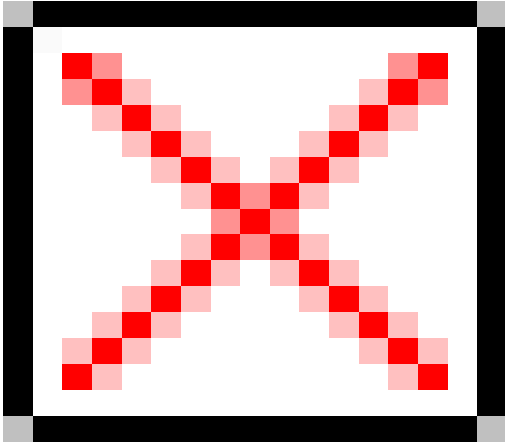


FM Releases CBEC's FAQ on GST



TIOL-DDT 2935

22 09 2016

Thursday

1. A

person from Gurgaon travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What will be the place of supply for GST?

Ans. The location of the recipient of services on the records of the supplier of insurance services shall be the place of supply. So Gurgaon shall be the place of supply.

2. Give two examples of registered taxable persons who were not liable to be registered under the earlier law but are required to be registered under GST?

Ans. A manufacturer having a turnover of say Rs 60 lakhs was enjoying SSI exemption earlier, will have to be registered in GST as the said turnover exceeds the basic threshold of Rs 10 lakhs.

A trader having turnover below the threshold under VAT making sales through e-commerce operator will be required to be registered in GST. There will no threshold for such persons.

3. In respect of exchange of goods, namely gold watch for restaurant services will the transaction be taxable as two different supplies or will it be taxable only in the hands of the main supplier?

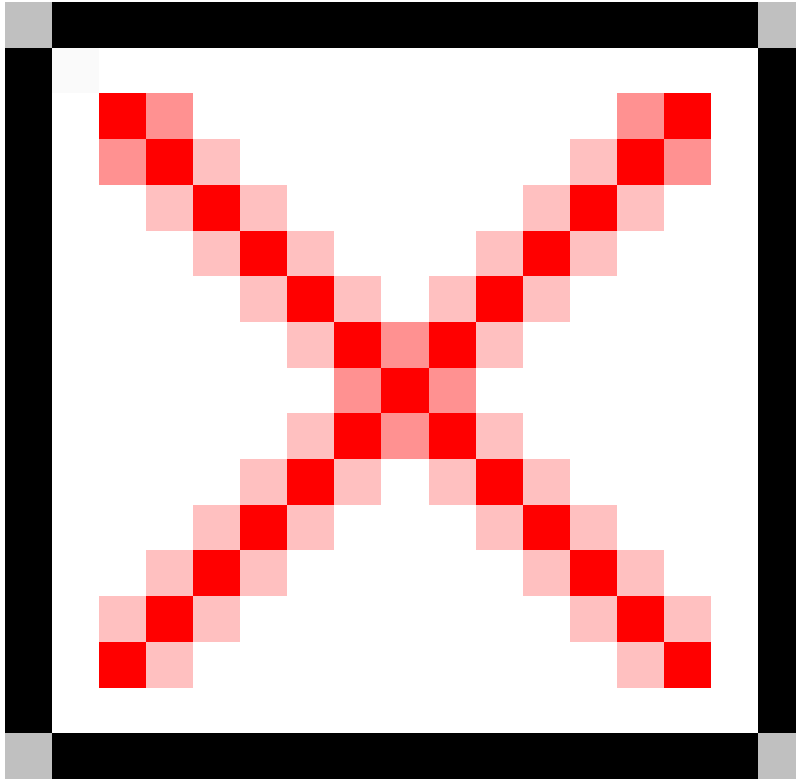
Ans. No. In the above case the transaction of supply of watch from consumer to the restaurant will not be an independent supply as the same is not in the course of business. It is a consideration for a supply made by the restaurant to him. The same will be a taxable supply by the restaurant.

These and 506 other questions on GST are answered in a book "**FAQ on GST**" published by CBEC and released by the Finance Minister yesterday.

But it beats me why anyone should go to a restaurant and give a gold watch for maybe having a cup of coffee. Maybe under the GST regime, that would be the norm. In this case, who is the main supplier? Why is the wise man who gives a gold watch in a restaurant not a supplier?

Have they decided on the threshold limits? In several places the FAQ mentions the threshold limit as Rs. 10 lakhs.

Have you heard of MGL? If you read the FAQ through you get this word 140 times and after the 80th time or so you will get a doubt whether it is an abbreviation for Model GST Law.



What is the difference between detention and seizure?

The FAQ answers: Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. Seizure is taking over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

And what happens if the search is illegal?

