

Suggestions on GST Law



Indirect Taxes Committee

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI**

INTRODUCTION

1. The Institute of Chartered Accountants of India considers it a privilege to submit its suggestions on GST Law. We have segregated the 152 suggestions in 3 parts:

- Policy related issues
- Law Related Issues
- Procedural Issues

We shall be pleased to discuss suggestion in meeting to illustrate the points made by us.

2. We look forward to contributing in the drafting of simple, transparent, & fair GST laws in India.
3. In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same. The contact details are:

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For any further information, please visit the website of Indirect Taxes Committee:
www.idtc.icai.org.

EXECUTIVE SUMMARY

POLICY ISSUE

S. No.	Topic(s)	Suggestion(s)
1.	Classification of single product under more than one schedule.	It is suggested that a single consolidated list of products may be prepared for classification purpose by merging various schedules. Consolidated list may be adopted so that classification criteria follow settled law of basic to advance as far as possible and thus categorizing the products under one chapter with one rate
2.	Compensation Cess on Coal	It is suggested to levy Compensation Cess on Coal only at the first point when the raw coal and lignite and peat are raised and dispatched from the mine and any further moment thereon, be exempted. Further, transitional credit should be provided of the clean energy cess paid under the erstwhile regime.
3.	GST on Petroleum products	It is suggested that a suitable notification be provided as early as possible to levy GST on petroleum products, as it will bring an important chain in the economic activity within the GST fold and in select cases, the credit of GST paid on these items may be disallowed in order to minimise the possibility of misuse.
4.	Testing and availability of utilities and other IT infrastructural issues	It is suggested that: - All the utilities on the GST portal be placed first and thoroughly tested before being implemented and shared with the general public – well within the due date for filing / use of the utilities. Only post testing, the trade/ industry be mandatorily required to comply with it.
5.	Exclusion of transactions between employer-employee from GST	It is suggested that the reverse may also be excluded i.e services provided by an employer to an employee. Cost of monitoring and reporting of supplies / services by an employer to an employee and payment of taxes thereon is an administrative hassle. This has also resulted in the employers amending the employment contract letter to include all the services / supplies therein to avoid payment of GST.
6.	Facility for adjustment of incorrect tax paid (due to incorrect determination of place of supply) in addition to refund mechanism	We welcome refund mechanism for incorrect payment of taxes by assessee .However, it is suggested that the adjustment of cash payment in wrong head be allowed at assessee level by way of journal entry on the GST common portal as taking refund is cumbersome in place of adjustment and refund process also leads to blockage of working capital.



7.	Lower Interest rate in case of delayed payment of tax	It is suggested that the difference in the interest rates given under Section 50 and section 56 be aligned or reduced to a minimal level of 12% which is the cost of borrowers.
8.	Training to the officers under GST	It is suggested that the officers be trained under this Act in respect of mindset of trust and support to the industry as against the tax terror which is prevalent even today. Those officers who would adjudicate and hear appeals are to compulsorily go through a special learning and test for understanding.
9.	Interest be not considered as supply except Banking, NBFC Company	Akin to the service tax law, it is suggested that the interest income earned by way of extending deposits, loans or advances be included in Schedule III of the CGST Act, 2017 (similar to negative list in service tax laws). If not, it is suggested that such interest is not considered as 'exempt supply' for a business entity other than Banking / NBFC Company as it leads to reversal of common ITC.
Definition		
10.	Corrections to the definition of term Aggregate Turnover	<ul style="list-style-type: none"> ➤ It is suggested that the reference of the words "export of goods / services" be accordingly removed / omitted / deleted from the definition of Aggregate Turnover. ➤ It is suggested that instead of words "aggregate turnover" the words "aggregate turnover of taxable supplies" be used.
11.	Definition of Capital Goods	<ul style="list-style-type: none"> ➤ It is suggested that an exception be provided for items which are written off during the year of purchase in books of accounts to treat them as capital goods even if not capitalised in books of accounts. ➤ Further, it is suggested that this definition may also include the goods, the value of which is amortized over a period in the books of accounts. ➤ Additionally, the term "in the course or furtherance of business" be replaced with "for the purpose of business" so that no scope for restriction of credit is left. Same change may also be done for definitions of "Input" & "Input Services", "Outward Supply" and also in Schedule I & II. ➤ The term "value" be replaced with the words 'purchase consideration' for better clarity.
12.	Definition of Electronic Commerce	It is suggested that words "supply of" be replaced with the words "facilitating the supply of".



13.	Definition of Exempt Supply - In line with Govt. Policy	<ul style="list-style-type: none"> ➤ It is suggested that non-taxable supplies be kept outside the ambit of 'exempt supplies' as well as 'aggregate turnover'. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme. ➤ An amendment may be required in said definition that "Exempt supply means any supply of goods/services which are non-taxable under this act other than supply for job work in accordance with Section 143 of the Act and includes such supply of goods or services or both, which attract nil rate of tax or which may be exempt from tax under section 11.
14.	Amendment to the definition of 'service' – Exclusion of supply of Canned software	It is suggested that an explanation as provided in Model GST law to the definitions of Goods as well as Services be restored that goods do not include intangible property and service includes intangible property.
15.	Definition of "Inward Supply" – If removed denial of credit	<ul style="list-style-type: none"> ➤ It is suggested that supplies made without consideration be kept outside the purview of the definition of "Inward Supply". ➤ The above definition be changed to 'Inward supply' in relation to a person with reference to whom the place of supply is determined means the corresponding supply by the supplier of the outward supply".
16.	Amendment to the definition of 'job work' – Exclusion of repairs / maintenance	It is suggested that a proviso be inserted to the definition of Job Work to provide that job-work will not include repair or maintenance or other forms of supply which are carried out with respect to the goods belonging to another taxable person.
17.	Definition of "Location of the supplier of goods"	It is suggested that "Location of the supplier of goods" be defined as Location of supplier means the location where goods are situated under the control of the supplier ready for supply with a proviso to cover situation in case of bill to ship to model U/s10 (1) (b) of IGST Act, 2017.
18.	Definition of the term Consideration	<ul style="list-style-type: none"> ➤ It is suggested that the words "made or to be made" be replaced with the words "received or to be received" so as to enable levy of GST on the full consideration received by air-travel agents who collect commission from passenger as well as from airline. And there are other industries where there is two-way flow of consideration for the same supply ➤ Further, to remove any ambiguity the definition of



		consideration be rephrased as follows: “Consideration in relation to the supply of goods and/or services includes.....”
19.	Term Provision to be included in Definition of Supply	It is suggested that the term “provision” be included in the scope of supply.
20.	Removal of words “such as” as the definition of Supply is inclusive one	It is suggested to omit the words 'such as' in Section 7(1)(a) as, even after deletion of the words, the scope of supply would not become restricted / limited in any way. This is because, the definition of ‘supply’ is an inclusive one and takes into account even extraneous situations.
21.	Taxability of Import of services	It is suggested that entry 4 of Schedule I of CGST Act be deleted.
22.	Business Goods put to Private use by an assessee	If the intent of the Government is to levy GST on such services (for personal use), then Input Tax Credit on such services is also to be allowed to the registered person
23.	Supply being regarded in section 7(1)(d) to be ‘treated as’	It is suggested that: <ul style="list-style-type: none"> • In first case, shift the location of clause (d) as a separate sub-section under section 7; • In second case, replace the words of clause (d) with “(d) the activities referred to in Schedule II whether or not in course or furtherance of business and whether or not for consideration as specified therein including their treatment as supply of goods or as supply of service respectively”.
24.	Reimbursement of expense for which invoice is issued in the name of employee	It is suggested that there be provided a suitable clarification regarding taxability of reimbursements made by an employer to the employee when the bill for a service etc. is issued in the name of that employee.
25.	Mandatory Registration under section 9(3) for Reverse Charge purpose need not trigger the provisions of section 9(1)	It is, therefore, suggested that relaxation be given to such of those Assessee’s who are required to register only due to the applicability of section 9(3) of the CGST Act, 2017 and having PAN-India turnover of less than Rs. 20 lacs in a financial year. Section 24 to be ‘notwithstanding section 22 but subject to section 23....’
26.	Tax liability on Composite and Mixed Supply	It is suggested that definition of "Principal Supply" may be change to bring in the concept of dominant intention theory



