F. No. G-25020/02/2017 ~ 8-1157

Dated: 05.04.2019

Subject: Minutes of meeting held on 28.03.2019 to discuss GST related issues.

Reference is invited to Prasar Bharati Secretariat letter no. PB-7(14) (1)/2018-fin/GST-SC/2580-87 dated 01.04.2019 regarding subject cited above (copy enclosed).

2. All the DDOs of field units are requested to note that they should issue invoice in respect of all Liquidated Damage (LD) amount against vendor invoices and send the details of such invoices to concerned SNOs on monthly basis. Detailed procedure of the same is mentioned in GST circular no. 3 dated 18.07.2017 (copy enclosed). Further they should also take credit note from the vendors in respect of other deductions made due to short supply of good and services, rate difference etc. from the vendor invoices. CAs may be consulted for further guidance in the matter.

3. It is also learnt that ITC against GST paid upon Bank Charges is not being claimed due to non-receipt of details from concerned field units. All the DDOs are requested to send the requisite data to respective SNOs and to ensure that ITC is not lapse due to non-receipt of information from concerned field units.

4. All the SNOs/ DDOs are requested to adhere strictly the instructions issued vide above referred letter of Prasar Bharati Secretariat to ensure that no monetary loss is caused to Doordarshan.

This is issued with the approval of Competent Authority.

Encl: As above

(K.C.Jain)
Dy. Director (Budget)

All SNOs/ DDOs

Copy to:

(i) DDG (Fin), Prasar Bharati House, Copernicus Marg, New Delhi
(ii) PS to ADG (F) DG: Doordarshan, New Delhi
(iii) AD (Tax) DG: Doordarshan, New Delhi
(iv) IT section DG: Doordarshan with the request to upload on Doordarshan website.
Sub: Review of existing contracts and agreements – reg.

Under the GST regime, various concepts as compared to old laws and rules made thereunder have been changed by the Government. GST may have an impact on the agreed terms and conditions of the existing contracts and agreements. Some of the reasons due to which contracts and agreements need to be reviewed are mentioned below:

1. **Reduction in rate of tax on supply of any goods/ service:** No person can make undue profit due to implementation of GST. Any reduction in tax due to introduction of GST has to be passed on to the recipient of the goods or services or both by way of proportionate reduction in prices.

2. **Mandatory disclosure of recipient GSTIN on invoice for claiming ITC:** Since no Input Tax Credit (ITC) can be allowed under GST if GSTIN of the recipient of the supply is not mentioned on the face of Invoice issued by registered person, hence specific clause should be inserted for disclosure of GSTIN of the concerned unit on the face of invoice and, in GSTR-1 filed by the supplier. Specific clause should be there for withholding/ recovery of amount to the extent of ITC amount not claimed from future payments due to such non-disclosure.

3. **Discontinuation of major indirect taxes:** More than 17 taxes and cesses have been subsumed under GST, hence name of subsumed taxes have to be replaced with GST so that there should be no ambiguity at the time of passing of the bill/ invoice.

4. **Penal Clause:** There should be specific provision in contracts and agreements that in case, any credit, refund or benefit is denied or delayed to the Buyer due to non-compliance by the Seller (ex: non-payment of GST on supplies, non-disclosure or incorrect disclosure in GST returns), the Seller would reimburse an amount equivalent to the loss including, but not limited to, the tax loss, interest and penalty to Prasar Bharati.

5. **Transition and Spill Over:** In the event of any change in law post signing of the contract, it is better that the Buyer and Seller would discuss and agree upon a transition plan which would allow for minimization of undue additional tax burden under the contract on the buyer and seller.

6. There are some charges on which no indirect tax was applicable prior to 01.07.2017 such as late fee or interest charged for delayed payments, charges paid by supplier on behalf of buyer etc., however, now these would attract GST.
7. There is possibility that some items which were taxable under applicable subsumed tax laws are now exempt under GST and vice-versa.

8. **Issue of Debit and Credit note:** Under GST, any revision in invoice amount has to be done by issue of debit / credit note. The specific provision defining so should be made of the agreement. For ex. liquidated damages (LD) should be deducted from the invoice amount by way of issue of debit note.

9. Since in Prasar Bharati under the GST regime, each registered person is a separate entity even under the same organisation/ business vertical, hence to avoid unnecessary issue of invoice to other units of Prasar Bharati and thereby blocking working capital of the organisation by making payment of GST by one unit and claiming of ITC by another unit, the clauses regarding place of supply/ delivery need to be reviewed and modified, if necessary in the light of GST provisions. Accordingly, invoice should be raised in the name of end-user and the delivery should also be made directly to the end-user. Similarly, invoice for output supply shall be issued by that unit which ultimately supplies goods and / or services to the client/ recipient.

10. Under the GST regime, in case the goods are received in lots or instalments, ITC can be availed only after receipt of all lots or instalments of goods even if the invoice has been issued before the delivery of goods. However, in case of continuous supply where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or each such payment is received.

    Besides the reasons mentioned above, there may be numerous other reasons also where a need may arise for review of existing contracts or agreements. Therefore, in the current scenario, all existing contracts and agreements need to be reviewed so that these would be in sync with the provisions of GST. Further, it is necessary to ensure that all prospective contracts are framed and finalised keeping in view the provisions of GST.

    In view of above, it is requested to kindly issue the necessary instructions to your field units to make the existing as well as new contracts compliant with GST provisions.

