

GST GUIDE



From RAMA'S Desk

Pleased to share with you the **2nd Edition (May'19)** of **RAMA GST Guide**.

Although, the Guide is under the evolution phase but would like to share that our idea behind the monthly GST Guide is to create one document providing critical information about changes, developments, litigation on GST Laws. As of now we want to keep it completely informative i.e. sharing the important Notifications, Amendments, AAR Rulings or Cases in relation to GST with a small section on RAMA's perspective ("RAMA Says").

Soon we are looking to start with one article on the important aspects to take care in relation to compliance with the provisions of the GST Laws. We will be happy to have your inputs in case you want us to include any specific topic(s).

In this edition we have covered, the AAR Rulings on Pure Agent, Job-works (all inputs may not be received back in the original form). There are some important case laws on matters impacting the industry at large, specifically, Charging of Delayed Payment Interest on Gross Liability / Net Liability, IGST on Ocean Freight leading to Double Taxation and very important matter on denying ITC due to vendor default.

There is information on updates in GST portal like the prototypes for new return system and new functionalities released by DG Systems for Tax Officers like blocking / unblocking of ITC Credit in Ledgers, access to annual returns etc. Also, for the users of RAMA-IRIS GST Compliance Tool, we have deployed approx. 30 Management Reports and Dashboards for quick review and action.

Apart from these, the edition includes a snapshot of news items related to GST like the rise in collections, arrests due to malpractices, orders by National Anti-profiteering Authority (NAA) etc.

Hope you find the content useful, please do let us know in case you need any further information on any of the content items in the RAMA GST Guide May'19.

-Kapil Bansal

CONTENTS



1 Notifications, Circulars & Amendments to GST Laws

2 Advance Authority Rulings (AAR / AAAR)

3 Important Decisions by Courts

4 Updates on GSTN Portal

5 Updates on RAMA-IRIS GST Compliance Tool

6 GST News



Notifications, Circulars and Amendments to law/rule



- i. Extension of due date for furnishing FORM GSTR-1 for the month of April, 2019 for registered persons in specified districts of Odisha till 10-Jun-19 (Notification No. 23/2019-Central Tax, dt. 11-May-19)
- ii. Extension of due date for furnishing FORM GSTR-3B for the month of April, 2019 for registered persons in specified districts of Odisha till 20-Jun-19 (Notification No. 24/2019-Central Tax, dt. 11-May-19)

Applicable for registered persons having principal place of business in the districts of Angul, Balasore, Bhadrak , Cuttack , Dhenkanal , Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha shall be furnished electronically through the common portal, on or before the 20-Jun-19.

Advance Authority Rulings (GST)

- i. **Deduction from the value of supply is not available merely on the basis that the payment is on actual cost**

Facts of the Case:

The Applicant intends to produce a feature film, with a portion to be shot at locations outside India. For this purpose, he intends to appoint CDI Virtual Films Inc. (hereinafter the CDIVF) as a Line Producer in Brazil to provide production services.

The Applicant will reimburse CDIVF the cost of procuring these services, based on the bills raised by the service providers bearing the name of the feature film. Also, CDIVF will hire the local actors in Brazil and will provide insurance coverage for the crew originating and residing in Brazil. CDIVF will be paid USD 95,000 for his services as outlined above.

Matter under Consideration:

Whether the services provided by CDIVF can be classified as Intermediary Services or Event Management Services and thus categorised as services provided outside India based on Place of Supply rules. Also, whether the reimbursements made on an actual cost basis will be subject to GST.



Observations and Findings:

- a. **Intermediary Services:** It was observed that CDIVF is not providing intermediary services as he is not merely facilitating the Producer Line Service but providing it by himself and hence not covered under the definition of Intermediary as defined under the IGST Act.
- b. **Event Management Services:** It was observed that found that it is no-where covered under the definition of Event management Services as defined under the IGST Act.
- c. **Pure Agent Services:** It was observed that contract only specifies reimbursement on actual basis and does not clearly specify CDIVF acting as pure agent. Further, the Bills bears name of feature film and not of the applicant. Hence, the conditions of pure Agent are not satisfied.