Levy & collection		
27.	Disabling the levy under Reverse Charge for supplies not in the course / furtherance of business	An explanation be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 9(3) of the CGST Act, 2017.
28.	Availability of Composition Scheme to all persons	<ul style="list-style-type: none"> ➤ It is suggested that eligibility for composition scheme be made available uniformly to all suppliers whether supplying goods or services or both ➤ Alternatively, sector-specific composition schemes may be designed to cater to need of different sectors. For instance, the benefit of composition scheme can be extended to service providers up to a limit of Rs. 35 Lacs and supplier partly effecting supply of goods which are not leviable to tax under this Act. ➤ It is suggested that in section 10(1) the words “under this Act” be added after the words “in lieu of tax payable by him” to define and restrict the taxes liable to be paid to CGST/ SGST paid under this Act / respective State Acts. ➤ The embargo placed on effecting inter-State supplies by the taxable person opting to pay tax under the composition scheme must be done away with. GST, being a destination based consumption tax and moving in the direction of being ‘One India – One Tax’, this embargo appears to be travelling in the opposite direction.
29.	Availability of Composition Scheme to supplier of services – where credit is not eligible u/s 17(5) of CGST Act, 2017.	It is suggested that option of paying tax u/s 10 should also be extended to goods and services covered u/s 17(5)(b), (c) & (d) and services provided by professionals having small turnover.
30.	Redundancy of the Composition Scheme in certain cases	It is suggested that a mechanism be brought, wherein, the credit available to the registered dealer (composition registration) is passed to the recipient on similar lines to the mechanism for passing on CENVAT credit under Central Excise Law (First stage dealer provisions) or any other model of ad-hoc credit basis like 40% or 60% etc. as the procurements by a recipient from the composition dealer will affect the MSE Sector on account of the fact that the price of supplies made by the registered dealer (composition registration) are high in comparison to a



		person under regular registration.
31.	Ineligibility to opt for Composition Scheme if the person has stock on account of inter-state purchases	It is suggested that, where the person wishing to opt for Composition Scheme holds such goods in stock which have been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, he should be allowed to opt for Composition Scheme upon payment of appropriate tax under GST.
32.	Classification & HSN code in case of services are overlapping & not aligned	Appropriate amendment be made in the said notification to remove the ambiguity. Further, clarification on SAC codes under GST to be used on professional services rendered by chartered accountant be provided.
33.	Power to grant exemption from Tax	It is suggested that a proviso be added to sub-section 11 (3) of the CGST Act, 2017 to provide that "every such insertion / amendment / modification that has the effect of increasing the tax payable be effective from the date of such insertion only".
34.	Exemption in respect of Charitable Institutions	It is suggested to extend the exemption to all activities undertaken by such charitable organizations, as they will be negligible in nature and further, they are not in the nature of the primary activity of the charitable organizations. Alternatively, a cap could be brought on such ancillary activities like 20% of total receipts for the specific purpose of providing exemption from tax and registration.
35.	Composition dealers not to be given exemption under Notification No. 38/2017(CT)	It is suggested that either of the two options be availed :- <ol style="list-style-type: none"> 1. Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017 be amended to provide that benefit of this notification not be available to a registered dealer under composition scheme. 2. Rule 5(1) of the CGST Rules, 2017 be amended to provide that a registered dealer under composition scheme will not be eligible to avail the benefit of Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017.
36.	Possible Exempt supply in case of interest or discount	It is suggested that the Notification 9/2017 dated 28.06.2017 (IGST-Rate) be suitably amended by inserting an explanation that the above entry only relates to supply made by the banking and other financial company. This will exclude those entities whose principal supply is taxable and it is only one of supply that they advanced loan to its subsidiary and consequently earning interest



		income.
Time & Value of Supply		
37.	Rationalization of time limit w.r.t. Time of Supply of goods and services under RCM	It is suggested that the time limit prescribed in both the cases be made 90 days in line with the provision of old service tax law.
38.	Correction to determination of Time of supply in case of continuous supply of goods or services	It is suggested that reference to only Section 31 be given instead of section 31(1) in the Section 12 of the CGST Act, 2017 and Section 31(2) in Section 13 of the CGST Act, 2017.
39.	Clarification w.r.t change in rate of tax for continuous supply of goods / services	In order to avoid possible litigation, it must be suitably clarified as to what is the time of supply in case of change in rate of tax w.r.t continuous supply of services/goods.
Value of Supply		
40.	Exclusion of taxes/duties etc. paid under other statutes from the value of supply	Any taxes, duties, cesses, fee and charges levied under any other statute be excluded from the transaction value so that spirit of GST may be maintained. Such charges, being simply in the nature of statutory levies, never form part of the taxable value, as no supply is rendered by airlines per se, in lieu of such charges.
41.	Manner of determination of amount liable to be paid by the supplier	It is suggested that the amount liable to be paid by supplier may have a reference to the contract or agreement between suppliers and recipient, by including the words 'by reason of or in connection with' in the Section after the words "liable to pay" so that that the said amount is defined and is limited to the scope of the contract or agreement.
42.	Clarity on the nature of supply of vouchers	<ul style="list-style-type: none"> • It is suggested that Section 13(4) be omitted from the law. • Further it is suggested that to avoid misinterpretation the following definition of term "Voucher" be provided: <p>'voucher means any instrument or entitlement received from an arrangement with one person permitting another person to accept the same in redemption against payment owed in respect of a taxable supply</p> <p>any instrument or entitlement received from any Government under a law for the time being in force to redeem the same in respect of settlement of any payment owed towards any tax or duty</p>



		<p>Explanation 1: voucher shall not include a system of payment recognized under the Payment and Settlement Systems Act, 2007 or any other law for the time being in force.</p> <p>Explanation 2: voucher shall not include actionable claims"</p>
43.	Valuation in case of sale of repossessed goods	Applicability of the proviso for disposal of goods repossessed from registered persons be clarified.
44.	Supply of Goods on which ITC was not allowed at the time of purchase	Rule 32 of the CGST Rules may suitably be amended so as to provide that the value of such goods for the purpose of levy of GST shall be only over and above the consideration on which tax has already been paid.
Input Tax Credit		
45.	Exclusion of supplies liable to reverse charge from 'Exempt Supplies' for credit apportionment	<p>It is, therefore, suggested that supplies liable to tax under reverse charge mechanism be kept outside the ambit of exempt supplies for the purpose of determination of proportionate credits.</p> <p>Alternatively, the supplier may be provided an option to either:</p> <ul style="list-style-type: none"> • pay tax on forward charge basis along with corresponding ITC claim, OR • The recipient can pay the applicable tax under reverse charge mechanism at a reduced rate and not claim the relevant ITC, subject to the condition of no ITC has been claimed by the supplier. <p>Further, refund mechanism in line of erstwhile Rule 5B of CENVAT Credit Rule be provided to such supplier providing services under 9(3) where refund was available to the supplier of services liable to RCM, where he is unable to utilise the credits for payment of output tax.</p>
46.	Eligibility of input tax credit on certain services mandated to be provided by a Company / entity	It is suggested that the facility of availing input tax credit not be blanketly blocked when goods and/or services are used or intended to be used in the course or furtherance of business and especially, when incurring of certain expenses are mandated for an entity
47.	Disallowance of Credit in respect of works contract services	<p>➤ It is suggested that Section 17(5)(c) be rephrased as "works contract and goods or services used in a works contract except where it is an input for further supply as works contract".</p> <p>➤ It is suggested that the provisions under Section 17 relating to the Input Tax Credit be rationalized and</p>



