



# GST

## *Recent Developments*

GST Council Meeting dated 10<sup>th</sup> Jan 2019

# Outcome of 32nd GST Council Meeting



## Threshold limit shall be increased to 40 Lakhs

- Effective April 1, the GST exemption threshold shall be raised from Rs 20 lakh to Rs 40 lakh (*except for service providers*)
- For hilly states and those in the North East, the threshold has been doubled to Rs 20 lakh.
- States will be able to choose if they want to keep the GST exemption limit at Rs 20 lakh or Rs 40 lakh

(Please note: This change will require amendment in all State and CGST Acts)

# Outcome of 32nd GST Council Meeting

## Composition limit increased to 1.5 Cr from the present 1cr

- Effective April 1, 2019, the existing Composition Scheme turnover threshold shall be raised to Rs 1.5 crore.

(Act already amended to facilitate this. Notification pending)

# Outcome of 32nd GST Council Meeting



**Quarterly payment but regular return annually.**

- For composition suppliers

# Outcome of 32nd GST Council Meeting

## Composition scheme for services

- Those providing services or mixed supplies (goods and services) with a turnover up to Rs 50 lakhs will now be entitled to avail composition scheme @ 6%.  
*(This change will require amendment in state/central acts)*
- Recent amendment act of 2018 had provided limit of 5 lacs or 10% of turnover in a state for mixed suppliers *(yet to be notified)*

Time limit to avail Input tax credit

# Amendment in section 16(4)

*Proviso added*

- Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018
- till the due date of furnishing of the return under the said section for the month of March, 2019
- in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18,
- the **details of which have been uploaded by the supplier** under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

**Order No. 02/2018-Central Tax**



# What if assessee has capitalised ITC?



Gujarat High court in CCE v/s Nish Fibres (2010) 257  
ELT 81 -

*If assessee has revised return by not claiming depreciation and availing the ITC and since no double benefit has been availed, therefore ITC can not be denied.*

# Can I claim ITC for RCM?

- Since the amended provision allows for claiming credit only in respect of invoices of FY 2017-2018 uploaded by supplier in form 2A;
- Thus any left out input credit on account of reverse charge or imports is not eligible for fresh credit under new proviso to section 16(4).

# Amendment in section 37

*2<sup>nd</sup> proviso added*

Provided further that the

- rectification of error or omission in **respect of the details** furnished under sub-section (1) (**of section 37**) shall be allowed
- after furnishing of the return under section 39 for the month of September, 2018
- till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019

Order No. 02/2018-Central Tax

# Section 34. Debit and Credit notes



34(2) – Credit notes	34(4) – Debit Notes
<p>(2) Any registered person who issues a <b>credit note</b> in relation to a supply of goods or services or both shall declare the details of such credit note</p> <p>in the return for the month during which such credit note has been issued</p> <p><i>but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier,</i></p> <p>and the tax liability shall be adjusted in such manner as may be prescribed:</p>	<p>(4) Any registered person who issues a <b>debit note</b> in relation to a supply of goods or services or both shall declare the details of such debit note</p> <p>in the return for the month during which such debit note has been issued</p> <p>and the tax liability shall be adjusted in such manner as may be prescribed</p>



# Returns

# Time limit increased for Annual return and GST audit



Old Date:  
31<sup>st</sup>  
December  
2018

New Date:  
30<sup>th</sup> June  
2019

 RODO No. 01 and 03/2018 dated 11<sup>th</sup> and 31<sup>st</sup> December 2018

# Extended timelines – GSTR 7 & 8



S L #	Months	Old due date	New due date
1	October 2018	10 <sup>th</sup> November 2018	31 <sup>st</sup> January 2019
2	November 2018	10 <sup>th</sup> December 2018	
3	December 2018	10 <sup>th</sup> January 2019	
4	January 2019	10 <sup>th</sup> February 2019 (no change)	

- 👉 Not. No. 66/2018 – CT dated 29<sup>th</sup> November 2018 (R-7)
- 👉 RODO No. 04/2018 dated 31<sup>st</sup> December 2018 (R-8)



# Extended timelines – ITC-04



SL #	Period	New due date
1.	July 2017 Till December 2018	31 <sup>st</sup> March 2019
2	January 2019 Till March 2019	25 <sup>th</sup> April 2019

👉 Not. No. 78/2018-CT dated 31<sup>st</sup> December 2018

# Migration

# Migration– Another Opportunity



- The persons who did not file the complete FORM GST REG-26 but received only a Provisional Identification Number (PID) till the 31<sup>st</sup> December, 2017 may now apply for permanent GSTIN.
- Details as per table in not. 31/2018 to be filed with Jurisdictional Nodal officer latest **by 31<sup>st</sup> Jan 2019.**
- Procedure to be completed by **28<sup>th</sup> Feb 2019**

☞ Not. No. 67/2018 – CT dated 31<sup>st</sup> December 2018, read with Not. No. 31/2018-CT dated 6<sup>th</sup> August 2018.

