

Date 07.12.2019

## **GST Updates – Summary of Order and Circular issued on 3<sup>rd</sup> and 4<sup>th</sup> December 2019**

**Disclaimer:** -This material and the information contained herein prepared by Hiregange & Associates is intended for clients and other Chartered Accountants, to provide updates under GST and is not an exhaustive treatment of such subject. We are not, by means of this material, rendering any professional advice or services. It should not be relied upon as the sole basis for any decision which may affect you or your business.

## **1. Removal of Difficulties Order No. 09/2019-CT dated 3<sup>rd</sup> December 2019**

- a. The government has issued Removal of Difficulties Order No. 09/2019-CT dt. 3<sup>rd</sup> December 2019 to extend the last date for filing of appeals before the GST Appellate Tribunal against orders of Appellate Authority on account of non-constitution of benches of the Appellate Tribunal.
- b. The time limit for filing of appeal against the order of the first appellate authority was three months from the date of communication of order based on section 112(1) of the CGST Act, 2017. For the reason that the Appellate Tribunal and its benches are yet to be constituted in many states, the last date for preferring the appeal before the appellate Tribunal has been extended to three months from the date of communication of order, or three months from the date of constitution of the Tribunal, whichever is later.
- c. Similarly, the commissioner has the power under section 112(3) of the CGST Act, 2017 to direct any officer subordinate to him to file an appeal to the Appellate Tribunal within six months from the date of order of first appellate authority. The Order *ibid* has extended the due date to six months from the date of communication of order, or six months from the date on which the Appellate Tribunal is constituted, whichever is later.

**H&A Comments:** Logical step by the government to extend the due date. Right of assessee to file an appeal cannot be infringed due to non-constitution of Appellate Tribunal. This is in line with recent order of Punjab and Haryana High Court cited 2018 (16) GSTL 21 (P&H) wherein held that the appeal filed by the applicant cannot be treated as time barred when delay is due to non-constitution of Appellate Authority.

## **2. Circular No. 127/46/2019-GST dated 4<sup>th</sup> December 2019**

The above circular was issued to withdraw Circular No. 107/26/2019-GST dated 18<sup>th</sup> July 2019 wherein certain clarifications were given in relation to various doubts regarding supply of Information Technology enabled Services (ITeS services) under GST. This is in line with the recommendation of the GST Council in its 37<sup>th</sup> Meeting held on 20<sup>th</sup> September 2019 at Goa where the Council recommended issuance of a new circular in supersession of Circular No. 107/26/2019-GST.

**H&A Comments:** Circular No. 107/26/2019-GST dated 18<sup>th</sup> July 2019 sought to provide clarity on supply of Information Technology enabled Services and back end support services to overseas entities under GST law as to whether they qualify as intermediary or it is export of service.

The said circular in Scenario II provided that the supplier of backend services which may include support services, during pre-delivery, delivery and post-delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.) falls under the definition of intermediary as it arranges or facilitates the supply of goods/ services by the client located abroad to their customers. This view is not in line with law which provides that the supplier of services cannot be treated as "intermediary" as long as the services are provided on his own account. This has to be determined based on the facts and circumstances of each case. The circular *ibid* was creating ambiguity and has rightly been withdrawn.

**Head Office:**

**Bangalore:** No.1010, II Floor, 26th Main, 4th 'T' Block, Jayanagar, Bangalore - 560 041. Tel 080-26536404 / 05 +91 98453 44353 e-mail [rajesh@hiregange.com](mailto:rajesh@hiregange.com)

**Branches:**

**Hyderabad:** 4th Floor, West Block, Sri Anushka Pride, Opp. Ratnadeep Supermarket, Road Number 12, Banjara Hills, Hyderabad, Telangana - 500034 Phone: 040-23318128 / 9908113795 E-mail: [sudhir@hiregange.com](mailto:sudhir@hiregange.com)

**NCR (Gurgaon):** 509, Vipul Trade Centre, Sector 48, Sohana Road, Gurgaon, Haryana - 122 009 Phone: 012-44634496 / 8510950400 E-mail: [ashish@hiregange.com](mailto:ashish@hiregange.com)

**Visakhapatnam:** Flat No. 101, D. No. 9-19/18 Sai Sri KesavVihar, Behind Gothi Sons Show room, CBM Compound Visakhapatnam - 530 003. Phone: 91-9989604111 E-mail: [anil@hiregange.com](mailto:anil@hiregange.com)

**Mumbai:** 409, Filix, Opp. Asian Paints, LBS Marg, Bhandup West, Mumbai - 400 078 Phone: 91-9867307715 E-mail: [vasant.bhat@hiregange.com](mailto:vasant.bhat@hiregange.com)

**Pune:** Rajyog Creations Apartment, Flat No. 5, IV Floor, Anand Park, Above HDFC Bank, Aundh, Pune - 411 007. Phone: 7680000205 / 020-41202013 E-Mail: [ravikumar@hiregange.com](mailto:ravikumar@hiregange.com)

## Hiregange & Associates

Chartered Accountants

**Chennai:** T3, Amar Sindhur, Pantheon Road, Egmore, Chennai – 600 008. Phone: 9962508380 / 044-43596509 E-Mail: [vikram@hiregange.com](mailto:vikram@hiregange.com)

**Guwahati:** 2A, 2<sup>nd</sup> Floor, Royal Silver Tower, Near Home Town Lachit nagar Main Road, Uluhari, Guwahati- 781007 Phone: 7670087000 E-Mail: [mannu@hiregange.com](mailto:mannu@hiregange.com)

[www.hiregange.com](http://www.hiregange.com)