

From	Karvy Data Management Services Ltd.
Date	January 06, 2019
Subject	Clarification on certain issues under the GST Laws
Category	Circular
Reference	Circular No. 76/2018 dt. 31.12.2018 to 78/2018 dt. 31.12.2018
Series	Karvy/GST/94

Various representations were made to the Central Board of Indirect Taxes and Customs (CBIC) seeking clarification on certain issues under the GST Laws. In order to clarify these issues and to ensure uniformity of implementation across field formations, CBIC has recently issued series of circulars having coverage over below mentioned matters:

Supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments.

Applicability of Penalty provision under Sec. 73 (11) of the CGST Act 2017, where the return in FORM GSTR-3B has been filed after the due date of filing such return.

Applicability of GST Rate in case a debit note or a credit note issued in the GST regime towards supply made in the pre-GST regime.

Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of Notification No. 50/2018 - Central Tax dated 13.09.2018.

Correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961.

"Owner of the goods" for the purposes of section 129(1) of the CGST Act 2017 (Detention, seizure and release of goods and conveyance in transit)

Denial of composition option by tax authorities and effective date thereof.

Tax treatment in case an exporter of services in India outsources a portion of the services contract to another person located outside India.

Clarification to the above issues given by CBIC is tabulated below:

Circular No. 76/50/2018-GST dt. 31.12.2018		
Sl. No.	Issues	Clarification given by CBIC
1	Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?	<p>→ Intra-State and Inter-State supply of such goods made by Central Govt., State Govt., UT or a Local Authority is a taxable supply under GST.</p> <p>→ Such supplies when made to a registered persons by Central Govt., State Govt., UT or a Local Authority, the same would be subject to RCM and the registered recipient shall discharge tax liability.</p> <p>→ Such supplies when made to an unregistered persons by Central Govt., State Govt., UT or a Local Authority, the same would be subject to forward charge and Central Govt., State Govt., UT or a Local Authority shall be liable to get registered and pay GST.</p>

Sl. No.	Issues	Clarification given by CBIC
2	<b>Whether penalty in accordance with section 73 (11) of the CGST Act 2017 should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?</b>	<p>→ A show cause notice is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilised for any reason under the provisions of Sec. 73 (1) of CGST Act 2017. In such scenario, penalty u/s 73 (11) of CGST Act 2017 can be imposed.</p> <p>→ The provisions of Sec. 73 of CGST Act 2017 are generally not invoked in case of delayed filing of return in Form GSTR-3B, because the tax along with applicable interest has already been paid.</p> <p>→ However, since the tax has been paid late in contravention of provisions of CGST Act 2017, a general penalty u/s 125 of CGST Act 2017 may be imposed after following the due process of law.</p>
3	<b>In case a debit note is to be issued under section 142(2)(a) of the CGST Act or a credit note under section 142(2)(b) of the CGST Act, what will be the tax rate applicable – the rate in the pre-GST regime or the rate applicable under GST?</b>	<p>→ In case of revision of prices, after 01.07.2017, of any goods or services supplied before 01.07.2017, thereby requiring issuance of supplementary invoice, debit note or credit note, the rate as per the provisions of GST Acts would be applicable.</p>
4	<b>Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of Notification No. 50/2018 - Central Tax dated 13.09.2018</b>	<p>→ The provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty one per cent or more participation by way of equity or control is with the Government.</p>
5	<b>What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?</b>	<p>→ Taxable value for the purposes of GST shall include the TCS amount collected under the provisions of Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.</p> <p>→ Refer valuation provision under Sec. 15 (2) of CGST Act 2017.</p>
6	<b>Who will be considered as the "owner of the goods" for the purposes of section 129(1) of the CGST Act 2017?</b>	<p>→ If the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner.</p> <p>→ If the invoice or any other specified document is not accompanying the consignment of goods, then the proper officer should determine who should be declared the owner of the goods.</p>

## Circular No. 77/51/2018-GST dt. 31.12.2018

Sl. No.	Issues	Clarification given by CBIC
7	<b>What will be the effective date in case a composition taxpayer has exercised the option of withdrawal from the scheme?</b>	<p>→ The composition taxpayer shall pay tax as a normal taxpayer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter.</p> <p>→ The composition taxpayer shall file an application in Form GST CMP-04 on the GSTN portal within 7 days of the occurrence of such event.</p> <p>→ The effective date shall be the date indicated by him in his application in Form GST CMP-04. But such date may not be prior to the commencement of the financial year in which such application for withdrawal is filed.</p>
8	<b>What is the procedure of issuing show cause notice by the proper officer to the taxpayer enquiring on the composition scheme eligibility of such taxpayer?</b>	<p>→ Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under composition scheme or has contravened the provisions of CGST Act or CGST Rules, he may issue a notice to such taxpayer in Form GST CMP-05 to show cause as to why the option to pay tax under composition scheme should be allowed.</p> <p>→ The registered taxpayer shall reply to the show cause notice in Form GST CMP-06.</p> <p>→ Upon receipt of the reply, the proper officer shall issue an order in Form GST CMP-07 within 30 days of receipt of reply, either accepting or denying the option to pay tax under composition scheme by the taxpayer.</p>
9	<b>What will be the effective date of acceptance or denial by the proper officer on the composition scheme option of the taxpayer?</b>	<p>→ In case of acceptance of the composition scheme option by the proper officer, effective date shall be the date of the option.</p> <p>→ In case of denial of the composition scheme option by the proper officer, effective date shall be the date of event concerning such contravention. The effective date in this case may even be of any retrospective date as may be determined by the tax authorities but shall not be prior to the date of contravention.</p>
10	<b>What are the provisions to be followed, once the eligibility option of composition scheme is denied by the proper officer?</b>	<p>→ The proceedings would have to be initiated under the provisions of Sec. 73 or Sec. 74 of CGST Act 2017 for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in Form GST CMP-07.</p> <p>→ The registered taxpayer shall be liable to pay tax as a regular taxpayer from the date of issue of the order in Form GST CMP-07.</p> <p>→ The taxpayer shall be eligible to claim ITC on inputs / capital goods held in stock on the date immediately preceding the date of issue of the order in Form GST CMP-07.</p>

