निबंधन संख्या पी0टी0-40

बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

5 आश्विन 1944 (श0)

(सं0 पटना 780) पटना, मंगलवार, 27 सितम्बर 2022

विधि विभाग

अधिसूचना

27 सितम्बर 2022

सं० एल०जी०–01–15/2022–8262/लेजः ।–भारत संविधान के अनुच्छेद 213 के खंड–(1) के अधीन बिहार राज्यपाल द्वारा दिनांक 26 सितम्बर 2022 को प्रख्यापित निम्नलिखित अध्यादेश इसके द्वारा सर्व–साधारण की सूचना के लिये प्रकाशित किया जाता है।

बिहार–राज्यपाल के आदेश से,
रूद्र प्रकाश मिश्र,
सरकार के सचिव।

(Bihar Ordinance No. 02, 2022)

THE BIHAR GOODS AND SERVICES TAX (AMENDMENT) ORDINANCE, 2022

AN

ORDINANCE

to amend the Bihar Goods and Services Tax Act, 2017(Bihar Act 12 of 2017).

WHEREAS, The Legislature of the State of Bihar is not in session;

AND, WHEREAS, the Governor of Bihar is satisfied that the circumstances exist which render it necessary for him to take immediate action to amend the Bihar Goods and Services Tax Act, 2017 (ACT 12, 2017), in the manner hereinafter appearing.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Bihar is pleased to promulgate the following Ordinance:-

1. Short title and commencement.—

(1) This Ordinance may be called the Bihar Goods and Services Tax (Amendment) Ordinance, 2022.

(2) Save as otherwise provided, the provisions of this Ordinance shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Ordinance and any reference in any such provision to the commencement of this Ordinance shall be construed as a reference to the coming into force of that provision.

2. ***Amendment of section 16.—*** *In the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the principal Act), in section 16, —*

(a) in sub-section *(2)*,—

(i) after clause *(b)*, the following clause shall be inserted, namely:—

"(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;";

(ii) in clause *(c)*, the words, figures and letter "or section 43A" shall be omitted;

(b) in sub-section *(4)*, for the words and figures "due date of furnishing of the return under section 39 for the month of September", the words "thirtieth day of November" shall be substituted.

3. ***Amendment of section 29.—*** *In section 29 of the principal Act, in sub-section (2), —*

a. in clause (*b*), for the words "returns for three consecutive tax periods", the words "the return for a financial year beyond three months from the due date of furnishing the said return" shall be substituted;

b. in clause (*c*), for the words "a continuous period of six months", the words "such continuous tax period as may be prescribed" shall be substituted.

4. ***Amendment of section 34.—***In section 34 of the principal Act, in sub-section *(2)*, for the word "September", the words "the thirtieth day of November" shall be substituted.

5. ***Amendment of section 37.—****In section 37 of the principal Act, —*

(a) in sub-section (*1*), —

(i) after the words "shall furnish, electronically,", the words "subject to such conditions and restrictions and" shall be inserted;

(ii) for the words "shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed", the words "shall, subject to such conditions and restrictions, within such

time and in such manner as may be prescribed, be communicated to the recipient of the said supplies" shall be substituted;

(iii) the first proviso shall be omitted;

(iv) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted;

(v) in the third proviso, for the words "Provided also that", the words "Provided further that" shall be substituted;

(b) sub-section (*2*) shall be omitted;

(c) in sub-section (*3*),—

(i) the words and figures "and which have remained unmatched under section 42 or section 43" shall be omitted;

(ii) in the first proviso, for the words and figures "furnishing of the return under section 39 for the month of September", the words "the thirtieth day of November" shall be substituted;

(d) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (*1*) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (*1*), even if he has not furnished the details of outward supplies for one or more previous tax periods. ".

6. Substitution of new section for section 38.—*For section 38 of the principal Act, the following section shall be substituted, namely:—*

"38. Communication of details of inward supplies and input tax credit.

(*1*) The details of outward supplies furnished by the registered persons under sub-section (*1*) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (*1*) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (*1*) of section 37,—

(i) by any registered person within such period of taking registrationas may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the

said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (*a*), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (*12*) of section 49 subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed. ".

7. ***Amendment of section 39.***—*In section 39 of the principal Act,* —

a. in sub-section (*5*), for the word "twenty", the word "thirteen" shall besubstituted;

b. in sub-section (*7*), for the first proviso, the following proviso shall besubstituted, namely:—

"Provided that every registered person furnishing return under the proviso to sub-section (*1*) shall pay to the Government, in such form and manner, andwithin such time, as may be prescribed,—

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (*a*), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed. ";

(c) in sub-section (*9*), —

(i) for the words and figures "Subject to the provisions of sections 37 and38, if", the word "Where" shall be substituted;

(ii) in the proviso, for the words "the due date for furnishing of return for the month of September or second quarter", the words "the thirtieth day of November" shall be substituted;

(d) in sub-section (*10*), for the words "has not been furnished by him", thefollowing shall be substituted, namely:—

"or the details of outward supplies under sub-section (*1*) of section 37 forthe said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (*1*) of section 37 for the said tax period. ".

8. ***Substitution of new section for section 41.***—For section 41 of the principal Act, the following section shall be substituted, namely:—

"41. Availment of input tax credit

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section *(1)* in respect of such supplies of goods or services or both, the tax

payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed. ".