		<p>brought at par with the simple concept that if outward supplies of a person are taxable then the inward supplies of the goods or services or both may be allowed as credit.</p> <ul style="list-style-type: none"> ➤ Further, it is suggested that renovation works, repairs etc. be eligible for credit if they are in course / furtherance of business. ➤ The restriction of ITC in respect of all works contracts resulting in immovable property at large be removed since in a large number of contracts which qualify as works contracts, the end result would be immovable property'.
48.	Section 17(5)(b) of the CGST Act provides for restriction from availing input tax credit in respect supply of certain goods or services or both.	It is suggested that an exception may be carved out under Section 17(5)(b) for outdoor catering just like the rent-a-cab service. If an analogy is drawn between the treatment given to Rent-a-cab services and outdoor catering, the exception would be required under GST Law.
49.	Non-availability of ITC on motor vehicle to developers/builders	<ul style="list-style-type: none"> • It is suggested that Clause (ii) of Section 17 (5) (a) be rephrased as follows: “(ii) for transportation of goods, including own supplies, whether or not any amount is separately charged therefor” • Further, clarification regarding transportation of items like money, securities, alcohol, petroleum products etc. be suitably provided. • It is suggested that credit of motor vehicles be allowed if the motor vehicle is used in the course of business for business purposes including construction services.
50.	Restriction of credit on goods confiscated or detained	It is suggested that there be no denial of ITC on goods confiscated or detained. Interest & penalty may be charged but denial of credit will lead to cascading and multi-point tax philosophy
51.	Eligibility of credit on capital goods and stock in certain cases	<ul style="list-style-type: none"> • It is suggested that suitable credit be allowed on purchase of capital goods after deducting appropriate depreciation as the registered person enjoyed some exemption earlier and now come under the taxable chain. Article 14 of the Constitution of India provides right of equality and if credit to such person is not allowed then it will lead to non-equality among the



		<p>equal.</p> <ul style="list-style-type: none"> It is suggested that in the principle of Natural Justice, the persons not obtaining registrations within the prescribed limit be allowed to set off the tax paid on the goods supplied by him (i.e. output tax payable) as he will be liable to pay tax from the date when he became liable for registration. Following explanations be added to Section 18(1)(d) "Explanation 1 - exempt supply becomes a taxable supply includes when a bone fide view is overturned by law or decision of a Court or Tribunal and such bona fides declared in the law so laid down. Explanation 2 –notwithstanding anything to the contrary in this Act, entitlement to take credit on input tax shall refer to input tax related to input, input service and capital goods, computed as aforesaid, used in relation to such supply.
52.	Tax treatment of supply of Capital Goods on which credit has been claimed	It is suggested that the in place of words “in case of supply of capital goods or plant and machinery” the words "In case of supply of capital goods, on which input tax credit..." be used. It will help give the provision the intended scope and give no room for ambiguity.
53.	Rationalization of certain conditions for claim of credit and eligibility	<ul style="list-style-type: none"> ➤ It is suggested that a proviso be added to Section 16(1) as follows: "Provided further that every registered person will be entitled take credit of input tax in accordance with this section even though tax is paid on outward supply is in accordance with section 7(1)(c) or section 9 (5) or any such provision from time to time" ➤ It is suggested that the mechanism to avail input tax credit on the purchase of inputs made during the period where he was unregistered be incorporated by way of proviso to Section 16(1) or by suitably changing the wordings contained in Section 40 to “effective date of First Purchase” instead of ‘effective date of registration’. ➤ It is also suggested that a suitable mechanism, in case of matching the credit, be provided for.
54.	Streamlining of provisions for	➤ It is suggested that the time-limit to claim Input Tax Credit in respect to any invoice be linked with the due



	time-limit for claim of credit	<p>date of filing the return rather than the actual filing of the return.</p> <p>➤ Further, it is suggested that the provision regarding belated claim of Input Tax Credits be suitably clarified.</p>
55.	Eligibility of credit on purchase of dumpers, tippers or other motor vehicle	<p>It is suggested that the credit of taxes paid on the purchase of dumpers and tippers or other motor vehicles of similar nature & kind be allowed. Further, it is suggested that the dumpers and tippers or other motor vehicles of similar nature & kind be included in the definition of “plant and machinery” in the explanation provided to Section 17 for the purposes of Chapter V (Input Tax Credit) and Chapter VI (Registration) and hence be eligible for Input Tax Credit and excluded from the definition of motor vehicles specifically as these motor vehicles are not used for transportation but construction (furtherance of business).</p>
56.	Exclusion of ‘Any other civil structure’ from the definition of ‘Plant and Machinery’	<p>It is therefore suggested that the words “other civil structures” be removed from the said Explanation. Clear statement also be made with respect to inclusion of passive structures as ‘plant and machinery’ i.e. those used for the furtherance of business, even if they are considered as ‘immovable property’ for purposes of municipal taxes by special provisions in that law.</p>
57.	Disallowance of Credit in respect of Rent-a-cab services and other services	<p>It is suggested that restriction of availing credit on Rent-a-cab services be dispensed with and credit be allowed for rent-a-cab used in course / furtherance of business under Sec17(4)(b) (iii). Furtherance of business or personal use is sufficient test in relation to cab services.</p> <p>Further, it is suggested to remove restriction on availing credits on travel benefits extended to employees on vacation such as leave or home travel concession as provided in Sec17(4)(b)(iv)</p>
58.	Credit of taxes paid prior to grant of registration be allowed for 6 months	<p>It is suggested that persons be allowed to take credit of duty paid by them to their supplier in the initial 2 months of GST implementation, considering that it is the initial period of implementation of GST and the persons, along with the department and the general public in large was struggling to adopt to the new law.</p>
59.	Eligibility of credit w.r.t. renting of immovable properties	<p>A clarification to be issued in respect of the above to consider such civil structures as ‘plant’ and allow the corresponding credit on the same. This would address the concerns of the community at large and prevent avoidable litigation at a future date.</p>



60.	Interest on Reversal of Capital goods	It is suggested that the words “along with applicable interest” be omitted.
Registration		
61.	Provision of Centralized Registration	The concept of Centralized Registration be provided for. Further, the assessee be mandated to provide in his return details of all the locations from which supply of goods/ services is made by him.
62.	Exclusion of certain income to arrive at threshold limit for registration for all persons	It is suggested that for determining the aggregate turnover limit of Rs. 20 lakhs for obtaining mandatory registration, non-operational income (like interest income) earned without any business motive not be considered.
63.	EVC-OTP option for private limited companies too in GST	It is suggested that e-filing with EVC-OTP option be allowed for private limited companies also in GST system. This will save lot of time, Cost for taxpayers & tax practitioners.
64.	Registration for interstate supply of goods	It is suggested that the benefit of twenty lakh for interstate service providers should be extended to interstate supply of goods also
65.	Relaxation of time-limit for effective date of registration	It is suggested that even in cases where the application for registration has been belatedly made, the effective date of registration be granted from the date of liability itself.
66.	Cancellation of Registration	It is suggested that clause (d) be deleted. Alternatively, the time-limit for commencement of business from the date of obtaining registration be extended to 1 year. Further, it is suggested that the facility of cancellation of registration from an earlier date be prohibited as this would disrupt the entire credit chain.
67.	Certificate of Incorporation issued by ROC	It is suggested that the words “giving effect to such order of the High Court or Tribunal” be deleted.
68.	Activation of registration number w.r.t. deemed registration	It is suggested that the activation of the registration number be done on an immediate basis, so as to facilitate the registered persons in compliance with the provisions of the law
69.	Anomaly in registration Provision	It is suggested that in Section 23 of the CGST Act, an over-riding clause be inserted: "Notwithstanding anything contained in section 22 & 24..."
70.	Requirement of registration in respect of construction works	It is suggested that a suitable clarification be provided in respect of registration requirements on construction



	undertaken in an outside State	works undertaken outside the registered State. Perhaps based on nature of works undertaken could guide this categorization. Mere installation works appear to attract registration where securing registration becomes cumbersome.
71.	Registration for an agent	<p>It is suggested that supply of goods between principal and agent, when made on account of agency, should be kept out of the list of transactions specified in Schedule I. It is also suggested that the requirement of obtaining registration regardless of the turnover being below the specified threshold limit be done away with.</p> <p>Also, one may consider introducing a concept like a 'pure agent' as is applicable in case of supply of services, in case of supply of goods as well.</p>
PROCEDURE RELATED ISSUES		
72.	Reason of Validation error not provided during registration	It is suggested that the reason for validation error be communicated to the applicant through email etc. so that he can take immediate corrective action by providing the correct particulars.
73.	Option of having multiple Trade Names with single GSTIN	It is suggested that the option of having multiple trade names against one GSTIN be provided to all registered person, regardless of the constitution of business, to facilitate ease of doing business.
74.	Effective date of cancellation of registration in case of automatically migrated from earlier regime	It is suggested that appropriate notification providing that if cancellation application has been filed within the specified time limit it will be effective from the appointed date to give relaxation to such assesses.
75.	Registration related issues under GST	It is suggested that detail list of issues of registration be resolved appropriately.
76.	Mismatch in GST Registration Number	It is suggested that such system glitches be looked into and resolved so that the genuine assesseees are not penalised for system defaults. Further, where multiple GSTINs have been issued against a single PAN (may be due to migration from various registrations, or any other reason), within the same State, a communication can be sent to the respective persons to intimate them regarding the multiplicity of registrations within the State. Accordingly, where a person has wrongly been allotted more than one GSTIN in a State, he can apply for cancellation of such registration.
77.	Registration taken under the Wrong Head	It is suggested that while making an application for registration under a particular head an option for