# Migration – Extended Timelines GSTR-1



**For RTP with Aggregate TO  $\leq$  1.5 Cr :**

<b>SL #</b>	<b>Quarter</b>	<b>Time period for furnishing the details in FORM GSTR-1</b>
1	July 2017 – December, 2018	31 <sup>st</sup> March 2019
2	January 2019 - March, 2019	30 <sup>th</sup> April, 2019

**For RTP with Aggregate TO  $>$  1.5 Cr :**

<b>SL #</b>	<b>Months</b>	<b>Time period for furnishing the details in FORM GSTR-1</b>
1	July 2017 till February 2019	31 <sup>st</sup> March 2019
2	March 2019	11 <sup>th</sup> April 2019

☞ Not. No. 71 and 72/2018-CT dated 31<sup>st</sup> December 2018

# Migration – Extended Timelines GSTR-3B



For all RTPs

SL #	Months	Time period for furnishing the details in FORM GSTR-1
1	July 2017 till February 2019	31 <sup>st</sup> March 2019
2	March 2019	20 <sup>th</sup> April 2019

☞ Not. No. 68 and 69/2018-CT dated 31<sup>st</sup> December 2018

## Late Fees

# Late fee waiver

Late fees for waiver for the month/Quarters of **July 2017 to September 2018**

For GSTR-3B, GSTR-1 and GSTR-4 only

Only if said returns were not filed till **December 21<sup>st</sup> 2018**

- ☞ Not. No. 75, 76 & 77/2018-CT dated 31<sup>st</sup> December 2018
- ☞ Waiver is only for late fees, interest shall still be applicable, since there is no extension in due date of filing GSTR-3B.
- ☞ Late fee is still applicable for statements/returns of tax periods beyond September 2018.

## TDS exemption



# Applicability of TDS provisions at present (before change)



- a) a department or establishment of the Central Government or State Government; or
- b) local authority; or
- c) Governmental agencies
- d) an authority or a board or any other body, -
  - (i) set up by an Act of Parliament or a State Legislature; or
  - (ii) established by any Government,with fifty-one per cent. or more participation by way of equity or control, to carry out any function;
- e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- f) public sector undertakings.

# Change...



If any supply of goods or service or both takes place between above 6 types of persons, provision of TDS u/s 51 shall not be applicable.

☞ Not. No. 73-CT dated 31<sup>st</sup> December 2018

# Existing exemptions to continue

- Any supply by any registered supplier to authorities under the Ministry of Defence, other than the authorities specified in the Annexure-A and their offices to not. No. 57/2018 dated 23-10-2018
- Intra state supplies made by unregistered supplier to a deductor who is not liable to compulsory registered under normal provisions of Act.
- All inter state supplies

## TCS registration

# TCS Registration



- Section 52 requires E-Commerce operator (*ECOMO*) to obtain registration in each state, where its supplier are situated.
- This mandated physical present in each state for registration and other compliances.
- Now, if *ECOMO* does not have physical presence in state B but has presence in state A, he may obtain registration in state B, based on principal place of business in state A.

*(Amended rule 12. Not. No. 74/2018-CT dated 31<sup>st</sup> December 2018)*

## E-way bill

# Restriction on e-way bill

No person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 *in respect of a registered person*, whether as a supplier or a recipient, who has not furnished the returns

- A. if composition supplier – for 2 consecutive tax periods (i.e. 2 quarters).
- B. Others – for 2 consecutive months

Jurisdiction commissioner may on sufficient cause and reasons may allow submission as well

*(Amended rule 138E. Not. No. 74/2018-CT dated 31<sup>st</sup> December 2018) (not yet enforced)*

# New exemptions

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# Not No. 28/2018-CR dated 31-12-2018



- Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana
- Services provided by GTA by way of transport of goods to –
  - a) Department or Establishment of the Central Government or State Government or Union territory;
  - b) local authority; or
  - c) Governmental agencies,which has taken registration under the CGST Act only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services.