9. ***Omission of sections 42, 43 and 43A.***— Sections 42, 43 and 43A of the principal Act shall be omitted.

10. ***Amendment of section 47.***—In section 47 of the principal Act, in sub-section (1),—

a. the words "or inward" shall be omitted;
b. the words and figures "or section 38" shall be omitted;
c. after the words and figures "section 39 or section 45", the words and figures "or section 52" shall be inserted.

11. ***Amendment of section 48.***—In section 48 of the principal Act, in sub-section (2), the words and figures ", the details of inward supplies under section 38" shall be omitted.

12. ***Amendment of section 49.***—In section 49 of the principal Act,—

(a) in sub-section (2), the words, figures and letter "or section 43A" shall be omitted;
(b) in sub-section (4), after the words "subject to such conditions", the words "and restrictions" shall be inserted;
(c) after sub-section (11), the following sub-section shall be inserted, namely:—

"(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.".

13. ***Amendment of section 50.***—In section 50 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:—

"(*3*) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.".

14. ***Amendment of section 52.***—In section 52 of the principal Act, in sub-section (*6*), in the proviso, for the words "due date for furnishing of statement for the month of September", thewords "thirtieth day of November" shall be substituted.

15. ***Amendment of section 54.***—In section 54 of the principal Act, —

(a) in sub-section (*1*), in the proviso, for the words and figures "the return furnished under section 39 in such", the words "such form and" shall be substituted;
(b) in sub-section (*2*), for the words "six months", the words "two years" shallbe substituted;
(c) in sub-section (*10*), the words, brackets and figure "under sub-section (*3*) "shall be omitted;

(d) in the *Explanation*, in clause (*2*), after sub-clause (*b*), the following sub-clause shall be inserted, namely:—

"(*ba*) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;".

16. ***Amendment of notification issued under section 146 of the principal Act retrospectively.—***

(*1*) The notification of the Commercial Taxes Department notification No. S.O. 128, dated the 23rd January, 2018 issued by the State Government on the recommendations of the Council, under section 146 of the principal Act, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the First Schedule, on and from the date specified in column (3) of that Schedule.

(*2*) For the purposes of sub-section (*1*), the State Government shall have and shall be deemed to have the power to amend the notification referred to in the said sub-section with retrospective effect as if the State Government had the power to amend the said notification under section 146 of the principal Act, retrospectively, at all material times.

17. ***Amendment of notification issued under sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the principal Act retrospectively.—***

(*1*) The notification of the Commercial Taxes Department notification No. S.O.101, dated the 29th June, 2017, issued by the State Government on the recommendations of the Council, under sub-sections (*1*) and (*3*) of section 50, sub-section (*12*) of section 54 and section 56 of the principal Act, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Second Schedule, on and from the date specified in column (3) of that Schedule.

(*2*) For the purposes of sub-section (*1*), the State Government shall have and shall be deemed to have the power to amend the notification referred to in the said sub-section with retrospective effect as if the State Government had the power to amend the said notification under sub-sections (*1*) and (*3*) of section 50, sub-section (*12*) of section 54 and section 56 of the principal Act, retrospectively, at all material times.

18. ***Retrospective exemption from, or levy or collection of State tax in certain cases.—***

(*1*) Notwithstanding anything contained in the notification of the Commercial Taxes Department notification No. S.O. 65, dated the 29th June, 2017 issued by the State Government, on the recommendations of the Council, in exercise of the powers under sub-section (*1*) of section 9 of the principal Act, no state tax shall be levied or collected in respect of supply of unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil, during the period commencing from the 1st day of July, 2017 and ending with the 30th day of September, 2019 (both days inclusive) .

(*2*) No refund shall be made of all such tax which has been collected, but which would not have been so collected, had sub-section (*1*) been in force at all material times.

19. ***Retrospective effect to notification issued under sub-section (2) of section 7 of the principal Act.***—(*1*) Subject to the provisions of sub-section (*2*), the notification of the Commercial Taxes Department notification No. S.O. 371, dated the 30th September, 2019, issued by the State Government on the recommendations of the Council, in exercise of the powers under sub- section (*2*) of section 7 of the principal Act, shall be deemed to have, and always to have, for all purposes,come into force on and from the 1st day of July, 2017

No refund shall be made of all such state tax which has been collected, but which would not have been so collected, had the notification referred to in sub-section (*1*) been in force at all material times.

Patna **Phagu Chauhan**
Dated 26th September 2022 **Governor of Bihar.**

THE FIRST SCHEDULE
[*See* section 16(*1*)]

Notification number and date	Amendment	Date of effect of amendment
(1)	**(2)**	**(3)**
Commercial Taxes Department Notification No. S.O. 128, dated the 23rd January, 2018	In the said notification, in paragraph 1, for the words "furnishing of returns and computation and settlement of integrated tax", the following shall be substituted, namely:— "furnishing of returns and computation and settlement of integrated tax and save as otherwise provided in the notification number S.O. 401, dated the 26th December, 2019, all functions provided under the Bihar Goods and Services Tax Rules, 2017."	22nd June, 2017.

THE SECOND SCHEDULE
[*See* section 17(*1*)]

Notification number and date	Amendment	Date of effect of amendment
(1)	**(2)**	**(3)**
Commercial Taxes Department Notification No. S.O.101, dated the 29th June, 2017	In the said notification, in the Table, against serial number 2, in column (3), for the figures "24", the figures "18" shall be substituted.	1st July, 2017.

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