		reconfirmation field be added and later on assessee be permitted to modify such fields.
78.	Issues faced while applying for GST Registration	
a)	Date of grant of Registration Certificate	It is suggested that the registrations so granted be checked for such anomalies and a provision for revision of effective date of registration be made in genuine cases.
b)	Delay in grant of Registration Certificate	It is suggested that proper officers be requested to adhere strictly to the timelines laid down by law and support the assesseees with timely grant of Registration Certificate.
c)	Proof of Business Premises	It is suggested that the sale deed/ Index 2 in name of owner be accepted as a valid proof of business premises in the application for registration.
d)	Size of Documents to be uploaded while undertaking registration	It is suggested that the size limit of the uploaded files be increased so as to maintain the quality and readability of the documents uploaded.
e)	Requisite Forms be activated on GST portal	It is suggested that forms related to Registration, Cancellation or Modification in Registration be activated now so that the assesseees requiring amendments or cancellations to their registrations may apply for the same at the earliest.
f)	Selection of Commissionerates code under state & central while applying registration	It is suggested that system selects the appropriate system code on the basis of the area and PIN code entered by applicant, at both Centre and State jurisdictions
<u>TAX INVOICE, CREDIT AND DEBIT NOTES</u>		
79.	Treatment of tax paid on units cancelled	Clarification be provided.
80.	One Consolidated Credit and debit notes on monthly basis	It is suggested that the law provides an option to issue a consolidated debit / credit note, per month, per recipient (GSTIN), while the benefit of reduction in output liability in case of credit note can continue to be based on acceptance of such credit note by the recipient in his Form GSTR-2, upon matching of details. This option can be made available only in respect of supplies to registered persons, as tracking of debit / credit notes would be difficult in case of supplies to unregistered persons, and also because supplies to unregistered persons would normally not include issuance of multiple debit / credit notes during a month
81.	Receipt Voucher in case of receipt of Advances against supply of goods or services in same month	<ul style="list-style-type: none"> • It is suggested that complexity in documentation should be simplified to avoid pressure on the IT system without compromising on the revenue implications. <ul style="list-style-type: none"> • It is also suggested that the Receipt Voucher for advance be made mandatory only for cases where the advances are to be adjusted for supplies to be made beyond the month in which the



		<p>advances are so received.</p> <ul style="list-style-type: none"> Accordingly, a consolidated receipt voucher can be issued on a monthly basis, at the end of each month, to every recipient from whom advances are received.
82.	Issuance of invoice in case of supply from unregistered person	Clarification is sought as to whether an invoice under section 31(3)(f) is required to be issued until the operation of Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017, i.e., so long as the exemption from payment of tax under section 9(4) of the CGST Act, 2017 is effective.
83.	Invoice and Value in case of Barter transactions	<ul style="list-style-type: none"> ➤ It is suggested that a specific rule may be inserted to prescribe for the of tax invoice in case of a barter transaction. ➤ Clarification is sought as to whether different value from both the parties i.e. supplier and receiver can be considered and GST can be levied accordingly may be in one case at lower value and another case it would be on higher value.
<u>Procedure Related Issues</u>		
84.	Difficulty in keeping quantitative record of stock.	Retail traders are worried about stock keeping, as they have wide range of different products. It is very tough to keep quantitative details of all products.
85.	Multiple Details required to be provided in an invoice	It is suggested that till an appropriate system is in place, GSTIN and product general details with some identification marks to correlate with Invoice or delivery challan be sufficient for invoicing. Place, HSN and other mandatory details be implemented when GST system is set to run smoothly.
86.	One cash ledger instead of separate cash ledger(s)	It is suggested that in cash ledger there should be only one cash ledger and as this money is not (yet) revenue of the Government, it can remain with the Union. Let cash ledger act as a E-wallet but, not as a dedicated column for the payment type. Adjustment of late fee, interest, penalty be possible in cash ledger with any head.
<u>ACCOUNTS AND RECORDS</u>		
87.	Definition of Books of Accounts for the purpose of GST	It is suggested that the term “Books of Account” be defined for the purpose of GST Laws. The reference to ‘books of account’ has also been made in the provisions pertaining to time of supply. A clear meaning established by law would thus support correct interpretations and would guide taxable persons in maintaining the bare



		minimum records.
88.	Audited Annual Accounts	It is suggested that a format of the Audit Report / Reconciliation Return should be specified to bring in clarity so that the assessee can plan and make necessary changes in their IT applications in a timely manner.
<u>Procedure Related Issues</u>		
89.	HSN code is required to be mention in GSTR 1 & 2	It is suggested that an alternative way of identifying the rate-wise supplies being reported to give relief to small traders who are otherwise not required to mention the digits of HSN codes in a tax invoice issued by them. Further, it is also suggested that such requirement in case of GSTR-2 be removed in case of all assessee.
<u>GSTR 3B Related Issues</u>		
90.	Liability to pay interest on late payment of tax due to extension of due date of filing GSTR 1 due to technical problem	It is suggested that the interest payable on late payment of tax at least be waived off for the month of July 2017 for which due date for filing GSTR 1 has been extended due to technical problem in GST network. Alternatively, a payment mechanism of debit of cash or credit ledger be made available to the assessee at any time during such time period
91.	Password for login	It is suggested that the copy-paste options be enabled in passwords, and the requirement to change password beyond a specified time be done away with.
92.	No option to add an Authorised Signatory without the authorisation of the existing Authorised Signatory	It is suggested that there must be an option to change the details of the authorized signatory wherever the existing authorised signatory cannot approve amendments in the application for registration, by way of a manual submission / a separate online application for intimating the reasons for requiring change of authorised signatory without the approval of the existing authorised signatory
93.	No acknowledgement for return filed	It is suggested that an option for generation of receipt in 'ARN-tracking' or 'View my Submissions' tab should be made available for each filing done on GST portal.
94.	Pure agent reimbursement would go as non-taxable supply - may lead to excess reversal	It is suggested that required column in the return to be inserted to show service provided as pure agent so that while calculating the proportionate ineligible credit, service provided as pure agent will not be considered as non-taxable supply.
<u>Return related</u>		



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95.	Payment provision be made available in Form GSTR 1	It is suggested that payment option be provided in Form GSTR 1 so that any liability which left to be recorded while filing Form GSTR 3b get paid off at the time of filing GSTR 1.
96.	Reduction In Late fee for non-filing of Form GSTR 1	It is suggested that waiver of late fees <i>vide Notification No. 64/2017 – Central Tax dated 15th Nov, 2017</i> provided in case of Form3B return filing be extended for GSTR 1 return also.
97.	Issues faces by assesses while filing Form TRAN 1	It is a genuine hardship to the assessee because of delayed functionalities and system failure. Accordingly, it is suggested to resolve the issue related to TRAN 1 to enable such assesses to claim transitional credit
98.	Actual date of Return filing missing	It is suggested that the actual date of return filing must appear in the record of the assessee on the GST portal, along with the record of filings made by the assessee.
99.	Facility be provided for Rectification of data/ return before or after payment of tax	It is suggested that rectification menu be inserted especially in case of Form 3B return, which be applicable — (a) for rectification of data/returns before payment of tax; and (b) rectification even after payment of the tax, wherein if the assessee is liable to pay more tax on rectification, the same may be required to be paid immediately. However, if rectification results into a refund to the assessee, the system should credit the refund amount to his account after due verification.
100.	First Return cannot be filed if registration is granted in next month	It is suggested that there be made available a facility to enable filing of GST returns for the month(s) preceding the month in which registration is granted, if registration has been applied for within prescribed time limit.
101.	GSTN related problem	It is suggested that Processing be on real time basis to avoid system failure due to heavy load of users.
102.	Non-availability of provision for filing of return without payment of tax	It is suggested to allow return filing without payment so that Tax can be paid till last date i.e. 20th, which will be credited automatically in the ledger.

