

GOODS & SERVICES TAX / IDT UPDATE – 41

Clarifications regarding GST in respect of certain services

The Central Government vide [Circular No.34/08/2018-GST dated 1st March, 2018](#) has clarified certain issues regarding GST in respect of certain services:

S. No.	Issue	Clarification
1.	Whether activity of bus body building, is a supply of goods or services?	<p>Classification of this composite supply as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.</p> <p><i>Comment: It does not clarify in case supply falls under HSN 9988. User discretion advised</i></p>
2.	Whether retreading of tyres is a supply of goods or services?	<p>Retreading of tyres is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply.</p> <p>Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%)</p> <p><i>Comment: Welcome clarification, helps avoid disputes.</i></p>
3.	Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?	<p>In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4th February, 2016. PSLC are not securities.</p>

		<p>PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT. In GST there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods at standard rate of 18% under the residuary S. No. 453 of Schedule III of notification No. 1/2017-Central Tax(Rate). GST payable on the certificates would be available as ITC to the bank buying the certificates.</p> <p><i>Comments: Implications are far reaching because 'entitlements' are not 'vested rights'. User discretion advised.</i></p>
4	<p>(1) Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST?</p> <p>(2) Whether the guarantee provided by State Government to state owned companies against guarantee commission, is taxable under GST?</p>	<p>(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, -</p> <ul style="list-style-type: none"> 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. <p>(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.</p> <p><i>Comment: Sale of power is exempt from GST. But services relating to T&D of power are taxable. Application of this circular requires careful consideration of facts even in case of RWAs or Property Management services involving power charges.</i></p>

[Circular No.34/08/2018-GST dated 1st March, 2018]

Taxable services provided by the members of the Joint venture (JV) to the JV and vice versa and inter se between the members of the JV

The Central Government vide *Circular No. 35/9/2018 –GST dated 5th March, 2018* has clarified that levy of GST on services supplied by member of an unincorporated Joint venture to joint venture or other members of joint venture or by joint venture to members will be determined as per circular no. 179/5/2014 of ST dated 29.04,2014 (The circular clarified that that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from joint venture(JV); and that payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax).

Taxability of cash calls has been further explained by the following illustrations:

Illustration A: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production.

Illustration B: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

4.1 Illustration A will not be the subject matter of ‘ST/GST’ for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

4.2 On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing ‘service’ within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

Comment: Reference to illustrations very important to identify taxable nature of transaction inter se between JV members. However, RWAs in particular cannot enjoy this relief due to express mention in schedule II.

[Circular No. 35/9/2018 –GST dated 5th March, 2018]

Central Goods & Service tax (Second Amendment) Rules,2018

The central Government vide *Notification No. 12/2018 dated 7th March ,2018* has notified following rules further to amend the Central Goods and Service tax rules ,2017

Particulars	Existing provision	Revised provision
Submission of statement in FORM GST TRAN 2 (FORM for furnishing the	Submits a statement in Form GST TRAN 2 at the end of each of 6 tax periods during	Submits a statement in Form GST TRAN 2 by 31st march, 2018 or within such period as

details of stock held by registered person availing scheme (60%/40% ITC)	which the scheme is in operation.	extended by the commissioner
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substitution in Rule 138 E-way Rules:

<u>Existing Provision</u>	<u>Revised Provision</u>	<u>Remarks</u>
Sub rule (1) of Rule 138 provides that every registered person who causes movement of goods furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal	Sub rule (1) of Rule 138 provides that every registered person who causes movement of goods furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal	Now, the registered person is also required to furnish additional information relating to goods as may be required on the common portal and a unique number will be generated on the said portal
Proviso to sub rule (3) of Rule 138 provides that where the goods are transported for a distance of less than 10 kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.	Proviso to sub rule (3) of Rule 138 provides that that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.	Earlier, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01 where the goods are transported for a distance of less than 10 kilometers. Now, the distance limit has been extended upto fifty kilometers within the State.