# Not No. 28/2018-CR dated 31-12-2018



- Services supplied by Central / State / Union Govt. to their undertakings or PSU's by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions

*(corporate guarantee for fellow PSUs)*

# Services provided by rehabilitation professionals



- Recognised under the Rehabilitation Council of India Act, 1992 (34 of 1992)
- by way of rehabilitation, therapy or counselling and such other activity as covered by the said act
- At medical establishments, educational institutions rehabilitation centers, established by Central/State Government or Union territory or an entity registered under section 12AA of the Income- tax Act, 1961 (43 of 1961).

# Reverse charge on security services

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# Security services

w.e.f. 01-01-2019 -

- A registered person
  - shall be liable to pay tax on security services (Services provided by way of supply of security personnel)
  - provided by any person other than a body corporate
- ➡ “Body Corporate” has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

# Exceptions



Not applicable to following recipients –

1. Department or Establishment of Central/State Government/Union territory or local authority or Governmental agencies, which has taken registration under CGST Act only for TDS purposes.
2. A registered person paying tax under section 10 of GST Act. i.e. composition supplier

# Section 2(11) of Companies Act



(11) “body corporate” or “corporation” includes a company incorporated outside India, but does not include—

- (i) a co-operative society registered under any law relating to co-operative societies; and
- (ii) (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

# Is LLP a body corporate?

Per Ramaya, 2015 edition, Page 57 –

an LLP is a body Corporate within the meaning of section 2(11) of Companies Act, 2013.



# Case Studies



Provider	Recipient	Tax
Unregistered Person (Non-Body Corporate)	Unregistered	No Tax
Unregistered Person (Body Corporate)	Composition tax payer	No Tax
Registered Person (Non-Body Corporate)	Regular tax payer	FCM
Registered Person (Non-Body Corporate) Providing cash van security services	Regular tax payer	RCM
Registered Person (Non-Body Corporate)	Unregistered	FCM

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# Recent circulars

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Circular no. 76

# Question no. 1

Q: Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?

A:

- Yes, it is a taxable supply.
- If sold to RTP – RCM applicable (*not. 36/2017-CTR and 37/2017-ITR*)
- If sold to URTP – Govt. Department to charge under FCM.

# Question no. 2



Q: Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?

A:

- Per sec.73(11), a penalty can be imposed if self assessed tax not paid within 30 days of due date
- Sec.73(11) is dependent on sec.73(1), which can be invoked only in case of non-payment or short payment.
- So if tax paid before issue of SCN, no penalty u/s 73(1), but general penalty u/s 125 may be levied.

*(Presenter's view: Section 125 is attracted only if there is no specific penalty for a particular offence. Since 73(11) provides for a specific penalty, thus even if penalty u/s 73(11) could not be levied, for reasons mentioned above, penalty u/s 125 cannot be initiated as well.)*

## Question no. 3

Q: Debit or credit note issued in relation to supply during pre-GST regime u/s 142(2)(a). Applicable tax rate for such notes?

A:

In case of revision of prices u/s 142(2)(a), the rate as per the provisions of the GST Acts (both CGST and SGST or IGST) would be applicable.

## Question no. 4

Q: Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of notification No. 50/2018-Central Tax dated 13.09.2018.?

A: The provisions of section 51 of the CGST Act are applicable only to -

- such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government
- in which fifty one per cent. or more participation by way of equity or control is with the Government.

*(both conditions must be applicable simultaneously)*

## Question no. 5

Q: What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961

A: It is clarified that as per the provisions of section 15(2), taxable value for the purposes of GST **shall include the TCS amount collected under the provisions of the Income Tax Act** since the value to be paid to the supplier by the buyer is inclusive of the said TCS.

*(Kerala High Court in the case of PSN Automobile Private Limited has granted interim stay on this)*



# Question no. 6



Q: Who will be considered as the “owner of the goods” for the purposes of section 129(1) of the CGST Act?

A: It is hereby clarified that if the invoice or any other specified **document is accompanying** the consignment of goods, then *either* the consignor or the consignee should be deemed to be the owner.