PAYMENT OF TAX



103.	No interest recovery on the credit reversal on date of completion of building	It is suggested to insert a proviso in the section as under: - " Provided that interest payable would be computed from the date on which the credits become ineligible".
104.	Extension of time limit to furnish information by the Electronic Commerce Operator	It is therefore suggested to relax the given provision by providing extension of the time limit for furnishing of details by the Electronic Commerce Operator.
105.	Certificate of tax collection in case of e-commerce operators	It is therefore suggested that the enabling provisions regarding issuance of tax collection certificate be incorporated and suitable forms be notified by way of rules.
<u>GSTN Related Issues</u>		
106.	Delay in responses from GSTN Helpdesk	Owing to above concerns, it is suggested that additional manpower be deployed for resolving queries/ issues, reduce call/ email revert time to help keep up the good work undertaken by GST helpdesk. An assistance provided by properly trained officials will add to the smooth functioning of the GST helpdesk and providing specific answers to the queries/ issues as against being referred to GST Acts, Rules, FAQs etc.
107.	High rate of interest in case of default in payment or wrong availment of credit	In the implementation phase of GST, the notified interest rate should be equivalent to present bank rate and in any event not exceeding 9% per annum, as tax payers would lack awareness, given that GST is a new law, and taxpayers may have made some inadvertent errors / mistakes. Even post first year, the notified interest rate should not exceed 12% per annum.
<u>REFUNDS</u>		
108.	Refund in case of inverted duty structure	It is suggested that: <ul style="list-style-type: none"> ➤ the word 'inputs' be replaced with the phrase 'inputs and input services' ➤ Also, the word 'Output Supply' be replaced with the word 'Outward Supply'. ➤ A mechanism for computation of the refund due on account of an inverted duty structure, given that the rate of tax
109.	Payment of refundable amount to applicant	It is suggested that all the input tax credits be seamlessly covered under the provisions of Section 54(6).
110.	Execution of LUT / bond for export	It is suggested that execution of LUT / bond be removed for export of services and also for third country



		trading cases.
111.	Deemed exports	It is suggested that NN49/2019-Central Tax to be made 'subject to' section 16 and 17 of CGST Act. There is no section granting entitlement to refund in case of deemed exports. Merely including in the definition of refund in section 54 does not become a substantive provision for entitlement to refund in these cases
<u>Advance Ruling</u>		
112.	Refund for 'deemed exports'	It is suggested that a substantive section in the Act be drafted to provide this entitlement to refund
113.	Advance Ruling	<ul style="list-style-type: none"> ➤ It is suggested that Advance Rulings provisions as per Section 96 & 97 of the CGST Act, 2017 be made simple and exhaustive. ➤ It is suggested that Advance Ruling provisions be extended for filing of application on behalf of an association representing its members (with a unanimous vote from the members), whereby the decision rendered by the Authority would mutatis mutandis apply to all the members of association representing such issue /industry.
<u>ASSESSMENT</u>		
114.	Provisional Assessment – Security or Surety to be furnished with the Bond	It is suggested that requirement of executing surety or security with prescribed bond be done away with.
115.	Adjustment of additional tax paid – Section 60(3)	The provisions of Section 60 (for provisional assessment) should be amended to provide for utilisation of credits to discharge additional liability, and availment of additional credits for the recipient, upon finalisation of provisional assessment, and such provisions should have an overriding effect on the provisions of Section 16(4), Section 37, 38 and 39(9) of the CGST Act, 2017.
<u>DEMANDS AND RECOVERY</u>		
116.	Time limit for issuance of order for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any will full misstatement or suppression of facts	It is therefore suggested that the time limit be reduced to 12 months since no information is hidden from the department with this elaborate reporting system in GSTR 1-2-3 including non – GST supplies and exempt supplies. Extended periods of limitation may remain only for fraud, suppression etc. in which case it can be 3 years (as per limitation Act)
117.	General provision related to	It is suggested that exclusion of time limit under Section



	demand	75(11) be qua assessee and qua state.
<u>OFFENCES AND PENALTIES</u>		
118.	Incorrect Classification of goods or services	It is suggested that initially (say for a period of 1 year), to support assesseees during transition process, the cases of wrong classification of goods or services be treated as tax neutral, and any additional liability arising on account of incorrect classification be demanded with interest alone, and not penalty, unless the incorrect classification is on account of fraud or wilful suppression, etc.
<u>TRANSITIONAL PROVISIONS</u>		
119.	Refund claims filed after the appointed day for goods cleared or services provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law	It is suggested that a proviso be included in section 142(4) of the CGST Act by virtue of which the CENVAT credit may lapse only after being given an opportunity of being heard and based on the grounds of rejection given in writing.
120.	Stage wise deduction for an Immovable property	It is suggested that the Revision option of service tax return be activated till the date of filing transitional credit.
<u>Procedure Related Issues</u>		
121.	Aggregate turnover figure entered wrongly in return	It is suggested that a facility be provided to the assesseees to correct the amount of aggregate turnover which has been furnished wrongly by the assessee.
122.	Input tax credit in respect of inputs sent for job work	<p>It is therefore suggested that the deeming provision for supply should consider the date on which the time period prescribed by law expires as the date on which the goods are deemed to be supplied by the principal to the job worker.</p> <p>It is further suggested that the law expressly provides that the job worker would be entitled to input tax credit thereon, although the supply is made without consideration, regardless of the provisions of Section 16(2) read with Rule 37 of the CGST Rules, 2017; a similar provision should also be made to enable the principal to avail credit on receipt of goods from the job worker (or direct dispatch for supply from the premises of the job worker) where the event takes place after the expiry of the time period prescribed by law.</p> <p>Where the job worker is not a registered person, the principal must be entitled to avail the credit of taxes paid by him pursuant to the 'deemed supply', when the</p>



		principal receives the goods from the job worker / directly dispatches the goods for supply from the premises of the job worker.
123.	The duties and responsibilities and powers of the Officers at various levels be specifically put up for public comment	<ul style="list-style-type: none"> ➤ Officers to be trained in respect of mindset of trust and supporting to the industry as against tax terror which is prevalent even today. ➤ Forum for mandatory audit be made public as by January 2018, such audits can begin which would be useful for the trade/ industry rather than starting after the year end. ➤ Officers to be trained in GST as the vast majority are unable to answer basic questions. If this is not the case let them take a proper examination. Those who would adjudicate and hear appeals to compulsorily go through a special learning and test for understanding
IGST ACT		
124.	Location of the recipient where the address on record exists	It is suggested that appropriate clarification be provided for the cases in retail trade.
125.	Place of Supply of Service	<ul style="list-style-type: none"> ➤ It be suitably clarified that the list of services provided in the sub-section is an exhaustive list. ➤ Section 12(4) be rephrased as follows: <ul style="list-style-type: none"> ○ “(4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment and health service including cosmetic and plastic surgery shall be the location where the services are actually performed.”
126.	Section 12(6): Place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park etc	<ul style="list-style-type: none"> ➤ It is suggested that the words "or where the park or such other place is located" be deleted. ➤ Also, a mechanism be provided for cases where services are provided at multiple locations under a single contract. ➤ A proviso be added as: Provided where the basis of allocation is not forthcoming, the duration in each State as a proportion to the total duration of the event shall be applied.
127.	Insurance of Immovable Properties	<p>It is suggested that a mechanism for insurance of immovable properties be incorporated in the statute by way of following proviso:</p> <p>Provided that in the case of insurance of immovable property, where the basis of allocation is not forthcoming, the value of immovable property situated in</p>