Proviso to sub-rule (5) of Rule 138 provides that where any transporter transferring goods from one conveyance to another and the goods are transported for a distance of **less than 10 kilometers** within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.

Proviso to sub-rule (5) of Rule 138 provides that where any transporter transferring goods from one conveyance to another and the goods are transported for a distance of **upto fifty kilometers** within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.

Earlier in case of transferring goods from one conveyance to another the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01 where the goods are transported for a distance of less than 10 kilometers. Now, the distance limit has been extended upto fifty kilometers within the State.

Sub-rule (7) of Rule 138 provides that where the consignor or the consignee has not generated Form GST EW-01 in accordance with the provision of sub rule (1) and value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods.

Sub-rule (7) of Rule 138 provides that where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan , as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods.

Through this substitution it has been provided that inspite of identifying value of goods carrying in the conveyance, aggregate of the consignment value of goods carried in the conveyance need to be identified

Further, the transporter is not more required to generate E-way bill in case of transportation of goods by railways, air and vessel.

Sub rule (10) of Rule 138 provides that an e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in the table below for the distance the goods have to be transported

Sl. No	Distance	Validity period
1.	Upto 100 km.	One day

Sub rule (10) of Rule 138 provides that an e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in the table below for the distance the goods have to be transported

Sl. No	Distance	Validity period
1.	Upto 100 km.	One day in cases other than Over

Through this substitution validity criteria of e-way bill has been amended .

2.	For every 100 km. or part thereof thereafter	One additional day			Dimensional Cargo
			2.	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
			3.	Upto 20 km	One day in case of Over Dimensional Cargo
			4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo

Insertions in Rule 138:

- Proviso to sub rule (1) of Rule 138 has been inserted to provide that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal.
- Proviso to sub rule (1) of Rule 138 has been inserted to provide that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal.
- Explanation 2 has been inserted in sub-rule (1) of Rule 138 to provide that for the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.
- Sub-rule 2A has been inserted to provide that Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01.

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery

- Explanation 2 has been inserted in sub-rule (3) of Rule 138 to provide that the e-way bill shall not

be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

- Sub-rule 5A has been inserted to provide that the consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment.

Provided that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

- Proviso to sub-rule (9) of Rule 138 has been inserted to provide that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.
- Further, clauses (e) to (n) have been inserted to provide various situations where no e-way bill is required to be generated for e.g. where goods being transported are non-taxable goods, goods being transported is treated as no supply under Schedule III of the Act etc.

**This Notification will come into effect from a date to be notified in the official gazette*

Comment: Welcome change and ICAI acknowledges active contribution from members in providing these suggestions that have been accepted by Council. Other changes requested are awaited.

[Notification No. 12/2018 dated 7th March ,2018]

Late fees for filing of GSTR-5A by OIDAR Service Providers – Notification No. 6/2018 rescinded

The Central Government vide Notification No. 13/2018 – Central Tax dated 7th March, 2018 has rescinded the Notification No. 6/2018-Central Tax dated – 23.01.2018 (This notification had reduced late fees for filing of GSTR 5A by OIDAR service providers to Rs.25/day (Rs.10/day in case of Nil Returns))

[Notification No. 13/2018 – Central Tax dated 7th March, 2018]

GST Revenue Collections for month of January 2018 (received in January/February upto 25th February) stand at Rs.86,318 crores ;

1.03 crore taxpayers have been registered under GST so far till 25th February, 2018. So far 17.65 lakh dealers got registered as composition dealers.

Total Revenue Collection under GST: The last date for filing of GSTR 3B return for the month of January 2018 was 20th February 2018. The total Revenue received under GST for the month of January 2018 (received in January/February up to 25th February,2018) has been Rs. 86,318 crores. 1.03 crore taxpayers have been registered under GST so far till 25th February, 2018. So far 17.65 lakh dealers got registered as Composition Dealers. Out of these, 1.23 lakh Composition Dealers have opted-out of the Composition Scheme and have thus become regular

taxpayers. Thus, till 25th February, 2018, there are 16.42 lakh Composition Dealers which are required to file returns every Quarter and the rest of 87.03 lakh taxpayers are required to file monthly returns.