If the invoice or any other specified document is **not accompanying** the consignment of goods, then in such cases, the *proper officer* should determine who should be declared as the owner of the goods.

## Circular no. 77 – Denial of composition

## Rule 6 – Validity of composition levy



(1) The option exercised by a registered person to pay tax under section 10 shall remain valid so long as ***he satisfies all the conditions mentioned in the said section and under these rules.***

(2) The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 ***from the day he ceases to satisfy any of the conditions mentioned in section 10*** or the provisions of this Chapter ...

# Denial of composition

Q1: What would be the effective date, where taxpayer has opted out of composition u/r 6(3) by filing CMP-04?

A:

1. The effective date shall be the date indicated by him in his intimation/application filed in FORM GST CMP-04
2. Such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed (i.e. not earlier than 1<sup>st</sup> April of filing)

# Denial of composition

Q2: What would be the effective date, where denial of option by the tax authorities u/r 6(4)?

A:

1. The effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules

# Denial of composition

A: contd...

2. In such cases, as provided under Section 10(5), the proceedings would have to be initiated under the provisions of section 73 or 74 for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in FORM GST CMP-07.

# Denial of composition

A: contd...

3. It is also clarified that the registered person shall be liable to pay tax under section 9 of the CGST Act from the date of issue of the order in FORM GST CMP-07.
4. Provisions of section 18(1)(c) of the CGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order

## Circular no. 78 – Refund related issues



## a. New refund filing procedure

- A. All documents/undertaking/statements to be submitted along with the claim for refund in FORM GST RFD-01A shall be uploaded on the common portal at the time of filing of the refund application.
- B. Only those copies of documents (ITC invoices) to be uploaded where which are missing in form 2A. No need to file any application or any kind of physical papers.
- C. However physical submission is optional for assessee (that does not mean online RFD-01A should not be filed completely)

## a. New refund filing procedure

- D. The ARN will be generated only after the claimant has completed the process of filing the refund application in FORM GST RFD-01A, and has completed uploading of all the supporting documents / undertaking / statements / invoices and, where required, the amount has been debited from the electronic credit/cash ledger.
- E. The moment ARN is generated, it shall be transferred electronically to JPO's login.
- F. Time limit of 15 days to issue acknowledgment shall start from ARN generation date.
- G. However acknowledgement or deficiency memo to be issued manually only.

## a. New refund filing procedure

- H. PO shall have to re-assign application to correct JPO, within 3 days, in case it is tfrd electronically to wrong PO. No deficiency memo to be issued simply on the ground of incorrect jurisdiction.
- I. Where the facility of electronic re-assignment is not available, the present arrangement shall continue.
- J. Rectified application after issuance of deficiency memo to be submitted manually only.

## **b. ITC of GST paid on invoices of earlier tax period availed in subsequent tax period**



**Q:** ITC invoice of August 2017, claimed in September 2017 return. Field officers are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2017

**A:** The ITC of invoices issued in August, 2017, “availed” in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017.

## c. Issue of same rate ITC for the purpose of inverted duty refund

### Issue:

The departmental officers are denying the refund

- of ITC of GST paid on those inputs
- which are procured at equal or lower rate of GST than the rate of GST on outward supply,
- by not including the amount of such ITC
- while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules .

## c. Issue of same rate ITC for the purpose of inverted duty refund

### Clarification:

Where

- there are multiple inputs
- attracting different rates of tax,
- in the formula provided in rule 89(5) of the CGST Rules,
- the term “Net ITC” covers the ITC availed on all inputs in the relevant period,
- irrespective of their rate of tax.

## d. Old online refund applications not submitted physically



1. All refund applications in which the amount claimed is less than the statutory limit of Rs. 1,000/- should be rejected and the amount re-credited to the electronic credit ledger of the applicant through the issuance of **FORM GST RFD-01B**.
2. For other cases, a communication may be sent to all such claimants on their registered email ids, informing that the application needs to be physical submitted to the jurisdictional tax office within 15 days of the date of the email.

## d. Old online refund applications not submitted physically



3. If no physical application is received within 15 days of email, the application to be summarily rejected and the debited amount, if any may be re-credited to e-credit ledger.
4. For cash ledger refunds, application filed on or before 30<sup>th</sup> December 2018 may be rejected and amount re-credited to cash ledger, provided there is no outstanding liability in liability ledger.