		each State as a proportion to the total value of the immovable property shall be applied.
128.	Place of supply of services provided by tourism accommodation services such as hotels, cruises, campsites etc.	<ul style="list-style-type: none"> • It is suggested that suitable amendment in the place of supply provisions be made to achieve seamless flow of credit and avoid any harm to the tourism industry. • Place of supply of accommodation (B to B) service provided to registered person shall be the location of recipient; person other than a registered person shall be the location of immovable property.
129.	Place of supply of services in case of works contractor	<p>In case of works contract being service movement of goods from one state to another state is not industry friendly, therefore appropriate amendment be made in CGST Rules.</p> <p>An equivalent provision similar to section 10(1)(b) be enabled in relation to services involving goods or all services to enable free flow of trade.</p>
130.	Relief from payment of IGST to Representatives in India earning foreign exchange from Overseas Suppliers	If this 'origin based tax' rule cannot be omitted, it is suggested that the general definition of an "intermediary" in Section 2(13) of the IGST Act be reconsidered by excluding intermediary for goods to provide level playing field to members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products
131.	Export of Service	<ul style="list-style-type: none"> ➤ It is suggested that suitable rules to be framed in respect of Third country trading / manufacturing /service Business Modules in the Indian Global Economy. ➤ It is also suggested that, third country trading / manufacturing /service companies need to be exempted from GST implications in respect of their global business done from India
132.	Dual Levy on Export of services	It is suggested that such transactions be notified as an exempt service. This will have reversal on Account of input, input service and capital goods. Also, it would help to avoid dual levy and one can undertake such transactions with ease.
133.	Nature of Supply under IGST – Correct nomenclature to be used	It is suggested that in order to avoid any confusion, the phrase used in Section 7 being "in the course of inter-state trade or commerce" be replaced with "inter-State supply" with appropriate grammatical variations.



134.	Levy of IGST on import of services from outside India by SEZ	It is suggested that : <ul style="list-style-type: none"> • Withdraw exemption to SEZs • Issue circular that services from outside India is not leviable to IGST
135.	Place of Supply in case of supply to SEZ	<ul style="list-style-type: none"> • It is suggested that section 12 and 13 of IGST Act contain an explanation that “provisions of this section shall not apply to supplies to SEZ developer or unit and qualifying as zero-rated supply” • Accordingly, either ISGT will be charged on all supplies ‘billed to’ SEZ or zero-rated benefit allowed.
136.	Levy of IGST in respect of goods ‘imported into India’	<ul style="list-style-type: none"> • It is suggested that words “goods imported into India” in proviso to section 5(1) be replaced with “imported goods” • It is suggested to withdraw circular 46/2017-Cus which states that ‘IGST is levied but deferred’ which is unauthorized in law.
137.	General Suggestion	
(a)	Settlement Commission provision be restored	Provisions related to Settlement Commission as provided in Chapter VIII of the Model GST Law to be reinstated as genuine mistakes may occur in the initial phases of the GST regime due to complexity of the law.
(b)	Kar Samadhan Schemes	Kar Samadhan Schemes under existing laws (both Central and state) be introduced to help the assessee clear their issues/ dues under existing law, support with hassle-free transition and reduce litigations .
(c)	Petroleum products and electricity	In order to maintain a level playing field, all goods must be brought into the purview of GST at the earliest, including petroleum, alcoholic liquor, and electricity, and repeal the other laws that levy taxes / duties on such goods. The businesses that consume the products of these industries, if kept outside the purview of GST, would face issues like cascading of taxes, non-availability of credit, maintaining separate books of accounts for claiming ITC etc.
(d)	Anti-Corruption measures	Anti-Corruption measures need to be strengthened by building in the accountability of Revenue officers. A 360 degree Compliance Rating be given to the officers ensure compliance on their part.
(e)	Exemption to exporter from payment of Tax on Inputs the time system stabilize:	A general exemption maybe issued for a period 6 months to enable exports of goods as well as services to be carried out without any payment of taxes on inputs or inputs services as refund mechanism has not been established due to system glitches, margin erosion and impracticality.



(f)	Exemption to small assessee	A relaxation may be provided to small assessee to facilitate payment of tax on receipt-basis. In the erstwhile service tax law, upto Rs. 50 Lacs assessee was permitted to pay tax on receipt basis.
138.	GST Compensation Rules to be prescribed	It is suggested that appropriate rules may be prescribed in relation to charge and credit of Compensation Cess.
139.	Solution provided through Twitter and /or FAQ in some cases are contradictory in nature and even FAQ are having disclaimer which is creating confusion.	
140.	Deemed deduction towards land in case of sale of apartments	<p>It is suggested that: -</p> <p>a) A deduction may be provided for the market value of the land – as per the agreement between the developer and customer; OR based on certification by an approved valuer OR provide for different rates of deemed deduction based on location, areas or cities or distance from cities etc.</p> <p>b) Also, following clarifications may be provided vide circular to be issued :</p> <ul style="list-style-type: none"> • The said deduction towards land cost must be allowed to be availed upfront out of the first few instalments received. • The components of receipts that would form part and parcel of the consideration towards availing the land cost deduction must include – Car park charges, club house charges, reticulated gas supply charges, modular kitchen, preferential location charges, floor rise charges, water and power charges, DG set charges, maintenance charges etc. This is because these costs are in the nature of construction costs. • In case of unsold flats on obtaining OC / PC, the reversal of input tax credits must not be arbitrary (but based on area unsold) and must not be subject to consequential levies such as interest / penalties.
141.	Joint Development Agreements (JDAs) – time and valuation for payment of GST	It is suggested that GST becomes payable, only when, and to such extent that the units are sold; In respect of unsold units relating to the Land Owner, the GST be made payable at the time of obtaining the OC / PC from the prescribed authorities.
142.	Revenue sharing under Construction service	Suitable clarifications may be issued on the following points:



		<p>(a) How is the land cost to be determined?</p> <p>(b) Can it be said that what is paid / payable to the Land Owner would be the Land Cost and therefore permissible as deductions?</p>
143.	Input Tax Credit for Real Estate developers	A clarification may be issued in respect of the said understanding which would address the concerns of the community at large and prevent avoidable litigation at a future date.
144.	Transfer of immovable property by way of long lease	It is suggested that similar exemption may be extended to all transfers irrespective of the period of lease and whether or not to an Industrial Unit and for any purpose as acquiring land on long lease is one of the well-known recognized methods of acquisition of land and levy of tax on land is a State subject.
145.	Transfer of immovable property by way of Assignment of Lease - GST implications	Accordingly, it may be suggested that the assignment of an existing lease by one Lessee to another (Assignee) would not amount to an activity and would amount to a transfer of title and therefore, be exempt under GST on the same basis as sale of land is exempt.
146.	Transfer of immovable property by way of grant of Development rights - GST implications	Accordingly, it may be suggested that any transaction of grant of development rights also needs to be exempted under GST laws on the basis of the exemption granted for sale of land.
147.	Rate of tax on sale of under construction units	It is suggested that the GST rate for sale of under construction real estate not to be more than 6% on the agreement value which will make it comparable to the present situation.
148.	Taxability of Transferable Development rights	A clarification needs to be issued that such TDRs are not taxable under the GST Laws since it is an immovable property right
149.	Movement of goods within same business not to be treated as supply	The supply of capital goods (whether to own depot or to the customer) be kept outside the purview of GST, and only the leasing/ renting/transfer of right to use the asset be subject to tax. Movement of capital goods for provision of services like renting/ leasing/ transfer of right to use be excluded from the scope of supply under GST regime.
150.	Levy & Collection under	It is suggested that, an explanation be added to



	Reverse Charge	specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 9(3) of the CGST Act.
151.	Deletion of Anti-profiteering clause under GST	<p>It is suggested that :</p> <ul style="list-style-type: none">(i) Some margin (may be 0-5%) depending on the value and volume of product may be allowed to the industry considering that GST has been recently implemented and therefore, avoiding the frivolous issues. Further, investment made by Industries on implementation of GST in regards to changes in software & compliance cost be also considered for.(ii) The view of professional be sought before taking final decision to invoke the Anti-profiteering clause i.e. before referring the matter to the Director General of safeguards for investigation.(iii) To ensure that only genuine complain are being filed, a condition be imposed on the applicant that in case complain are found to be bogus, some penalty would be imposed.(iv) Some restriction be imposed on the no. of complain to be filed against a particular company.
152.	Change in GST Rate on Railway/ Metro fare	<ul style="list-style-type: none">• It is suggested that instead of exempting railway/ metro fare, make it zero rated or 5% to enable availment of input tax credit.• It is also suggested not to restrict refund of input tax credit on expenses. (e.g. Operations and Maintenance)

SUGGESTION IN DETAIL

POLICY ISSUE

1. Classification of single product under more than one schedule.

Central Board of Excise and Customs issued separate booklets for classification of Goods as well as Services available on website as well as on the android mobiles whereby separate lists have been provided rate wise.

