



Inside this edition

- CBIC waives late fees for delay in filing of GSTR-4 Annual return FY 2021-22 till 30th June 2022.
- CBIC issues guidelines for deposit of tax during the course search, inspection, or investigation.
- GST not payable on monthly collection not exceeding INR. 7500 per member of Residents Welfare Association.
- Amount received under lease rental services for residential purposes will be outside the ambit of GST

and more...

NOTIFICATIONS & UPDATES

CBIC waives late fees for delay in filing of GSTR-4 Annual return FY 2021-22 till 30th June 2022



CBIC vide Notification No-07/2022 of Central Tax dated May 26, 2022, has waived late fees for delay in filing of annual return in Form GSTR-4 for taxpayers who have opted for composition scheme from May 01, 2022, till June 30, 2022.

Source: Notification No-07/2022 of Central Tax Dated May 26, 2022

CBIC issues guidelines for deposit of tax during the course search, inspection or investigation.

CBIC vide Instruction No-01/2022-23 dated May 25, 2022, has issued guidelines for deposit of tax during the course of search, inspection or investigation. CBIC states that Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save taxpayer from higher penalty imposed on him subsequent to issuance of show cause notice under Section 73 or Section 74.

Recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due

legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues must be made by the tax officer from the taxpayer during search, inspection, or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by taxpayer or the tax officer in respect of such issues, either during such proceedings or subsequently together and made available to the users.

Source: Instruction No 01/2022-23 dated May 25, 2022

JUDGEMENTS AND ADVANCE RULING

GST not payable on monthly collection not exceeding INR 7500 per member of Residents Welfare Association



Issue: GST rate applicable on monthly collection not exceeding INR7500 per member as the total collection of the society is more than INR20 lakhs a year.

Hon'ble Authority of Advance ruling of Telangana in application of advance ruling of M/s. Jayabheri Orange County Owners Association passed order stating, The Serial No. 77 of Notification No. 12/2017 as amended vide

Notification No. 02/2018 dated January 25, 2018 states that service by an unincorporated body or a non-profit entity to its own members is exempt upto an amount of INR 7500 per member for sourcing goods or services from a 3rd person for the common use of its members in a housing society or a residential complex. Therefore where the aggregate turnover of a Residents Welfare Association (RWA) exceeds INR 20 lakhs in a financial year and the amount collected for maintenance per member exceeds INR 7500/- then the entire amount is chargeable to GST at the rate of 18%. For example: if the maintenance charges are INR 9000 per month per member, GST @18% shall be payable on the entire amount and not on the difference amount.

Further even if the annual turnover of the RWA is greater than INR20 lakhs but the monthly maintenance charged per person is INR 7500/- or less, then such RWA need not pay tax on the amounts so collected. Any amounts collected periodically along with the monthly maintenance charges are covered under Entry 77 of Notification No. 12/2017. Therefore they are taxable if the total amount collected by the RWA, by whatever name i.e., monthly maintenance or sinking fund etc., exceeds INR 7500/-. Therefore the total amount collected in July or august month by RWA from the members i.e., the monthly maintenance charge plus sinking fund amount is liable to tax if it exceeds INR 7500/-. Nevertheless, GST is not leviable on electricity and water charges collected from residents.

Source: TSAAR Order No.29/2022

GST payable on receipt of gratuitous payment from outgoing member

Issue: • Determination of the liability to pay tax on any goods or services or both.

• Whether any particular thing done by the applicant with respect to any goods or services, or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Hon'ble Authority of Advance Ruling of Maharashtra passed an order in application M/s Monalisa Co-operative Housing Society Ltd. The applicant is a co-operative housing society registered under the Maharashtra Co-operative Housing Society Act (MCHS Act) having 48 flats which charges its members maintenance charges as per flat towards maintenance and upkeep of its premises.

When there is a transfer of a flat, the outgoing member makes a gratuitous and voluntary payment to the society. It does not have any implications on the outgoing formalities to be completed as per the MCHS Act. The applicant stated that the contribution made is entirely voluntary and is not at all a consideration received in lieu of services provided by the applicant.

The applicant collected funds from its members for future major repairs and renovation of the premises. The funds will not be used right away. The amount will only be utilized once the applicant finalizes the bids received for the repairs to be carried out.

The applicant has sought an advance ruling on the issue of whether the receipt of a gratuitous payment from an outgoing member for the time he has resided in the society is taxable under the CGST Act, 2017. The applicant has submitted that whenever there is a transfer of a flat, the outgoing member makes a gratuitous payment to the applicant

society, which does not have any implications or bearing on the outgoing formalities to be completed. The gratuitous contribution is voluntarily made by the outgoing member and is not at all a consideration received in lieu of services provided by the applicant, therefore the amount received is not liable to GST.