Advance Authority Rulings (GST)



Held:

- a. Basis the above, The Hon'ble West Bengal AAR vide order no. 45/WBAAR/2018-19 dated 26-Feb-19 held that the Line Producer in Brazil is supplying motion picture production services, classifiable under SAC 999612
- b. The Applicant is liable to pay IGST on the payments made to the above Line Producer in terms of Sl. No. 1 of Notification No. 10/2017 – IGST (Rate) at 18% under Sl. No. 34(vi) of Notification No. 08/2017 – IT (Rate) as amended from time to time.
- c. No deduction is available from the value of the supply of motion picture production services even if payment is made on an actual cost basis, as the Line Producer is not acting as a Pure Agent.

RAMA Says:

The ruling is line of the provision of the law, as there is no ambiguity in the definitions on Intermediary Services and Event Management Services w.r.t. the transaction under review.

With regards to claiming deduction on payments made on actual basis, the Applicant should have considered to have an agreement in line with the Agency services.

Advance Authority Rulings (GST)

ii. Inputs sent to for job-work not mandatory to be received back in Original Form but may be consumed in the job-work activity

Facts of the Case:

Ratan Projects & Engineering Co. Pvt. Ltd., the Applicant, is stated to be a manufacturer of cable tray, angel ladder tray etc., mainly used for electrical works. The Applicant sends steel structures for galvanising to a job worker along with Furnace Oil, Zinc, Nickel to be consumed in the galvanising process.

Matter under Consideration:

Whether dispatch of materials consumed in the job-work process and not returned back in physical form to be treated as supply from the Principal to Job-worker, if they are not returned within the time allowed under section 143(1)(a) of the GST Act.

This advance ruling is sought in order to understand Department's view on ITC of such inputs not returned, whether to be reversed or not.

Observation and Findings:

The Ruling Bench observed that since the items sent for job-work were in

intermediate stage of Manufacturing and the Applicant also provided the additional materials required in job-work process like Zinc, etc.; they constitute inputs as per Section 143(1)(a) and are required to be received back from job-worker within maximum period of 1 year.

Further, the Authority noted that the 'inputs' returned, however, do not include in their original physical forms the goods like Furnace Oil, Zinc etc. that have been sent to the job-worker. Also noted, that The Applicant submits these goods are consumed in the galvanising process. Whether the entire quantity of such goods sent to the job-worker has actually been exhausted in the process is a question of evidence and records.

On further study of the meaning attributed to 'inputs' in the Explanation to section 143, the AAR finds that it expands the meaning of 'inputs' to the intermediate goods that include, as embedded, attached or consumed, the inputs that are exhausted in the process of manufacturing the intermediate goods.

Advance Authority Rulings (GST)

Held:

Return of the galvanised goods to the Applicant satisfies the condition of receiving back the inputs in accordance with section 143(1)(a) of the GST Act. As the goods like Furnace Oil, Zinc etc. - consumed in the process of galvanising – are inseparable from the galvanised goods, they should not be treated as supply in terms of section 143(3) of the GST Act, provided they have been entirely used up in the process of galvanising.

RAMA Says:

The ruling is pretty clear and as per the due concept of law. One important aspect requiring attention is the onus and ability of the Assesse to prove that the inputs sent are entirely consumed for the job-working activity. In case of any leftovers, these should be received back within stipulated time others will be treated as supply.



Recent Case Laws (GST)



i. Demand of interest on gross liability stayed – Delhi High Court

Facts of the Case

M/s Landmark Lifestyle received a demand from the department for interest on delayed payment of GST, the Interest was been calculated on the Gross amount without adjusting input tax credit against the tax liability.

Order

The Delhi High Court in case of M/s. Landmark Lifestyles vs UOI in WP(C) No. 6055/2019 & CM Appeal No. 26114/2019 has granted stay from the recovery of interest on gross liabilities i.e. interest on amount constituting input tax credit adjustable against the tax liability.

RAMA Says

Section 50 mentions that interest liability is mandatorily attracted on the entire tax remained unpaid beyond the due date prescribed.

Factually, the amount eligible for credit is already paid by the assessee ahead in the supply chain and hence should not be considered as unpaid.

GST Council proposed to amend section 50 of CGST Act in 31st GST Council meeting held on 22-Dec-18 to provide that interest should be charged only on the net tax liability of the taxpayer after taking into account admissible input tax credit.