For e.g.: - Tobacco leaves are covered under Schedule I i.e. rate of 5% while other tobacco products are covered under Schedule II i.e. rate of 28%.

Issue

The classification criteria adopted under the GST Law takes into account various different Schedules whereby a single product may be classified under more than one schedule with the different rates of GST.

Suggestion

It is suggested that a single consolidated list of products may be prepared for classification purpose by merging various schedules. Consolidated list may be adopted so that classification criteria follow settled law of basic to advance as far as possible and thus categorizing the products under one chapter with one rate.

For example:

Chapter/ Heading	Description of goods	CGST Rate (%)	SGST/U TGST Rate (%)	IGST Rate (%)
2401	Tobacco leaves	2.5	2.5	5
2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes	14	14	28
4202	tobacco - pouches	9	9	18

2. Compensation Cess on Coal

In the GST regime, Compensation Cess on Coal is levied at every point of sale while under the erstwhile Central Excise laws, corresponding clean energy cess on coal was levied only on Raw Coal, Lignite and Peat raised and dispatch from a coal mine.



Issue:

- **Similar basis for incidence of tax under the Central Excise Laws:** The basis of incidence of the compensation cess in the GST law is same as that of clean energy cess in erstwhile Excise Law. It is prudent to understand that there was a reasoning behind levy of clean energy cess on coal only on Raw Coal, Lignite and Peat raised and dispatch from a coal mine, and providing exemption for all other type of coal at other stages.

Even for the purpose of import, the Central Excise Law provided that – ‘As imported coal would not satisfy the condition regarding payment of appropriate cess at the raw stage, clean energy cess would apply to all forms of imported coal including wash coal’. Thus, it is suggested that status quo of compensation cess taxability be made as that of clean energy cess in the erstwhile Central Excise Law

- **Revenue-neutral situation:** If the Compensation Cess on Coal is only levied at the first point when the raw coal and lignite and peat are raised and dispatch from the mine and any further moment thereon is exempted, it would be a revenue neutral for the Government situation because the Compensation Cess is levied at the rate of Rs. 400/- per tonne of coal. Once the coal is raised from the mine, that would be the maximum quantity on which Compensation Cess would be payable. After each further processing, the quantity would stand reduced proportionately. Thus, even if there is a credit chain of compensation cess, it would not bring any effect on the revenue.
- Further, in practice, the way coal is used by various industries like power industry or coal industry, it is difficult to maintain the credit chain even if they wish too. For instance, in case of purchase of coal by power companies from a mine, they may use part of the coal themselves to produce power or they may send the coal for processing or they may sell some reject coal. When they sell the reject coal they will again have to pay compensation cess on which they would wish to take input credit of such cess. But in their accounting systems, the clean energy cess component is expensed in the books of accounts all the while and forming part of their cost, which in turn affects the price of the power.

Suggestion:

It is suggested to levy Compensation Cess on Coal only at the first point when the raw coal and lignite and peat are raised and dispatched from the mine and any further moment thereon, be exempted.

3. GST on Petroleum products

The Government has deferred the levy of GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel to a later date that has not been notified yet under Section 9 of CGST Act, 2017.

Issue:

Petroleum crude, high speed diesel, motor spirit, natural gas etc constitutes a major expense for almost every business, in some or the other way. Keeping such items outside the ambit of GST



would imply that the credit on capital goods and input services going into exploration and extraction would not be available, resulting in cascading effects. Leaving diesel, ATF and motor spirit out of the purview of GST would make it extremely difficult for refineries to apportion the credit on capital goods, input services and inputs. These products are principal inputs for many services such as aviation, road transport, railways and cab operators, among others.

Further, these goods are being sold at such a higher cost because of non-availability of credit on such products.

Suggestion:

It is suggested that a suitable notification be provided as early as possible to levy GST on petroleum products, as it will bring an important chain in the economic activity within the GST fold and in selected cases, the credit of GST paid on these items may be disallowed in order to minimise the possibility of misuse.

4. Testing and availability of utilities and other IT infrastructural issues

The GST common portal gst.gov.in is a common platform for all the GST related matters including filing of returns, payment of taxes, filing of advance ruling applications, issuance of notices by the government etc.

Issue:

Several problems are being faced by the industry while working with the GST common portal especially relating to returns and forms. In most cases, the utilities for furnishing the huge volume of data required are released only a few days prior to the due dates. The utilities that are made available on the portal also are not up to mark in terms of comprehensiveness and correctness, requiring a revised and updated utility in most of the cases.

Suggestion:

It is therefore suggested that: -

All the utilities on the GST portal be placed first and thoroughly tested before being implemented and shared with the general public – well within the due date for filing / use of the utilities. Only post testing, the trade/ industry be mandatorily required to comply with it.

5. Exclusion of transactions between employer-employee from GST

As per Schedule III of the CGST Act, 2017, the supply of services by an employee to an employer under the terms of an employment contract alone is kept out of the meaning of 'supply'.

Issue:

Most of the benefits provided by employers to their staff such as health check-up facilities, medi-claim and gifts up to a value of Rs 50,000/- per year by an employer to his employee are



outside the ambit of GST. Further, benefits provide by the employer as part of the employment contract letter to the employee such as travel allowance, cash allowance, free housing to employees are outside the ambit of GST.

Examples of probably taxable transactions from employer to employee:

- a) Reimbursement of business expenses incurred for the benefit of employer
- b) TA/DA paid to meet expenses during travel without bills
- c) Recovery of conveyance and canteen expenses (full or partial)
- d) Notice pay recovery (for non-service of notice period)
- e) Gifts upto Rs.50,000/- are excluded (in sch I) whereas gifts above Rs.5,000/- are taxable as perquisite as per Income tax Act,1961
- f) Facilities and infrastructure provided in the course of their work

Suggestion:

It is suggested that the reverse may also be excluded i.e services provided by an employer to an employee. Cost of monitoring and reporting of supplies / services by an employer to an employee and payment of taxes thereon is an administrative hassle. This has also resulted in the employers amending the employment contract letter to include all the services / supplies therein to comply with GST Law.

6. Facility for adjustment of incorrect tax paid (due to incorrect determination of place of supply) in addition to refund mechanism

In situations where an assessee has paid Central and State / Union territory tax on a transaction considered by him to be an intra-State supply but which is subsequently held to be an inter-State supply, he is required to make a fresh payment of integrated taxes and the tax wrongly paid will be refunded.

Issue:

The given section provides for refund of the tax paid earlier on account of incorrect place of supply; however, the assessee is forced to pay the correct nature of tax again (i.e. integrated taxes instead of Central and State / Union territory tax) i.e. he will have to end up remitting double the amount of actual tax that is liable to be paid until the refund is processed and paid to him. This double payment of tax amount by the assessee will lead to severe financial hardships to the assessee depending on the gravity of the error and blockage of working capital funds.

Suggestion:

We welcome refund mechanism for incorrect payment of taxes by assessee .However, it is suggested that the adjustment of cash payment in wrong head be allowed at assessee level by



way of journal entry on the GST common portal as taking refund is cumbersome in place of adjustment and refund process also leads to blockage of working capital.

7. Lower Interest rate in case of delayed payment of tax

In situations where the assessee has delayed the payment of tax to the Government by the specified due dates, the assessee is required to pay interest for the period for which the tax remains unpaid at 18% (currently) under Section 50 of the CGST Act, 2017. However, in case of undue or excess claim of input tax credit or reduction in the output tax liability, the rate of interest has been pegged at 24% (currently).

Issue:

Assessee is required to pay a much higher rate of interest on delayed payment of tax as provided under Section 50 of the Act in comparison to the payment of interest by the Government on delayed refund of tax provided under Section 56 of the Act. This leads to undue financial hardship to the assessee. The difference in the interest rates on payment by assessee vis-à-vis due from the Government is too wide and the assessee should not be put through such disparity especially since a large number of assessee would be faced with this situation due to lack of knowledge of the new law.

