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Executive summary

This Tax Alert summarizes a recent Circular(1) issued by the Central Board of Indirect Taxes and Customs (CBIC), clarifying certain issues under Goods and Services Tax (GST) as follows:

Some of the key clarifications are as follows:

- Moulds and dies owned by Original Equipment Manufacturer (OEM) sent free of cost to component manufacturer is not a supply under GST
- Separate rates for goods and services will apply in case of servicing of cars where the value of such goods and services supplied are shown separately
- E-way bill is required for intra-state supply of goods if they move through another state
- E-way bill is not required for movement of goods from Domestic Tariff Area (DTA) to Special Economic Zone (SEZ) or vice versa where both are located in the same state
- Railways shall not deliver goods without production of e-way bill at the time of delivery

(1) Circular No. 47/21/2018-GST dated 08 June 2018
Background

Central Board of Indirect Taxes and Customs (CBIC) has issued the Circular clarifying certain issues under Goods and Services Tax (GST) based on the representations made by trade and industry.

Clarifications

Moulds and dies owned by Original Equipment Manufacturer (OEM) sent free of cost (FOC) to component manufacturer is not a supply under GST

- Moulds owned by OEM sent on FOC basis
  - The Circular clarifies that moulds and dies owned by the OEM which are component manufacturers (not being related persons or distinct persons) on FOC basis does not amount to a supply under GST as there is no consideration involved.
  - Further, there is no requirement to reverse the ITC availed on such moulds and dies by OEM since they are provided by the OEM to the component manufacturer in the course or furtherance of business.
  - The Circular also clarifies that the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis is not required to be added to the value of the supply made by the component manufacturer in terms of Section 15(2)(b) of the CGST Act.
  - The said section provides for the inclusion of any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable.
  - This is because the cost of moulds/dies was not intended to be incurred by the component manufacturer.

- Moulds belonging to the component manufacturer supplied by OEM on FOC basis
  - However, the situation changes if it was stipulated in the contract between OEM and component manufacturer that the components would be made by using the moulds/dies belonging to the component manufacturer, but the same was actually supplied by the OEM on FOC basis.
  - In such a case, the amortized cost of such moulds/dies shall be added to the value of the components.
  - Further, the OEM will be required to reverse the credit availed on such moulds/dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former’s business.

Separate rates for goods and services apply in case of servicing of cars (involving supply of both goods and services) where the values are shown separately

- The Circular states that the taxability of supply in case of servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, would have to be determined on a case to case basis considering the facts and circumstances of each case.
- If the value of such goods and services supplied are shown separately, then they would be liable to tax at the rates as applicable to such goods and services separately.

E-way bill required for intra-state supply of goods if they move through another state

- The Circular clarifies that requirement of e-way bill is dependent on whether the movement of goods is inter-state and not on whether the supply is inter-state.
- Therefore, if the goods transit through a second state while moving from one place in a state to another place in the same state, an e-way bill is required to be generated.

E-way bill is not required for movement of goods from Domestic Tariff Area (DTA) to Special Economic Zone (SEZ) or vice versa where both are located in the same state

- The Circular clarifies that if goods move from a DTA unit to a SEZ unit or vice versa located in the same state, there is no requirement to generate an e-way bill provided it is exempted under Rule 138(14) of the CGST Rules.
- The said rule provides that there will be no requirement of e-way bill within such areas as notified under Rule 138 (14) (d) of the state or Union territory GST Rules of that particular state or Union territory.

Railways shall not deliver goods without production of e-way bill at the time of delivery

- The Circular clarifies that in case of transportation of goods by railways, such goods will not be delivered if the e-way bill is not produced at the time of delivery, thus reiterating the proviso to rule 138(2A) of the CGST Rules.

Warehouse may be declared as additional place of business by the principal and the auctioneer of tea, coffee, rubber

- Maintaining the books of accounts at additional place of business
The Circular clarifies that in case of auction of tea, coffee, rubber etc., the principal and the auctioneer may declare the warehouses, where such goods are stored, as their additional place of business.

Further, the buyer is also required to disclose such warehouse as his additional place of business if he desires to store the goods purchased through auction in such warehouses.

The Circular clarifies that the principal and an auctioneer may also comply with the said provisions in cases of supply of tea through a private treaty.

As per first proviso to Section 35(1) of the CGST Act, the principal and the auctioneer (either for the purpose of auction of tea, coffee, rubber etc., or for supply of tea through a private treaty), are required to maintain the books of account relating to each and every place of business in that place itself.

The Circular further clarifies that in case of difficulties in maintaining the books of accounts, they may maintain the books of accounts relating to the additional place(s) of business, at their principal place of business instead of such additional place(s).

However, in such a situation, they are required to intimate their jurisdictional officer, in writing, regarding the maintenance of books of accounts relating to the additional place(s) of business at their principal place of business.

Availability of ITC

The Circular clarifies that the principal and the auctioneer (either for the purpose of auction of tea, coffee, rubber etc., or for supply of tea through a private treaty) shall be eligible to avail ITC provided all relevant conditions as per the CGST Act and Rules are fulfilled.

Comments

Clarifications issued by the government, particularly with reference to non-taxability of moulds issued for component manufacturing, though on expected lines, clears the ambiguity concerning not only the taxability but also the reversal of input tax credit.

Non-requirement of e-way bill for movement of goods between DTA and SEZ may help reduce the compliance burden.
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