

Update on circulars, orders and notification issued by Central Board of Indirect Taxes and Customs

A. Notification update

1. Reverse charge mechanism

Following category of services have been included under the reverse charge mechanism

Nature of services	Service provider	Person liable to pay GST
Services provided by the business facilitator to a banking company	Business facilitator	Banking company located in taxable territory
Services provided by an agent of business correspondent (BC) to business correspondent	Agent of BC	BC located in taxable territory
Security services (services provided by way of supply of security personnel) provided to registered person*	Any person other than body corporate	A registered person located in taxable territory

*registered person shall not include persons who have obtained registration only for the purpose of deducting tax at source under section 51 of the Central Goods and Services Tax Act, 2017 and not making any other taxable supply of goods or services or persons who have opted for registration under the composition scheme.

[Notification No. 29/2018 - Central Tax (Rate) dated 31 December 2018]

B. Circular updates

1. GST on services of business facilitator (BF) or a business correspondent (BC) to the banking company

Central Board of Indirect Taxes and Customs (CBIC) have clarified that in business facilitator / correspondent model, banking companies are the service providers. Banking companies are accordingly liable to pay GST on the entire value of service charge or fee charged to customers.

The same has been clarified basis the following:

- By virtue of an agreement with banks, BF/BC are prohibited from directly charging any fee to the customers for services rendered by them on behalf of the banks
- Further the agreement between banks and customers, clearly specifies that banks are responsible to the customers for acts of omission and commission of the BF/BC.

Further, for claiming area based exemption granted for services provided by BF/BC to a banking company with respect to accounts in a rural area, it is clarified that procedures laid down by Reserve Bank of India to determine what constitutes rural branch should be accepted.

[Circular no. 86/05/2019-GST dated 1 January 2019]

2. GST rate on the supply of food and beverage services by an educational institution

It has been clarified that GST is exempt on the supply of foods and beverages by an educational institution when the same has been provided by the institution itself to its students, faculty and staff. However, if any other person provides the same based on a contractual arrangement with such institutions, the same would be liable to GST @5 per cent.

[Circular no. 85/05/2019-GST dated 1 January 2019]

3. Classification of service of printing of pictures

Printing of pictures has been clarified to be classified under service code '998386: Photographic and videographic processing services' and accordingly are liable to GST @18 per cent.

[Circular no. 84/05/2019-GST dated 1 January 2019]

4. Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC)

By virtue of exemption and immunity granted to ADB and IFC by the respective ADB Act, 1996 and IFC Act, 1958, it is clarified that the services provided by IFC and ADB as exempt from levy of GST.

[Circular no. 83/05/2019-GST dated 1 January 2019]

5. Applicability of GST on various programmes conducted by Indian Institutes of Management (IIMs)

The applicability of GST on the various programmes conducted by IIMs, CBIC have clarified as under:

- For the period 1 July 2017 to 30 January 2018 – Exemption was available only with respect to three long duration programs as specified under sl. no. 67 of notification no. 12/2017-Central Tax (Rate)
- 31 January 2018 onwards –
 - All programmes conducted by IIMs are exempt by virtue of sl. no. 66 of notification no. 12/2017-Central Tax (Rate)
 - Short-term programmes for which participants are awarded participation certificates and for specifically designed programmes which are not recognised as qualification will be subject to GST @18 per cent.

[Circular no. 82/05/2019-GST dated 1 January 2019]

6. GST rates and classification (goods) in specific cases

i. GST rate on Animal Feed supplements/feed additives from drugs

On the representation seeking clarification on the dispute with respect to classification of animal feed supplements/feed additives from drug between tariff heading 2309 and 2936, circular has been issued to clarify the principle for determining classification in the instant case

- Animal feed supplements are classifiable under chapter 29 (heading 2906) if it is an item of general use
- If they are prepared as food supplements in the form of tablets etc. they would be classified under HSN code 2309.

ii. GST on the supply of liquefied petroleum gas (LPG) for domestic use

On the GST rate to be applied in the supply chain of LPG used by domestic consumers, it is clarified that, since usage of LPG for domestic purpose is known before hand, GST @5 per cent would be applicable.

