L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

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Recent Circulars

- **Circular No. 102/21/2019-GST**
- **Circular No. 103/22/2019-GST**
- **Circular No. 104/23/2019-GST**
- **Circular No. 105/24/2019-GST**

1. Circular No. 102/21/2019-GST:

Clarification on taxability of additional charges levied on delayed payment of EMI

- ✓ Following issues were examined where an equated monthly instalment (EMI) is not paid at the scheduled time:
  - Whether the additional charges/penal interest would be exempt in terms of S. No. 27 of Notification No. 12/2017-CT(rate) dated 28.06.2017, i.e. services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services).
  - Whether the charges would be treated as consideration for agreeing to the obligation to tolerate an act under paragraph 5(e) of Schedule II of the CGST Act.

1. Circular No. 102/21/2019-GST (contd.):

✓ In order to provide clarification, the following two situation were contemplated:

Case 1:

- X sold mobile phone worth Rs 40,000/- to Y on payment in 4 EMIs of 11,000/- each over a period of 4 months.
- Y is required to pay Rs 500 per month on delayed payment of EMI
- Alternatively, X may sell the mobile phones for Rs. 40,000/- and issue separate invoice for interest at the rate of 2.5% per month.
- Y would required to pay 500 per month on delayed payments

Case 2

- X sold mobile phone worth Rs 40,000/- to Y.
- M/s ABC Ltd would provide loan of Rs 40,000/- to Y at the rate of interest of 2.5% per month for purchase of mobile.
- Y is required to pay additional/penal interest @ 1.25% on delayed payments.

1. Circular No. 102/21/2019-GST (contd.):

✓ It has been clarified that:

Case 1,

- The amount paid (500 per month or interest @ 2.5%) would qualify as additional consideration in terms of sub-clause(d) of sub-section (2) of section 15 of the CGST Act.
- The value of supply shall include "interest or late fee or penalty for delayed payment of any consideration for any supply".
- Thus, the additional charges/penalty would be included in the value of the taxable goods i.e. mobile phone irrespective of the manner of invoicing.

Case 2,

- The additional amount paid to M/s ABC would be covered under S. No. 27 of Notification No. 12/2017-CT(rate), dated 28.06.2017 and therefore not taxable.
- The value of supply of mobile by X shall remain 40,000/-

1. Circular No. 102/21/2019-GST (contd.):

✓ It has been further clarified that:

- In both the cases, the additional amount would not fall within the ambit of paragraph 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation or to do an act".

- Any service fee/charges levied by M/s ABC (financing company in case 2) in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in Notification No. 12/2017-CT(rate) dated 28.06.2017 and therefore such charges would not be exempt.

2. Circular No. 103/22/2019-GST:

Clarification on the place of provision of the following services has been issued:

- Services provided by Ports
- Services rendered on goods imported temporarily into India

Services provided by Ports

- It has been clarified that services rendered by ports in relation to cargo handling (such as haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc) are ancillary to cargo handling.
- These services are not in relation to immovable property.
- Accordingly the place of supply of such services will be determined in terms of sub-section (2) of Section 12 of CGST Act or sub-section (2) of Section 13 as the IGST Act.

2. Circular No. 103/22/2019-GST (contd.):

Services rendered on goods imported temporarily into India

- Clarification has been provided in respect of services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India.

- The services are performance based services which are generally covered under clause (a) of sub-section (3) of Section 13 of the IGST Act i.e. the place where service are performed.

- However, second proviso to sub-section (3) carves out an exception in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India.

- Thus, it has been clarified that the place of supply of services under consideration therefore would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.

3. Circular No. 104/23/2019-GST:

Clarification in respect of processing of refund applications in FORM GST RFD-01A submitted by taxpayers wrongly mapped on the common portal

- ✓ It has been clarified that where reassignment of refund applications to the correct jurisdictional tax authority is not possible on the common portal, the processing of the refund claim should not be held up and it should be processed by the tax authority to whom the refund application has been electronically transferred by the common portal.

- ✓ Thereafter, the refund processing authority may inform the common portal about the incorrect mapping with a request to update it suitably on the common portal so that all subsequent refund applications are transferred to the correct jurisdictional tax authority

4. Circular No. 105/24/2019-GST:

Clarification on post sales discount offered to dealers in the following situations:

a. There is no obligation on dealer
b. There is obligation on dealer to perform some activities
c. The discount is given to offer reduced price to customer by the dealer
d. ITC eligibility of the dealer where discount is given by issuing a commercial credit note

a. **There is no obligation on recipient/dealer**

- If the post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer's end, then the post sales discount would not be included in the value of supply.
- However, the eligibility of discount is subject to the following conditions under Section 15(3) of CGST Act:-

  "(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
  (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply."

4. Circular No. 105/24/2019-GST (contd.):

b. There is an obligation on dealer to perform some activities

- ✓ The dealer is required to do some acts (like undertaking special sales drive, advertisement campaign, exhibition etc.,) to get the additional discount.
- ✓ The transaction would be a separate transaction.
- ✓ The additional discount will be the consideration for undertaking such activity and therefore would be in relation to supply of service by dealer to the supplier of good.
- ✓ The dealer would be required to charge applicable GST on the value of such additional discount .
- ✓ The supplier of goods, being recipient of services, will be eligible to claim ITC of the GST so charged by the dealer subject to other conditions.

4. Circular No. 105/24/2019-GST (contd.):

c. The discount is given to offer reduced price to customer by the dealer

- The dealer is required to offer a special reduced price to the customer to get the discount.
- The additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by dealer to the customer.
- The value of discount would be liable to be added to the consideration payable by the customer, for the purpose of arriving value of supply of the dealer.
- The customer, if registered, would be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by the said customer to the dealer in view of second proviso to sub-section (2) of Section 16 of the CGST Act.

4. Circular No. 105/24/2019-GST (contd.):

d. ITC eligibility of the dealer where discount is given by issuing a commercial credit note

- In a situation where post sale discount is not allowed to be reduced from the value of supply and the supplier issues a commercial credit note, supplier is not eligible to reduce its tax liability.

- Further, the dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial / commercial credit notes by supplier in view of second proviso to Rule 37(1).

- The dealer shall be eligible for ITC as long as:
  - it pays the value of the supply (as reduced after adjusting the amount of post-sale discount in terms of financial / commercial credit notes received by him from the supplier of goods)
  - the amount of original tax charged by the supplier

NEW DELHI
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9800

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing,
Cnergy IT Park,
Appa Saheb Marathe Marg, (Near Century Bazar)
Prabhadevi, Mumbai - 400025.
Phone : +91-22-2439 2500
E-mail : lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West,
Bangalore-560 055.
Ph: +91-80-4933 1800
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner,
Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road,
Camp, Pune – 411 001
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

KOLKATA
2ND Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59,
Sector 26,
Chandigarh - 160026
Phone : +91-172-492 1700
E-mail : lschd@lakshmisri.com

GURGAON
OS2 & OS3, 5th Floor, Corporate Office Tower, AMBIENCE Island, Sector 25-A,
Gurgaon - 122001
Phone : +91-124-477 1300
E-mail :lsgurgaon@lakshmisri.com

ALLAHABAD
3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg),
Allahabad -211001 (U.P.)
Phone no. : (0532) – 2421037, 2420359
Email: lsallahabad@lakshmisri.com

www.lakshmisri.com www.gst.lakshmisri.com