors

GST Weekly Update

36th GST Council Meet

Decisions taken in 36th GST Council meeting held on 27th July 2019

A. GST rate related changes on supply of goods and services (changes to be effective from 1st Aug 2019)
i. The GST rate on all electric vehicles be reduced from 12% to 5%.
ii. The GST rate on charger or charging stations for Electric vehicles be reduced from 18% to 5%.
iii. Hiring of electric buses (of carrying capacity of more than 12 passengers) by local authorities be exempted from GST.
B. Changes in GST law:
i. Last date for filing of intimation, in Form GST CMP-02, for availing the option of payment of tax under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 (by exclusive supplier of services), to be extended from 31.07.2019 to 30.09.2019.
ii. The last date for furnishing statement containing the details of the self-assessed tax in Form GST CMP-08 for the quarter April, 2019 to June, 2019 (by taxpayers under composition scheme), to be extended from 31.07.2019 to 31.08.2019.
Circular No.109/28/2019- GST dated 22nd July 2019

Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members.

• RWA shall be required to pay GST on monthly subscription/contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also more than Rs. 20 lakhs.
• RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.
• Exemption from GST on maintenance charges charged by a RWA from its residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable.

(http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-109.pdf;jsessionid=109F3F9B53D5A92EB8112F8DE0E74F7E)

Circular No. 108/27/2019-GST dated 18th July 2019

Clarification in respect of goods sent/taken out of India for exhibition or on Consignment basis for export promotion.

• Such activity is in the nature of “sale on approval basis” wherein goods are sent / taken outside India for approval of the person located abroad. Such goods to be accompanied with a Delivery Challan.
• Activity of sending / taking specified goods out of India is not a zero-rated supply. Hence, execution of a bond or LUT, as per the provisions of the IGST Act is not required.
• In case such goods are sold fully or partially, within the stipulated period of six months, as per the provisions of Section 31(7) of the CGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad.
• In a scenario where such goods have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back.
• The sender can prefer refund claim even when the specified goods were sent/taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) the CGST Act read with rule 89(4) of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice.

(http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-108.pdf;jsessionid=87B4B0D3404F73E64E45BFA25E8FF367)

Circular No. 107/26/2019-GST dated 18th July 2019

Clarification on issues related to supply of Information Technology enabled Services (hereinafter referred to as "ITeS services") such as call center, business process outsourcing services, etc. and "Intermediaries" to overseas entities under GST and whether they qualify to be export of services or otherwise.

• The supplier of services would not be treated as "intermediary" even where the supplier of services qualifies to be "an agent/ broker or any other person" if he is involved in the supply of services on his own account.

• A supplier of ITeS services supplies services, on his own account to his client or to some customer of his client, such supplier will not be categorized as an "intermediary" in terms of sub-section (13) of section 2 of the IGST Act.

• A supplier of ITeS services located in India arranges or facilitates the supply of goods or services or both by a client located abroad to the customers of client then such supplier of services would be treated as intermediary as per the provisions of IGST Act. Such services may include support services, during pre-delivery, delivery and post-delivery of supply.

• A supplier of ITeS services supplying back end services on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad and/or to his client's customer. Such a supplier would qualify as intermediary or not would be determined on case to case basis keeping in view which set of services is principal/main supply.

(http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-107.pdf;jsessionid=DE0587DB26E39CF91B81B0DD183D5116)

M/S Commercial Steel Engineering Corporation v. The State of Bihar and ors. - IN THE HIGH COURT OF JUDICATURE AT PATNA (Civil Writ Jurisdiction Case No. 2125 of 2019)

In a recent judgement, in the matter of **M/S Commercial Steel Engineering Corporation v. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, Govt. of Bihar, Patna and ors,** dated 27/06/2019 held that the transitional credit claimed by a dealer can't be treated as an availment of the said credit when in fact an availment of credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or utilization.

It was further held that any rejection of claim for transitional credit does not bestow any statutory jurisdiction upon the assessing authority to correspondingly create a tax liability when neither any such outstanding liability exists nor such credit has been put to use. The Hon'bl court while allowing the writ petition filed under Article 226 of Constitution of India held that the provisions underlying section 73 of 'the Bihar Goods and Services Tax Act' is self-eloquent and the legislative intent reflected from a purposeful reading of the provisions is that even a wrongly reflected transitional credit in an electronic ledger on its own is not sufficient to draw penal proceedings until the same or any portion thereof, is put to use so as to become recoverable.

With Best Regards,

Team Hammurabi & Solomon Partners

T:+91-11-4155-1825, 41551825

HAMMURABI & SOLOMON
Advocates & Corporate Law Advisors

INDIA: Delhi | Gurugram | Mumbai | Bengaluru | Patna | Ranchi

Awards & Recognitions in various Practice Areas:

To know more about us please see our E - Profile or visit us at www.hammurabisolomon.com

Disclaimer:
This e-mail is intended for the addresses shown. This e-mail contains information that is confidential and protected from disclosure. Any review, dissemination or use of this transmission or its contents by persons or unauthorized employees of the intended organisations is strictly prohibited. The contents of this e-mail do not necessarily represent the views or policies of Hammurabi & Solomon or its employees.