'No problem', says the FAQ: Search without a valid search warrant (i.e. issued by other than a competent authority or without a search warrant) results in an illegal search without authority of law. However, due to this reason, the accused cannot get benefit. Accordingly, evidence collected even during an illegal search and seizure is considered admissible in trial and adjudication proceedings.

Many such interesting questions are answered for helping the officers as well as public, to get acquainted with the Model GST Law and its nuances, as Chairman, CBEC Najib Shah says in his foreword.

[CBEC's Frequently Asked Questions \(FAQ\) on GST](#)

Stay all Operations of GSTN - Swamy to PM

DR. Subramanian Swamy has again written to the Prime Minister on GSTN, this time a much stronger letter. The CBEC and IRS Associations seem to have got a champion campaigner on their behalf.

Swamy in his letter to the PM states:

I am happy to learn from the media that you have taken a review meeting of finance ministry officials on the question of GST/GSTN implementation. As you may now be aware, GSTN, which is a data processing and tax revenue collecting private limited company, was never security cleared by the home ministry, whose clearance is mandatory.

I strongly urge you therefore to direct the complete stay of all operations of the presently constituted GSTN, and that it remains non-operational till it is restructured according to our national interest and after security certification by the home ministry.

CAG has no power to look into financial transactions of GSTN, which will run into huge amounts once GST is implemented. Hence, there is reckless disregard to the use of public funds to benefit the private shareholders and employees.

The Indian Revenue Service Association has unanimously resolved that GSTN is a facility which can be duplicated by the experience of the finance ministry's data processing of income tax receipts and with much greater experience and efficiency by CBEC.

The CEO of GSTN gets an annual salary of Rs. 1 crore, HRA of Rs. 1 lakh, free car/travel, telephone, wi-fi network at home, club membership, medical reimbursement etc. and performance linked incentive bonus up to 50% of the basic pay plus DA. Never in the history of any government has any official got this level of remuneration and that too for performing routine work of data processing.

The data obtained by private parties and foreign shareholders of indirect tax dues and payments of Indian taxpayers as well as details of travel from the point of manufacturing to the point of sale will help private parties rig national exchange outcome.

I am of the view that given the capacity of our department of electronics and finance ministry's data processing capacity that GSTN should be restructured with government-owned financial institutions in place of the present two private banks and private companies. The data processing can then be handed over to the Central Board of Excise & Customs. Only then, further progress in implementation of GST can take place. Otherwise continuation of the present system and/or with its marginal amendments, will be set aside by the Supreme Court on a PIL, as unconstitutional and not as being in the public interest.

Hence I am urging you to order the stay of all operations of the present GSTN as it is illegal.

Custom or Customs - What's in a name? Power of Settlement Commission to grant Immunity - Central Board of Excise and "Custom" Issues Instructions

IS it the Custom Department or the Customs Department? Many people who do not understand that things can be singular or plural use the phrase Custom Department, but can the Board do it? No organization that takes pride in its existence will ever get its own name wrong. In an instruction given yesterday, the Board calls itself the Central Board of Excise and Custom (not Customs). I may be very fussy about this minor spelling error, but sir, that is YOUR NAME!

Anyway the instruction says that as per sub-section 2 of Section 32K of the Central Excise Act, 1944 also made applicable to Service Tax matters and Customs, immunity granted to a person from prosecution, penalty and fine shall stand withdrawn if such person fails to pay any sums specified under order of settlement within the stipulated time.

In this regard, it has been brought to the notice of the Board that the conditions subject to which the immunity has been granted have not been complied with by the applicants in some cases, thereby rendering the order of settlement void.

Board wants field formations to closely monitor and ensure strict compliance with the conditions stipulated in the order of Settlement Commission. In cases of any violations, the jurisdictional Commissioner should initiate necessary action under the relevant law after bringing it to the notice of the Commission.

But the law is not that simple as is made out to be.

Section 32K(2) of the CEA, 1944 reads -

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under [Sub-section (5) of section 32F within the time specified in such order] or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

The words "**shall stand withdrawn**"

do not mean that the immunities leave the applicant's side merely because he fails to obey the order of the Settlement Commission on the basis of which these immunities were granted.

In his treatise, Settlement of Tax Liabilities, G.S.Sidhu, Former Chairman of Income Tax Settlement Commission has the following to say on the subject matter in the context of section 245H(1A) of the Income Tax Act -

"For withdrawing immunity under sub-section (1A), the Commission, following the principles of natural justice, should give the defaulting taxpayer an opportunity of being heard. While allowing further time to pay the tax liabilities, the Commission may impose any such conditions as it deems necessary to ensure payment as per revised schedule and secure the interest of Revenue."