## e. Misinterpretation of the meaning of the term “inputs”



Q: Field officers deny refund on ITC on stores, packing materials, material for machinery repair on the ground that either not consumed in the manufacturing process or are considered capital goods, even if not capitalised.

A: The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs satisfy conditions of section 16.

Further, Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

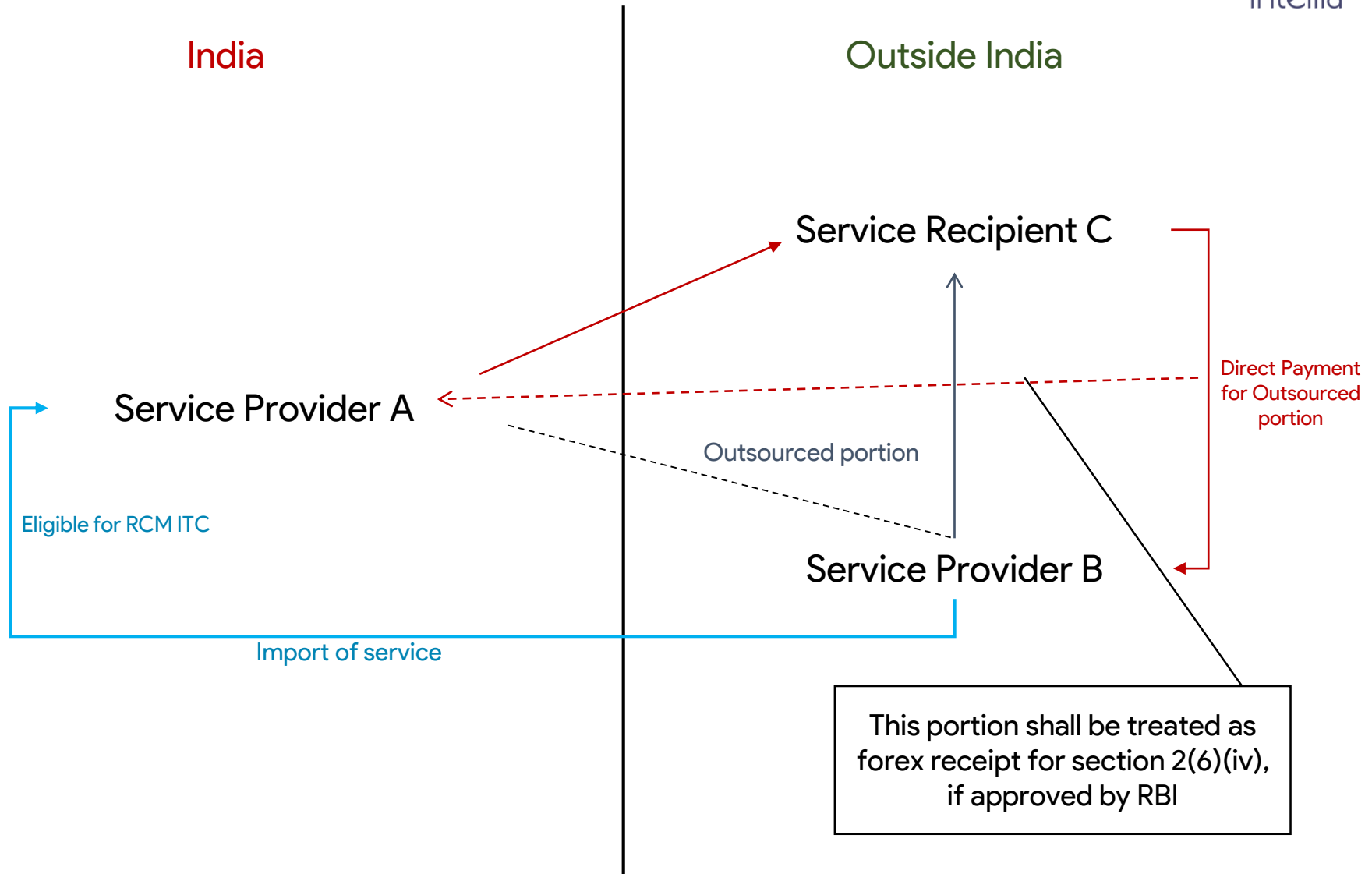
## Circular no. 79 – Refund related issues

# Clarification on export of services



In case an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter?