57.78 lakh GSTR 3B returns have been filed for the month of January, 2018 till 25th February, 2018. This is 69 percent of total taxpayers which are required to file monthly returns. Amount of tax collected under different heads is shown below:

Revenue Collection under GST

S. no.	Tax	Collection
1.	IGST	Rs. 18,988 crores
2.	CGST	Rs. 25,560 crores
3.	SGST	Rs. 33,440 crores
4.	Compensation Cess	Rs. 8,331 crores

GST Council decided to extent tax exemptions for exporters for six months

Sending a strong positive signal to the exporting community, the GST Council in its 26th meeting decided to extend the available tax exemptions on imported goods for a further 6 months beyond 31.03.2018. Thus, exporters presently availing various export promotion schemes can now continue to avail such exemptions on their imports upto 01.10.2018, by which time an e-Wallet scheme is expected to be in place to continue the benefits in future.

In a related development which would benefit the exporters, the Council reviewed the progress in grant of refunds to exports of both IGST and Input Tax Credit. The Council appreciated that the pace of grant of IGST refund has picked up. Thereafter, the Council directed GSTN to expeditiously forward the balance refund claims to the Customs/Central GST/State GST authorities, as the case may be, for their immediate sanction and disbursal.

It may be recalled that in its meeting held on 06.10.2017 the Council had noted that exporters are experiencing difficulties of cash blockage on account of having to upfront pay GST / IGST on the inputs, raw materials etc. / finished goods imported / procured for purposes of exports. An interim solution was found by re-introducing the pre-GST tax exemptions on such imports. Additionally, for merchant exporters a special scheme of payment of GST @ 0.1% on their procured goods was introduced. Also, domestic procurement made under Advance Authorization, EPCG and EOU schemes were recognized as 'deemed exports' with flexibility foreither the suppliers or the exporters being able to claim a refund of GST / IGST paid thereon. All these avenues were made available upto 31.03.2018.

The permanent solution agreed to by the Council was to introduce an e-Wallet scheme w.e.f. 01.04.2018. The e-Wallet scheme is basically the creation of electronic e-Wallets, which would be credited with notional or virtual currency by the DGFT. This notional / virtual currency would

be used by the exporters to make the payment of GST / IGST on the goods imported / procured by them so their funds are not blocked.

On 16.12.2017, Finance Secretary constituted a Working Group with representatives of Central and State Governments to operationalize the e-Wallet scheme. After reviewing the progress, the Council noted that whereas some preparatory work had been done, more needs to be done to address a large number of technical, legal and administrative issues that have been identified. The Council appreciated that this would require more time. The Council was also unanimous that there should be no disruption that may affect the exports. Accordingly, the Council agreed to:

- (a) Defer the implementation of the e-Wallet scheme by 6 months i.e., upto 01.10.2018; and
- (b) Extend the present dispensation in terms of exemptions etc. which is available up to 31.03.2018, for a further 6 months i.e., upto 01.10.2018.

Release ID :177256

Recommendations made during the 26th meeting of the GST Council

I. Return filing System

The present system of filing of GSTR 3B and GSTR 1 is extended for another three months i.e., April to June, 2018 till the new return system is finalized. A new model was discussed extensively and Group of Ministers on IT has been tasked to finalize the same.

II. Reverse charge mechanism

The liability to pay tax on reverse charge basis has been deferred **till 30.06.2018**. In the meantime, a Group of Ministers will look into the modalities of its implementation to ensure that no inconvenience is caused to the trade and industry.

III. TDS/TCS

The provisions for deduction of tax at source (TDS) under section 51 of the CGST Act and collection of tax at source (TCS) under section 52 of the CGST Act shall remain suspended **till 30.06.2018**. In the meantime, the modalities of linking State and Central Governments accounting system with GSTN will be worked out so that seamless credit is available to the registered traders whose tax is deducted or collected at source.