The AAR ruled that “consideration” includes any payment made in money, since the payment was made towards the major repair funds of the society. It was clear that the payment was for the inducement of the supply of goods or services or both, either by the recipient if he continues to be a member, or by any other person.

The AAR relied on the decision of the High Court in the case of M/s MP Finance Group CC (In Liquidation) v. C SARS, in which one important legal proposition was explained. It was ruled that income received by a taxpayer from illegal gains would be taxable in the hands of the taxpayer. Thus, though the collection of charges by society might be illegal under some other law, since it is covered by the scope of supply and other ingredients of the GST levy, it is taxable.

Source: GST-ARA- 30/2020-21/B-7 dated May 31 2022

Amount received under lease rental services for residential purposes will be outside the ambit of GST

Issue: Whether GST is payable of rental income received for residential purpose.

Hon’ble Authority of Advance Ruling of Maharashtra has ruled that the amount received under lease rental services for residential purposes will be outside the ambit of GST.

The ruling was made after M/S Kasturi and Sons Ltd approached the AAR that the Jurisdictional officer had ruled that giving properties on rent to LIC would not be residential in nature since, “LIC is not a natural person and LIC is profit making company. So, in order to increase profit, the facility of accommodation is given to employees, which is for commercial use and not for residential use.” Kasturi and Sons maintained that the properties were residential apartments and it proposed to let out on Leave and License basis to LIC of India specifically for the residential purpose of their staff members on fixed rentals / license fee basis.

Kasturi and Sons approached the AAR to know if they would be eligible for the exemption from payment of GST on the monthly license fee to be received by them on the proposed letting out on Leave and License Basis of their residential building. The AAR held that GST exemption is provided by the nature of the property and its usage and not by the status of the recipient. Only if a residential property was either used or let out for commercial purposes then it would be classified as a service provided and attract GST whereas, property let out for residential purposes will be exempt from the GST ambit, said the AAR. The GST applicability is not decided by the nature of the property but by the purpose for which it is used i.e. it is not the nature of the property, but the nature of the end use that will determine whether it is a commercial rent or residential rent, it added. The AAR held that Kasturi and Sons would be eligible for the exemption from payment of GST on the monthly license fee to be received on the proposed letting out on Leave and License basis of their residential building. The AAR also ruled that the jurisdictional officer defied all logic when he stated that the LIC staff to whom the flat is let out can sit late in office and

work more, which again formed a basis to treat the leasing of flats as commercial in nature.

Source: GST-ARA-30/2020-21/B-72 Dated May 31, 2022

CUSTOMS

Central Board of Indirect Taxes and Customs(CBIC) enables export of goods from Bangladesh to India by rail in closed containers.



CBIC vide Circular No-08/2022 of Customs dated May 17, 2022, allows movement of containerized cargo from Bangladesh into India by rail. A request has also been received from the High Commissioner of Bangladesh in New Delhi in which it has been informed that containers going from India to Bangladesh by rail are returning empty after delivering India's export goods there and that Bangladesh companies have expressed interest to use such empty containers to export their products to India.

The above request from Bangladesh entails using empty containers returning from Bangladesh after delivering Indian export goods. The carrier will be trains of Indian Railways plying between India and Bangladesh carrying India's containerized export goods to Bangladesh (forward journey) and returning with Bangladesh export goods in the same containers to India (return journey). In both forward and return journeys, the trains will cross the international border through one of the specified Land Customs Stations with rail route. It has been decided that the empty containers returning from Bangladesh to India on a train may be utilized to carry export goods of Bangladesh to India.

This shall apply to closed containers moved by Container Corporation of India (CONCOR) carried on trains operated by Indian Railways.

Source: Circular No-08/2022 of Customs dated May 17, 2022

GST REVENUE COLLECTION

The gross GST revenue collected in the month of May 2022 is 1,40,885 Cr. of which CGST is INR25,036 Cr., SGST is INR32,001 Cr., IGST is INR 73,345 Cr. (including INR 37469 Cr. collected on import of goods) and cess is INR 10,502 Cr. (including INR931 Cr. collected on import of goods).

The government has settled INR 27,924 Cr. to CGST and INR23,123 Cr. to SGST from IGST. The total revenue of Centre and the States in the month of May 2022 after regular settlement is INR 52,960 Cr. for CGST and INR 55,124 Cr. for the SGST. In addition, Centre has also released GST compensation of INR 86912 Cr. to States and UTs on 31.05.2022.

Source: pib.gov.in

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