

SKKA IDT ALERT

23/2022 dt 08TH Aug 2022

WEEKLY UPDATES

KEY HIGHLIGHTS

- **CBIC vide Order 01/2022-GST dated 21st July,2022 provides the power of authorisation under clause (c) of sub-rule (4) of rule 96 of the Central Goods and Services Tax Rules, 2017.**
- **Analysis of GST Council's decision of imposing 5% GST on hospital bed rents costing more than Rs. 5000 per day (excluding ICU).**

INTRODUCTION

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The GST law as well as the GST portal throughout the course of recent months has seen a few changes and updates. All the new updates are rolled out on a regular basis to help and assist the taxpayers in smooth and effective documentation of their GST returns.

Summary of the same is encapsulated in this Alert. Our Team at SKKA brings forth you weekly updates to ensure your business remains tax compliant.

REFUND OF IGST ON EXPORTED GOODS OR SERVICES OUT OF INDIA

Rule 96 of the CGST Rules govern the refund of IGST on exported goods or services. Export of goods is deemed application for refund of integrated tax paid on the goods exported out of India and such application is considered to have been filed only when the person

in charge of the conveyance carrying the export goods duly files a departure manifest; has furnished a valid return in FORM GSTR-3B and has undergone Aadhaar authentication in the manner provided in Rule 10B. Details of export after the return in FORM GSTR 3B has been furnished shall be transmitted electronically by the common portal to the system designated by the Customs.

Rule 96 (4) averts that the claim for refund shall be withheld where: -

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54, or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

As on 5th July 2022 CBIC amends the said rule via Notification No 14/2022 (CT) and hereby inserts the following clause after clause (b) as cited below:

“(c) the Commissioner in the Board or an officer authorized by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.”

In addition to the above, CBIC comes up with **Order No. 01/2022** dated 21st July 2022 and explicates above newly inserted clause by authorizing the Principal Director General/ Director General of Directorate General of Analytics and Risk Management (DGARM) to exercise the functions under clause (c) of sub-rule (4) of rule 96 of the CGST Rules, throughout the territory of India.

CBIC authorizes Principal Director General/ Director General of DGARM for Withholding of IGST Refund for Verification Purposes making retrospective amendment from July, 2017. In this manner, it empowers the claimants to approach the jurisdictional officer to resolve the discrepancies and get their refund claims processed. But from the point of view of genuine taxpayers it will end up being a time taking cycle.

SKKA COMMENTS

The above amendment is a very welcome step as there are many cases which are pending for refund due to risky exporter tag/other technical issues for which assesses have went to High Courts and the High Court has ordered the refund to be sanctioned. However due to non availability of the proper officer to decide such cases, the matters were being held up for inordinate times. With this amendment all cases of pending IGST refund shall now be addressed by Principal Director General/ Director General of DGARM.

HOSPITAL ROOM RENT TO ATTRACT GST NOW

Who might have at any point pondered that for sake of Revenue loss, GST Council would burden the room rent earned by Hospitals! Making a room for GST in Healthcare must as Finance Minister to Tax Hospital Room Rent!

The 47th GST Council meeting held on 28th & 29th June 2022 has coincided with the fifth anniversary of GST implementation. The GST Council seeks to rationalize rates and also notifies the much-needed amendments to remove ambiguity and legal disputes on various issues making it the major agenda of the meeting.

The GST council proposes implications of GST on hospital room rent that read as follows:

“Room rent (excluding ICU) exceeding Rs 5000 per day per patient charged by a hospital shall be taxed to the extent of amount charged for the room at 5% without ITC. “

The new levy stands effective from July 18, 2022. The 47th GST Council, which met late-last month, made this decision as part of a larger tax rate rationalization exercise.

Industry and trade chambers have voiced worry at some of the decisions of the Goods and Services Tax (GST) Council, for example, burdening medical clinic room levy, unbranded packaged consumer items, etc.

India's Pharmaceutical Industry at this point is third biggest to the extent its volume is concerned. The medical care area has been barely exposed to indirect duties on their services, taking into account its significance and the object of lessening the expense of medical care administrations. As populace is perpetually growing, so is the necessity for good Healthcare Services. The burden of charges on medical care services would straightforward affect the general population as the inflated expense of treatment. Besides, hospitals are also concerned about the non-availability of input tax credit in this case as cascading of embedded taxes will increase the cost of treatment for patients. In any case, the exemption has not been given to cosmetic treatments considering they are basically for the upgradation of beauty and not stringently a need.

The new levy by the Council sets to increase the cost of healthcare for consumer. Taking into account a great deal of patients admitted for longer periods, the combined impact of expense might weigh heavy on such person.

As we all know, GST is levied on the supply of goods or services or both as defined under Section 7 of CGST Act, 2017 Insofar as there is a solitary supply of goods or service, there may not be much difficulty in determining the rate applicable on such supply. However, there may be such scenarios where the supplies made are in form of composite supply having combinations like:

- Combination of services having the same or different rate of tax
- Combination of goods having the same or different rate of tax
- Combination of goods along with services with same or different rate

In accordance with GST Law, a composite supply is two or more goods or services that are only sold as a set and cannot be sold individually, taxed at the GST rate of the principal supply. Every composite supply has a principal supply, which is the main product or service that the buyer primarily wants.

A mixed supply is two or more independent products or services which are offered together as a bundle but can also be sold separately. In a mixed supply, the item or service with the highest GST rate is treated as the principal supply. The mixed supply is taxed at the GST rate of the principal supply.

Therefore, it becomes all the more important in such cases to decide the fundamental character of supply involved and further determine whether said supply is composite supply or mixed supply.

The hospital is an integral part of a social and medical organization, the function of which is to provide the population complete healthcare, both curative and preventive. Medical clinic beds are not inn beds and thus patients don't come for amusement but to address their medical problems. The room rent charged is not the purpose for which customer is billed but the treatments or services offered is. One can in any case contend that room rent charged by hospital is definitely not an independent service and would keep on being essential for the medical care administration, exempt under GST. Thus, it becomes questionable here as to what is the principal supply for taxability under GST. Further, even if such transaction is viewed as a composite supply, the different components of the said transaction can't be cut off for giving different tax treatment.

Further, if taxation proves contrary to principle of composite supply, the proposition of GST Council would positively be likely to challenge before the legal forum.

Incoming of GST implications has led to outbreak of multiple dilemmas in the hospital industry. Hospital Billing isn't quite as straightforward as including GST the per-day bed use. It is not the same as some other customer confronting industry. There are variety of costs incurred and determined for purpose of billing to customers. The key inquiries that require prompt consideration are on the application and execution of the GST. There is a need of slew of explanations from the GST Council to implement the decision. Considering the monetary issues that confronts healthcare industries, they will have no choice except to pass on this weight to patients. High cost of beds in hospital can be well substantiated for all valid reasons and thus GST levy would make health officials voice their worry. Further, healthcare as a sector may be taxed but ideally it should be with input tax credit to ensure that the GST chain is not broken.

The above proposition all the while assuming a pretense of rate justification is downright a shock-treatment for the medical services area, as it would disrupt the settled tax position and lead to undesirable tax litigations propping up in future.

SKKA COMMENTS:

With provision of online compliances and payments, the framework of GST has become more accountable. The one nation, one tax system aims to improve India's competitiveness in global markets. Being GST-compliant, organizations can experience the merits of having a unified tax system and easy input credits. Notwithstanding compliance challenges, it's clear that noncompliance is vastly more expensive and far riskier to an organization.

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