[Central Board of Excise and Custom F. No. 275/29/2016-CX.8 A., Dated September 21 2016](#)

High Sea Sales - Value of Stamp Paper

REPRESENTATION

has been received from trade regarding the amount of Stamp Paper required for executing High Sea Sales Contract to be reduced from Rs.500/- to Rs.100/-.

The Principal Commissioner of Customs (Imports), Air Cargo Complex Mumbai clarifies that 'High Seas Sale' Contract is an agreement of sale between two private entities for which the 'Maharashtra Stamp (Amendment) Act, 2015' has kept the prescribed stamp duty amount of Rs.100 only. It is different from a bond viz. Customs & Central Excise Bond, for which the minimum stamp duty has been raised from Rs. 100/- to Rs.500/- in the amended act.

He has therefore decided that High Sea Sales Contracts/ Agreements will be accepted on Rs. 100/- Stamp Paper only.

[Principal Commissioner of Customs \(Imports\), Air Cargo Complex Mumbai FACILITY NOTICE No. 11/2016-17., Dated September 14 2016](#)

Introduction of SMS based SAD Refund information system (S-RIS)

THE Office of the Commissioner of Customs (General), Mumbai Zone III has initiated an

"SMS based SAD refund information system (SRIS)"

for registration of Special Additional Duty (SAD) Refund claims. All the data pertaining to such refund claims filed by the importers shall be electronically captured and a message regarding the status of such applications, any deficiency in the refund claims, date and time of personal hearing and lastly when the refund order is finally processed the final status of the claim will be intimated on the Mobile Numbers registered with the department.

In order to implement such SMS based SAD Refund Information System (S-RIS) , it is necessary that the claimant shall produce additional information in "**Annexure-F**" along with refund application. Annexure-"**F**" shall be mandatory w.e.f. 1st September 2016.

[Commissioner of Customs Air Cargo Complex FACILITY NOTICE No-10/2016-17., Dated: September 09 2016](#)

Age Limit for Admission into 3-year Law Degree - 30 Years

THE Bar Council of India in a letter written to the Vice-Chancellors of all universities and the Principals of all Law Colleges states:

"It is to inform you that Clause 28 of Schedule III of Legal Education Rules 2008 which deals with age restriction for taking admission in LL.B course was notified in the Gazette of India vide Part-III, Section 4, on 21-27 March, 2009. As per Clause 28, upper age limit for admission in LL.B three year course was 30 years and for LL.B five year course was 20 years. The relevant clause is given below:-

Age on admission:

"(a) Subject to the condition stipulated by a University on this behalf and the high degree of professional commitment required, the maximum age for seeking admission into a stream of integrated Bachelor of law degree program, is limited to twenty years in case of general category of applicants and to twenty two years in case of applicants from SC, ST and other Backward communities.

(b) Subject to the condition stipulated by a University, and the general social condition of the applicants seeking legal education belatedly, the maximum age for seeking admission into a stream of Three Year Bachelor Degree Course in Law, is limited to thirty years with right of the University to give concession of five further years for the applicant belonging to SC or ST or any other Backward Community."

Subsequently, Bar Council of India has withdrawn Clause 28 vide resolution No. 200/2013 thereby age restriction was removed for admission in LL.B three year and five year course. Later on, withdrawal of Clause 28 was challenged before the Madurai Bench of the Hon'ble High Court of Madras in WP No. 9533/2015. The Hon'ble High Court was pleased to allow the petition and held that withdrawal of Clause 28 by the Bar Council of India was illegal. Subsequently, Bar Council of India challenged the aforesaid decision of the High Court of Madras before the Hon'ble Supreme Court of India and Hon'ble Supreme Court dismissed the Special Leave Appeal (Civil) 33742 of 2015 by its Order dated 11.12.2015.

Resultantly, after the order of Hon'ble High Court and Hon'ble Apex Court, the rule under Clause 28 of Legal Education Rules 2008 has been restored.

Therefore, you are requested to kindly comply with the provision of Clause 28 of Legal Education Rules 2008."

[Bar Council of India Letter BCI/D:/1519 \(LE:Circ.\)-6., Dated: September 17 2016](#)

92 Year Old Rail Budget Subsumed in General Budget

THE

presentation of separate Railway budget started in the year 1924, and has continued after Independence as a convention rather than under Constitutional provisions. The Union Cabinet yesterday approved a proposal of the Finance Ministry for the merger of Railway budget with the General budget. With GST, the General Budget itself will lose its steam.

Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.

- Learned Hand

Until Tomorrow with more DDT

Have a nice day.

Mail your comments to vijaywrite@tiol.in