However the same is still pending to be amended in the law.

Recent Case Laws (GST)

ii. IGST levied on Ocean Freight stayed – Gujarat High Court

Facts of the Case

M/s Ghanshyamlal and Company filed a petition challenging levy of IGST on Ocean Freight, arguing it is leading to double taxation.

The importers are required to discharge IGST at the rate of 5% on Ocean Freight Services under the Reverse Charge Mechanism (RCM).

Under RCM, it is the duty of importer to pay IGST on behalf of foreign buyer. However, at the same time, IGST is levied on the CIF value that includes such Ocean Freight.

Last year, a petition was filed by Mohit Minerals Pvt Ltd challenged vires of the said taxability.

Order

The Gujarat High Court has stayed the levy of IGST on ocean freight. The order passed by the two-judge bench comprising Justice Harsha Devani and Justice Bhargav D Karia stated that “Under the circumstances, issue Notice, returnable on 19-Jun-19. By way of ad interim relief, the impugned order dated 27-Apr-19 (Annexure D to the petition) has stayed.”



RAMA Says

A welcome stay by The Gujarat HC to avoid double taxation in case of GST on Ocean Freight.

Having paid the tax under IGST Act on the entire value of imports (either on CIF / FOB basis), the Assessee cannot be asked to pay tax on the ocean freight all over again.

Further, in case of CIF (Cost, Insurance and Freight) contracts, the service provider and service recipient both are outside the territory of India. No tax on such service can be collected even on reverse charge mechanism.

Again in case of High Sea sales, the burden is cast on the tax payer as an importer, whereas, the petitioner is not the recipient of the service at all. Factually, the vendor of goods sold on high sea basis has received the services from the exporter/ transporter.

Recent Case Laws (GST)

iii. Input Tax credit (GST) cannot be denied to recipient for default on part of the supplier- Delhi High Court issued notice to UNION OF INDIA.

Facts of the Case:

Writ petition filed by Bharti Telemedia Ltd. (the Petitioner) in Delhi High Court challenging following provisions of The CGST Act, 2017 in relation to availment of ITC.

Section 16(2)(c) – ITC allowable only if Vendor has paid the taxes to the Govt.

Second proviso to Section 16(2)(d) – ITC to be reversed in case payment is not made to the vendor within 180 days of Invoice.

Section 16(4) – ITC can be availed at the earliest of the date of Annual Return or GSTR 3B for the month of September of following financial year.

Section 43A(6) (yet to be notified) - The supplier and recipient shall be jointly and severally liable to pay tax or pay ITC availed.

Such writ was filed on the argument that the Department has been vested with all the powers to recover any revenue lost owing to non-payment of taxes by erring suppliers and credit cannot be denied to recipient for default on part of the supplier.

Status:

Delhi HC has issued a notice to Union of India on the date of order (29-May-19) and posted the matter on 18-Sep-19.

RAMA Says:

The petition challenging the Act is a welcome move by the industry at large.

Review of Section 16(2)(c) is required because even though the Assessee is GST compliant, he is denied ITC just because the vendor is not GST compliant. The Assessee in most cases have no control on the vendor to ensure compliance.

Review of Second proviso to Section 16(2)(d) is a debatable and may not be required as similar provisions existed in previous laws and even in similar laws in other countries.

Review of Section 16(4) is again a welcome step as legitimate ITC should not be denied. Once the conditions of availment are satisfied, ITC should be allowed at any point of time.

IN all, the decision of this petition is much awaited and will be very critical not only in terms of having just law but also passing on a positive message to the industry. It may turn out to be a landmark judgement.

GST Portal Functionality

i. Following new features have now been made available on the GST Portal:

Web-based prototype of the offline tool for new return system. The new GST Returns will replace GSTR-3B, GSTR-1 for selective assesses probably based on turnover. The prototypes are user-friendly and facilitates uploads of sales invoices & purchase register for matching with system-created inward supplies.

Features of New Return Prototype

a. Annexure of supplies (GST ANX-1)

Details of the documents (invoice, credit/debit notes) can be uploaded any time during the month till filing of return.