(C. K. Jain)
Dy. Director General (Fin)

1. DG:DD
2. DG:AIR
3. ADG(E&A), PB Sectt.

Copy to for information to:
1. PS to CEO, PB
2. PS to Member (Fin), PB

\[\text{\textcopyright \, 18th}\, 2017\]

\[\text{\textcopyright \, DiR (T)}\, \text{with the relevant to upload on the website.}\]
GST Circular no. 12

No. PB-7(14) (1)/2018-Fin/21577 -97 Dated 3/10.2018

Sub: Liquidated damages and issue of Credit and Debit Notes under GST - reg.
Ref: This office GST circular no. 3 dated 18.07.2017

Section 34 of Central Goods & Services Tax Act, 2017 deals with issue of Debit and Credit Notes. As per Section 34(1), where a tax invoice has been issued for supply of any goods or services or both and -

a) the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or

b) where the goods supplied are returned by the recipient, or

c) where goods or services or both supplied are found to be deficient

the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note.

Similarly, Debit note(s) can be issued where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a Debit Note. For the purpose of GST Acts, “Debit Note” shall include a supplementary invoice.

Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted accordingly.

It may be noted that-

1. The debit notes as well as credit notes under GST can be issued only by the supplier of the goods and / or service. These notes can-not be issued by the recipient of the supply.

2. The supplier shall mention the details of debit or credit note in from GSTR-1. On filing the details it will get auto-populated in form GSTR-2A for the recipient. The recipient can either modify or accept or reject these details and claim input tax credit (ITC) accordingly.
3. Debit Note/Credit Note Must Contain Invoice Number
   (a) The debit note/credit note must contain the invoice number of the original supplies made.
   (b) The details of the debit note/credit to be declared in form GSTR-1 shall be given along with details of original invoice number, date and GSTIN.

4. The time limit is only for issuing credit note and not debit note.

**GST on Liquidity Damages (LD):**

Liquidated Damages is not defined in GST Acts but is a common concept in business. Section 73 and 74 of Indian Contract Act, 1872 deals with ‘liquidated damages’ and the same are reproduced below:

**Section 73:** "When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it."

**Section 74:** "When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is provided to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, or as the case may be, the penalty stipulated for."

In other words, we can say that "Liquidated damages are damages or a sum of money which is agreed upon in a contract to be paid to a party by another party in the event of breach of any term or condition of the contract."

As per Schedule II of CGST Act, 2017, there are some activities which are to be treated as supply of goods or supply of services. Liquidated damages are covered under the Clause 5(e) of said Schedule II and are to be treated as Services. There is no specific Service Accounting Code (SAC) for liquidated damages. It may be covered under Heading "9997" [please refer Central Tax (Rate) Notification no.11/2017 dated 28.06.2017] on which GST is payable @18%.

In view of above, it may be noted that a separate tax invoice should be issued by the field units against the deduction made from the invoice of the supplier on account of liquated damages. The field units charging liquidated damages shall issue Tax Invoice as per the GST Acts and the rules made thereunder. The example given under clause 8 of GST circular no.3 under reference stands deleted.

The payment should be made net of invoice(s) received from the supplier and invoice(s) issued by the field unit in respect of the liquidated damages. In respect of any
deduction in the invoice other than liquidated damages, the Credit Note needs to be issued by the supplier.

The following actions need to be taken by the DDOs and SNOs for GST compliance in this regard:

<table>
<thead>
<tr>
<th>Sl No.</th>
<th>Particulars</th>
<th>Details to be sent by DDOs to SNOs under the details of</th>
<th>Action to be taken by SNOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Credit Note/Debit Note issued by the supplier against inward supply invoices</td>
<td>GSTR-2</td>
<td>Reduce or increase the amount of ITC.</td>
</tr>
<tr>
<td>2</td>
<td>Credit Note/Debit Note issued by field unit of Prasar Bharati against outward supply invoices</td>
<td>GSTR-1</td>
<td>Reduce or increase the amount of GST liability.</td>
</tr>
<tr>
<td>3</td>
<td>Tax invoice(s) issued by clients/customers for liquidated damages</td>
<td>GSTR-2</td>
<td>Claim the tax amount as ITC.</td>
</tr>
<tr>
<td>4</td>
<td>Tax invoice(s) issued by the field units of Prasar Bharati for liquidated damages</td>
<td>GSTR-1</td>
<td>Increase the amount of GST liability.</td>
</tr>
</tbody>
</table>

Both the Directorates are requested to circulate this circular to all the field units under their control and ensure that the instructions are followed scrupulously. A copy of this circular is also being uploaded on the website of Prasar Bharati.

This issues with the approval of Member (Finance), Prasar Bharati.

(C.K. Jain)
DDG (Fin)

DG: DD
DG: AIR
E-in-C, AIR & Doordarshan

Copy for information & necessary action to:
1. ADG (Comm.), DD & AIR, Prasar Bharati Sectt.
2. ADG (FIN), DG: DD/ DG: AIR.
3. ADG (E&A)/ ADG (Sports), PB Sectt.
4. All ADG (E)s/ ADG (P)s of Prasar Bharati, AIR and Doordarshan
5. CE (Civil), CCW, New Delhi
6. DDG (Fin), DG: DD/ DG: AIR.
7. DDG (Comm.), DG: DD/ DG: AIR.
8. All SNOs of DG: DD/ DG: AIR.
10. DDG (Technical) for uploading on the website.

Copy for information to:
1. SO to CEO
2. PS to Member (Fin)