Accordingly, LPG supplied in bulk, whether by a refiner / fractionator to an oil manufacturing company (OMC) or by one OMC to another for bottling and further supply for domestic use will fall under sl. no. 165A of the notification no. 1/2017-Central Tax (Rate) dated 28 June 2017 and subject to GST @5 per cent.

iii. GST on the supply of embroidered fabric sold in three-piece for lady suits

Referring to the earlier circular no. 13/13/2017-CGST dated 27 October 2017, it is clarified that mere packing of fabrics into pieces of different lengths does not change the nature of the goods and such fabrics continue to be classifiable under the respective heading. Accordingly, the supply of embroidered fabric sold in three-piece for ladies suit would be subject to GST @5 per cent.

iv. GST on the supply of waste to energy plant

CBIC had received representation seeking clarification on two issues

- GST rate to be applied on goods used in the setting up of waste to energy plants (WTEP), in term of sr. no. 234 of Schedule I of Notification no. 1/2017-Central Tax (Rates) dated 28 June 2018 and
- On how a supplier can satisfy the condition that goods falling under chapter 84, 85 and 94 would be used in the WTEP.

In response, CBIC have clarified the following

- The aforementioned notification specifically applies only to the goods (machinery) falling under chapter 84, 85 and 94 and are used in the initial setting up of renewable energy plants and devices including WTEP
- Further with reference to the second issue, it has been clarified that GST is to be self- assessed by a taxpayer. The taxpayer needs to satisfy himself with the requisite document from a buyer such as supply contracts/orders for WTEP from the concerned authorities before supplying goods claiming concession under said entry 234.

v. GST on the supply of cranes, rigs, tools and spares and other machinery when moved from one state to another by a person on his own account-

In continuation to an earlier circular issued [circular no. 21/21/2017-GST dated 22 November 2017], CBIC has clarified that inter-state movement of goods not involving the transfer of title or stock transfers would not constitute supply and hence not liable to GST.

[Circular no. 80/54/2018-GST dated 31 March 2018]

7. Clarification on specific issues

i. Whether supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST

Circular has been issued to clarify the following

- If the supply is made to a registered person, by virtue of notification 36/2017 – Central Tax (Rate) and notification 37/2017-Integrated Tax (Rate), the same would be subject to GST under reverse charge basis and accordingly tax will be payable by the recipient
- However in case, the supplies are made to an unregistered person, the respective Government departments shall be liable to get registered and pay GST.

ii. Applicability of the provisions of section 51 of the CGST Act in context of notification no. 50/2018-Central Tax dated 13 September 2018

On the doubt with respect to what constitutes an authority or a board or other body, CBIC have clarified that the provision of section 51 of the CGST Act is applicable only to such authority or board or any other body set up by an Act of parliament or a state legislature or established by any Government in which 51% or more participation by way of equity or control is with Government.

iii. Correct valuation methodology for the ascertainment of GST on tax collected at source (TCS) under the Income Tax Act, 1961

CBIC has clarified that, by virtue of section 15(2) of the CGST Act, the value of supply includes any taxes, duties, cesses, fees, and charges levied under any law for the time being in force if charged separately.

Accordingly, the TCS amount is to be included in the taxable value for the purpose of GST.

Circular no. 76/50/2018-GST dated 31 December 2018]

8. Clarification on the export of services

Tax treatment in case an exporter of services outsources a portion of the service contract to another person located outside India

Clarification by CBIC – In the instant case, there are two supplies involved

- Supply by the exporter to the recipient of services located outside India - full contract value shall be considered as export of services, subject to fulfilment of condition laid down. Further, in case full consideration is not received in convertible foreign currency in India due to the fact that recipient of services located outside India has directly paid to the supplier of services located outside India (for outsourced services), that portion of the consideration shall also be treated as receipt of consideration towards export of services
- Import of services by the exporter for the outsourced portion – on the said services it has been clarified that the supplier (original exporter) would be liable to pay IGST on a reverse charge basis.

[Circular no. 78/52/2018-GST dated 31 December 2018]

C. Order updates

1. Un-availed input tax credit (ITC) for FY 2017-18

Un-availed ITC for the period from July 2017 to March 2018, can be availed before the filing of GSTR-3B for March 2019. The same can be availed if the details of such invoice or debit notes pertaining to supplies made during the FY 2017-18, has been uploaded by the supplier till the due date for furnishing the return under GSTR-1 for the month of March 2019.

[Order no. 02/2018-Central Tax dated 31 December 2018]

2. Due date for filing Annual Returns

The due date for filing of the Annual returns in form GSTR-9, 9A and reconciliation statement in GSTR-9C has been further extended to 30 June 2019 for the FY 2017-18.

[Order no. 03/2018-Central Tax dated 31 December 2018]

3. Tax collection statement by e-commerce operators

The due date for furnishing tax collection statement by an e-commerce operators for the period October 2018 to December 2018 has been extended till 31 January 2019.

[Order no. 04/2018-Central Tax dated 31 December 2018]

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