## Circular No. 78/52/2018-GST dt. 31.12.2018

Sl. No.	Issues	Clarification given by CBIC
11	<p><b>In case an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract in the hands of the exporter?</b></p> <p><b>There may be instances where the full consideration for the outsourced services is not received by the exporter in India.</b></p>	<p><b>Such transactions involves two supplies:</b></p> <ul style="list-style-type: none"> <li>(i) Supply of services from the exporter of services (say ABC Ltd.) located in India to the recipient of services (say DEF Inc.) located outside India (say in U.S) for the full contract value.</li> <li>(ii) Import of services by ABC Ltd. in India from the supplier of services (say XYZ LLC) located outside India (say in Mexico) with respect to the outsourced portion of the contract.</li> </ul> <p><b>Conditions to be met for a transaction to qualify as export of services as per Sec. 2(6) of IGST Act 2017:</b></p> <ul style="list-style-type: none"> <li>(a) the supplier of service is located in India;</li> <li>(b) the recipient of service is located outside India;</li> <li>(c) the place of supply of service is outside India;</li> <li>(d) the payment for such service has been received by the supplier of service in convertible foreign exchange; and</li> <li>(e) the supplier of service and the recipient of service are not merely establishments of a distinct person.</li> </ul> <p>→ The total value of the contract between ABC Ltd. India and DEF Inc. U.S will be considered as export of services if all the above conditions u/s 2(6) of IGST Act 2017 are met.</p> <p>→ The exporter of services (ABC Ltd., India) shall be liable to pay tax under reverse charge mechanism (RCM) on the import of services on that portion of services which has been provided by the supplier (XYZ LLC, Mexico) on its behalf to the end recipient of services (DEF Inc., U.S). The tax paid under RCM shall be available as ITC in the hands of ABC Ltd. India.</p> <p>→ The full consideration of the contract might not be received by ABC Ltd. India in convertible foreign exchange due to the fact that the end recipient of services (DEF Inc. U.S) has paid directly part of the consideration to the supplier of services located outside India (XYZ LLC, Mexico) to the extent services were outsourced by ABC Ltd., India to XYZ LLC, Mexico.</p> <p>→ Such part consideration directly paid to the supplier of services located outside India (XYZ LLC, Mexico) by the recipient of services (DEF Inc. U.S), shall be considered as receipt of consideration in convertible foreign exchange in the hands of ABC Ltd. India for the purpose of export of services in terms of Sec. 2(6) of IGST Act 2017. However, following conditions should be met in this scenario:</p> <ul style="list-style-type: none"> <li>(i) IGST has been paid under reverse charge mechanism by ABC Ltd. India for import of services on that outsourced portion of services provided by XYZ LLC, Mexico to the end recipient DEF LLC, U.S on its behalf.</li> <li>(ii) RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.</li> </ul>

Download the circulars from the below link:

Circular No.	Download Link
76/2018	<a href="http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-76.pdf;jsessionid=536502FC54BF674340F9BAE55B6BB97C">http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-76.pdf;jsessionid=536502FC54BF674340F9BAE55B6BB97C</a>
77/2018	<a href="http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-77.pdf;jsessionid=5B654F89C4C71B169E4585723F504075">http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-77.pdf;jsessionid=5B654F89C4C71B169E4585723F504075</a>
78/2018	<a href="http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-78.pdf">http://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-No-78.pdf</a>

#### **About KARVY DATA MANAGEMENT SERVICES LTD.**

Karvy Data Management Services Limited (KDMSL), a GST Suvidha Provider which has developed ASP Solution for easing GST compliance for tax payers. Easy to use interfaces are made available at the disposal of the tax payers to simplify their compliances in terms of dashboards, MIS, returns, payments, refunds and other compliance process. So, 'HELP US HELP YOU' we offer following services for GST - GSP & ASP Services (on cloud or on premises) with ERP Integration and Vendor Management Solution. We also offer managed services for Outsourced GST Compliance which will take care of end to end compliances.

In India, GST Team of KDMSL are located in following cities: Hyderabad, Mumbai, Bangalore, New Delhi, Chennai, Pune and Kolkata. For more information about KDMSL service offerings, visit [www.karvygst.com](http://www.karvygst.com)

#### **Below are the co-ordinates of our representatives from GST Team across India:**

Hyderabad: Mr. Vamsi Krishna Pothukuchi (8378976769) & Mr. Dipak Tiwary (9823741187)

Mumbai: Mr. Avdhesh Heda (9130561253)

Pune: Mr. Avdhesh Heda (9130561253)

Bangalore: Mr. Vamsi Krishna Pothukuchi (8378976769) & Mr. Dipak Tiwary (9823741187)

New Delhi: Ms. Priyanka Mathur (9953563996)

Kolkata: Mr. Vijay Kumar Gupta (9339355647)

Chennai: Mr. Vamsi Krishna Pothukuchi (8378976769) & Mr. Dipak Tiwary (9823741187)

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