IV. Grievance Redressal Mechanism

GST implementation Committee (GIC) has been tasked with the work of redressing the grievances caused to the taxpayers arising out of IT glitches.

Release ID :177255

Recommendations regarding E-way Bill made during meeting of the GST Council

The GST Council has recommended the introduction of e-way bill for inter-State movement of goods across the country from 01st April 2018. For intra-State movement of goods, e-way bill system will be introduced w.e.f. a date to be announced in a phased manner but not later than 01st June, 2018.

Major improvements over the last set of rules, as approved by the Council now, are as follows:

- E-way bill is required to be generated only where the value of the consignment exceeds Rs. 50000/-. For smaller value consignments, no e-way bill is required.
- The provisions of sub-rule (7) of Rule 138 will be notified from a later date. Therefore, at present there is no requirement to generate e-way bill where an individual consignment value is less than Rs. 50,000/-, even if the transporter is carrying goods of more than Rs. 50,000/- in a single conveyance.
- Value of exempted goods has been excluded from value of the consignment, for the purpose of e-way bill generation.
- Public conveyance has also been included as a mode of transport and the responsibility of generating e-way bill in case of movement of goods by public transport would be that of the consignor or consignee.
- Railways has been exempted from generation and carrying of e-way bill with the condition that without the production of e-way bill, railways will not deliver the goods to the recipient. But railways are required to carry invoice or delivery challan etc.
- Time period for the recipient to communicate his acceptance or rejection of the consignment would be the validity period of the concerned e-way bill or 72 hours, *whichever is earlier*.
- In case of movement of goods on account of job-work, the registered job worker can also generate e-way bill.
- Consignor can authorize the transporter, courier agency and e-commerce operator to fill PART-A of e-way bill on his behalf.
- Movement of goods from the place of consignor to the place of transporter up to a distance of 50 Km [increased from 10 km] does not require filling of PART-B of e-way bill. They have to generate PART-A of e-way bill.
- Extra validity period has been provided for Over Dimensional Cargo (ODC).
- If the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period in case of transshipment or in case of circumstances of an exceptional nature.
- Validity of one day will expire at midnight of the day immediately following the date of generation of e-way bill.
- Once verified by any tax officer, the same conveyance will not be subject to a second check in any State or Union territory, unless and until, specific information for the same is received.
- In case of movement of goods by railways, airways and waterways, the e-way bill can be generated even after commencement of movement of goods.
- Movement of goods on account of Bill-To-Ship-To supply will be handled through the capturing of place of despatch in PART-A of e-way bill.

Release ID :177254

Comment: Further clarity awaited particularly where there is complete change in these resolutions compared to the FAQs released earlier. For eg., 'Bill-to and Ship-to' transactions,

whether one EWB is required now or two EWBs.

Recommendations regarding Data Analytics made during the 26th meeting of the GST Council

The GST Council has been apprised of the fact that CBEC and GSTN have started detailed data analytics across a number of data sets available with them. The outcome of preliminary data analysis has revealed interesting insights:

- It has emerged that there is variance between the amount of IGST & Compensation Cess paid by importers at Customs ports and input tax credit of the same claimed in GSTR-3B.
- There are major data gaps between self-declared liability in FORM GSTR-1 and FORM GSTR-3B.

It was deliberated that this information may be further analysed and adequate action may be initiated accordingly.

Release ID :177253

[<http://pib.nic.in/newsite/erelease.aspx>]

GSTN Related update

Facility to provide details of amendment, in Form GSTR 4, has now been provided to composition taxpayers.

Composition taxpayers can now file amendment details of advance of reverse charge or advances for which invoice is received in current period in various tables of Form GSTR 4 , such as table 5A (for supply) , Table 5C (for debit/credit notes) , Table 7 (for tax on outward supply made) and Table 8(II).

[GSTN]

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