# Clarification on export of services



# **Gujarat High Court in TORRENT POWER LTD TIOL-15-HC-AHM-GST**

Landmark judgement on composite supply

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# Circular # 34, dated March 1, 2018



*Answer to question No. 4 -*

- 1) Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No. 12/2017- CT (R) , Sl. No. 25.  
The other services such as, -
  - I. Application fee for releasing connection of electricity;
  - II. Rental Charges against metering equipment;
  - III. Testing fee for meters/ transformers, capacitors etc.;
  - IV. Labour charges from customers for shifting of meters or shifting of service lines;
  - V. charges for duplicate bill;provided by DISCOMS to consumer are taxable.
  
- 2) The service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable.

# Sr. no. 25 of Notification 12/2017-CTR reads



Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
25	Heading 9969	Transmission or distribution of electricity by an electricity transmission or distribution utility.	Nil	Nil

# CBEC Cir. No. 131/13/2010 dt. 07/12/2010



2. It is a general practice among electricity transmission (TRANSCO) / distribution companies (DISCOM) to install electricity meters at the premises of the consumers, to measure the amount of electricity consumed by them and hire charges' are collected periodically.

Supply of **electricity meters for hire** to the consumers being an essential activity having **direct and close nexus with transmission and distribution of electricity**, the same is covered by the exemption for transmission and distribution of electricity, extended under the relevant notifications.



# Court observes...



- The meaning of “transmission and distribution of electricity” does not change, either for the negative list regime or the GST regime.
- Accordingly, the services which stood included within the ambit of transmission and distribution of electricity during the pre-negative list regime **cannot** now be sought be excluded by merely issuing a clarificatory circular, that too, with retrospective effect.
- By the clarificatory circular, the respondents (**Gol**) seek to give a different interpretation of the very same services as against the clarification issued for the pre-negative list regime.

# Court on composite supply

- Clause (a) says that a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;
- To fall within the ambit of clause (a) the supply has to be a composite one.
- Composite supply has been defined under section 2(30) of the CGST Act to mean **a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is the principal supply.**

# Court on composite supply

- Section 8 read with section 2(30) of the CGST Act are more or less akin to section 66F (3)(a) of the Finance Act.
- Both require that to fall within the ambit thereof the services should be naturally bundled in the **ordinary course** of business.
- "**principal supply**" is the supply which gives the bundle its essential character.
- In present case, the principal supply of transmission and distribution of electricity is naturally bundled and supplied in conjunction with the related/ancillary services in the ordinary course of business,

# Court on composite supply

- Section 8 say that the tax liability of a composite or a mixed supply shall be determined in the manner provided thereunder.
- In a given case, the tax liability may be nil, but that would not take such service out of the purview of section 8 of the Act, which would be attracted if the supply is either composite or mixed in nature, notwithstanding that the end result may be nil tax liability.

# Court on Exempt u/s composite supply



- Argument of Gol – Section 8(a) would not be applicable where the principal supply is exempt from levy of tax.
- Hon’ble Court -In the opinion of this court, there is nothing in section 8 of the Act to read any such construction. What the section says is that the tax liability of a composite or a mixed supply shall be determined in the manner provided thereunder.

# Court on mixed supply



- Illustration in section 8(b) makes it clear that what is to be treated as "mixed supply" -
  - is a combination of supplies
  - wherein each of the items forming part of the supply
  - can be *supplied separately* and are *independent* of each other,
  - but are supplied in conjunction with each other.
- In the present case -
  - the related supplies cannot be supplied *separately* nor are the principal supply and related supplies independent of each other.
  - The related supplies are dependent on the principal supply of transmission and distribution of electricity and vice versa, neither service can be provided independent of the other.

# Final verdict

- The transmission and distribution of electricity cannot be done without the help of electric line, electric plant and electric meter, and Nor can the related services be used for any purpose other than for transmission and distribution of electricity.
- The principal supply and the related/ancillary services go hand in hand and one cannot be provided independent of the other.
- The services provided by the petitioner are in the nature of composite supply, so **if the principal supply of transmission and distribution of electricity is exempt from levy of service tax, the tax liability of the related services shall be determined accordingly.**



# Questions

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**Thanks for your  
time!**

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# Contact us



## **Intellia Advisors, LLP**

211-212, Amba Towers

Sector 9, Rohini

Delhi 110085

Ph: +91-11-4563 8630

Email: [gst@intellia.in](mailto:gst@intellia.in)