Documents uploaded up to 10th of following month shall be made available to the recipient for claiming ITC.

Documents uploaded after 10th of following month shall be made available to the recipient in the next month.

b. Annexure of Inward Supplies (GST ANX- 2)



Inward supplies auto-populated from the suppliers GST ANX-1).

There will be a facility to match ANX-2 with purchase register

It will also contain details auto-populated from Form GSTR-5 (Non-resident foreign taxpayer) and Form GSTR-6 (Return by Input Service Distributor).

The DG Systems under CBIC has released new business functionalities in GST IT Ecosystem dated 20-Apr-19, as under:

Tax Officers can block / unblock ITC credit in Credit ledger at GST portal;

Tax Officers can see annual returns GSTR-9; GSTR-9A filed on GST portal;

Tax Officers can see GSTR-2 return claiming TDS/TCS credit on GST portal;

Tax Officers can see ITC-01 and ITC-03 returns filed by new registrants for ITC credit on inputs held in stock or semi-finished or finished goods.

RAMA IRIS GST - New Features



Businesses with an annual turnover of over Rs.2 crore can now start filing GST audit reports for FY2017-18 as GST Network (GSTN) has made its format available on its portal.

RAMA-IRIS has deployed more than 25 analytical reports on the GST Compliance Tools. The reports are designed to cater the need of the compliance team to keep a check on the filing as well as to submit regular updates to Management.

Some of the reports available are:

- a. Comparison of GSTR-3B and GSTR-1
- b. 3B-ITC Cross Utilisation – provides view of utilization of ITC
- c. 3B-Net ITC Available – provides overview of net ITC available
- d. 3B-Interest and Late fee
- e. ITC Analysis: 2A-Vendors yet to file GSTR-1
- f. ITC Analysis: ITC Eligibility based on GSTR-2A

For demo enquiry, please contact Mr. Kapil Bansal: +91 97693 63338

- i. GST Revenue collection for May 2019 shows Growth of 6.67%
- ii. The total gross GST revenue collected in the month of May, 2019 is Rs 1,00,289 crore
- iii. The total number of GSTR 3B Returns filed for the month of April up to 31-May-19 is 72.45 lakhs
- iv. The total revenue earned by Central Government and the State Governments after regular settlement in the month of May, 2019 is Rs.35,909 crore for CGST and Rs.38,900 crore for the SGST.
- v. The revenue in May, 2019 is 2.21% higher than the monthly average of GST revenue in FY 2018-19 (Rs.98,114 crore).
- vi. Rs. 18,934 crore has been released to the states as GST compensation for the months of Feb-Mar, 2019.
- vii. CBIC has released 2 sets of FAQ on Real Estate on new GST Rate Structure:
 - a. F. No 354/32/2019 – TRU dated 7-May-19 (FAQ Series 1 – 41 FAQs)
 - b. F. No 354/32/2019 – TRU dated 14-May-19 (FAQ Series 2 – 27 FAQs)
- viii. CBDT issues Order for deferment of Implementation of GAAR and GST Compliance in FORM 3CD 31-Mar- 20.
- ix. CBI Arrests an Inspector of Central GST in Case of Bribery, the inspector demanded and accepted bribe of Rs. 30,000/- from the complainant for release of his vehicle detained by the accused in Noida.
- x. Management of Manpasand Beverages arrested in fake invoice GST fraud. Multi locational searches were conducted on various premises of M/s Manpasand Beverages Ltd. unveiling a huge racket of fake / dummy units for availing fraudulent credit and committing tax evasion of Rs.40 Crores.
- xi. Free GST Accounting & Billing Software for MSMEs.
- xii. The National Anti-Profiteering Authority (NAA) has passed 60 orders so far against the complaints of profiteering. In 23 cases, profiteering was established amounting to Rs.625 Crores and effected recovery of Rs.300 Crores approx.

Disclaimer: The views expressed in various sections of the guide are based on understanding of the GST Laws and study of notifications, circulars, rulings and judgements issued by various competent authorities, however, in no case these should be considered as opinion expressed on a particular scenario that would require a deeper understanding of the transaction in consideration.



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RAMA's IT arm is a **Microsoft Certified Partner** providing ERP Implementation & Consulting services.

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