Suggestion:

It is suggested that the difference in the interest rates given under Section 50 and section 56 be aligned or reduced to a minimal level of 12% which is the cost of borrowers.

8. Training to the officers under GST

Issue

Officers to be appointed under GST Act may be untrained as the vast majority of them are unable to answer basic questions. The officers lack learning and test for understanding. The GST law. Further, there is no examination procedure while appointing the officers under this Act.

Suggestion

It is suggested that the officers be trained under this Act in respect of mindset of trust and support to the industry as against the tax terror which is prevalent even today. Those officers who would adjudicate and hear appeals are to compulsorily go through a special learning and test for understanding.

9. Interest be not considered as supply except Banking, NBFC Company

Interest income earned by way of extending deposits, loans or advances have been exempted from levy of GST in terms of Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017. The same was kept out of the purview of service tax (in the negative list) rather than bringing it within the purview of law and providing an exemption to the same.

Issue:



Such income is primarily earned by a Banking / NBFC Company and by extending the applicability of exemption to interest income by any entity, complications have arisen for business entities as the law requires reversal of input tax credit to the extent it relates to exempt supply.

Suggestion:

Akin to the service tax law, it is suggested that the interest income earned by way of extending deposits, loans or advances be included in Schedule III of the CGST Act, 2017 (similar to negative list in service tax laws). If not, it is suggested that such interest is not considered as 'exempt supply' for a business entity other than Banking / NBFC Company.

DEFINITION

10. Corrections to the definition of term Aggregate Turnover

Section 2(6) of CGST Act provides that "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Issue:

- The term "exports of goods or services or both" covers all the exports which may be taxable as well as non-taxable. Reference may be drawn from wordings in section 2(108) (taxable supply) of the CGST Act read with sections 2(5) (export of goods) and 2(6) (export of services) IGST Act, 2017.
- If 'exempt supplies' are included in the aforesaid threshold of Rs.20 lakh that would mean that if a dealer is involved in exclusive supply of exempt goods/services and if he happens to make a small supply of taxable goods/services including High seas sales, then he will become liable for registration. As such the turnover limit of Rs.20 lakh is too low a limit and if the exempt supplies are also included therein then a very large number of assesses will become liable for registration without any substantial revenue to the Government.

Suggestion:

- It is therefore suggested that the reference of the words "export of goods / services" be accordingly omitted from the definition of Aggregate Turnover.
- It is suggested that instead of words "aggregate turnover" the words "aggregate turnover of taxable supplies" be used.

11. Definition of Capital Goods

Section 2(19) of the CGST Act 2017 provides that "capital goods" means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business;

Issue



Under this definition, no treatment for the items have been provided which will be expensed during the year of purchase but not written off in the books due to their nature and use in industry.

Suggestion

- It is suggested that an exception be provided for items which are written off during the year of purchase in books of accounts to treat them as capital goods even if not capitalised in books of accounts.
- Further, it is suggested that this definition may also include the goods, the value of which is amortized over a period in the books of accounts.
- Additionally, the term “in the course or furtherance of business” be replaced with “for the purpose of business” so that no scope for restriction of credit is left. Same change may also be done for definitions of **“Input” & “Input Services”, “Outward Supply” and also in Schedule I & II.**
- The term “value” be replaced with the words ‘purchase consideration’ for better clarity.

12. Definition of Electronic Commerce

Section 2(44) of the CGST Act defines the Electronic Commerce as supply of goods or services or both including digital products over digital or electronic network.

Issue

The current definition appears to include only 'supply on own account' and not 'supply through the portal but by other Suppliers'. Also, electronic commerce appears to exclude 'information portals' and 'customer to customer' portals but the same will be covered by section 52(1).

Suggestion

It is suggested that words” supply of” be replaced with the words “facilitating the supply of”.

13. Definition of Exempt Supply - In line with Govt. Policy

As per the definition given in Section 2(47) of CGST Act, “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;



Issue

- Non-Taxable Supplies have been excluded from the scope of Aggregate Turnover in the CGST Act but still the term “Exempt Supply” covers the same. Thus, inclusion of non-taxable supply in the exempt supply would ultimately bring it within the scope of aggregate turnover.
- Interpretation of aforesaid definition appears that supply made to job worker covered under exempt supply. Since a registered taxable person may send any inputs and/or capital goods without payment of tax, to a job worker for job-work and therefrom subsequently send to another job worker.

Suggestion

- It is suggested that non-taxable supplies be kept outside the ambit of ‘exempt supplies’ as well as ‘aggregate turnover’. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.
- An amendment may be required in said definition that “Exempt supply means any supply of goods/services which are non-taxable under this act **other than supply for job work in accordance with Section 143 of the Act** and includes such supply of goods or services or both, which attract nil rate of tax or which may be exempt from tax under section 11.

14. Amendment to the definition of ‘service’ – Exclusion of supply of Canned software

Section 2(52) of CGST Act, 2017 defines goods as ‘every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply’.

Further section 2(102) defines services as “anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged”

Issue

Draft Model GST Law specifically contained an explanation in the definition of goods which clarified that goods **do not include intangible property**. The definition of services also contained a similar Explanation to the effect that **service includes intangible property**. Hence, it was made very clear that software in any form is always classifiable as a service and not goods.

However, the explanations cited aforesaid have been deleted in the CGST Act. It has only been specified in Para 5(d) of Schedule II that development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software is a



service. The deeming provision in Schedule II is a replica of what we have in Clause 66E of the Finance Act, 1994 which deals with Declared Services.

The deletion of the aforesaid Explanations would once again raise the long-standing classification dispute as to whether sale of shrink wrapped software or canned software is a supply of good or service.

Suggestion

It is suggested that an explanation as provided in Model GST law to the definitions of Goods as well as Services be restored that goods **do not include intangible property** and **service includes intangible** property.

15. Definition of “Inward Supply” – If removed denial of credit.

Section 2(67) of CGST Act provides that “inward supply” in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without **consideration**;

Issue:

The definition proposes that Inward Supplies made without consideration are also to be treated as a part of total inward supplies. In other words, the present definition requires the buyer to account the purchases even for the free supplies made to him which will not be accounted by the supplier causing reconciliation issues. Since there is no levy of GST on the free of cost supplies, this inclusion of supplies without consideration need not be required.

The current definition introduces new terms like 'purchase, acquisition, etc.' which appear to convey that they are the mirror opposite of each of the forms of supply in section 7(1)(a) of CGST Act, 2017.

Suggestion:

- It is suggested that supplies made without consideration be kept outside the purview of the definition of “Inward Supply”.
- The above definition be changed to ‘Inward supply’ in relation to a person with reference to whom the place of supply is determined means the corresponding supply by the supplier of the outward supply”.

16. Amendment to the definition of ‘job work’ – Exclusion of repairs / maintenance

Section 2(68) of CGST Act provides that “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly;

Issue

The definition of job work appears to cover any kind of treatment or process undertaken including repairs, maintenance etc. although that does not seem to be the intention of the Government while defining “job work”.

Suggestion



It is suggested that a proviso be inserted to the definition of Job Work to provide that job-work will not include repair or maintenance or other forms of supply which are carried out with respect to the goods belonging to another taxable person.

17. Definition of “Location of the supplier of goods”

Section 2 (70) & 2 (71) of CGST Act, 2017 defines “Location of the recipient of services” & “Location of the supplier of services” but does not define “Location of the supplier of goods”.

Issue:

The absence of the definition of “Location of the supplier of goods is causing great concern to the trade and industry.

Suggestion:

It is suggested that “Location of the supplier of goods” be defined as “the location where goods are situated under the control of the supplier ready for supply with a proviso to cover situations in case of bill to ship to model U/s10(1)(b) of IGST Act, 2017”.

18. Definition of the term Consideration

As per Section 2(31) of the CGST Act, “consideration” in relation to the supply of goods or services or both includes—

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Issue

- Consideration is not what the buyer pays but what the seller receives. Section 2(d) of Indian Contract Act recognizes that the promisee or 'any other person' may also pay the consideration.
- Further, the present definition does not deal with situations of composite supply of goods along-with services like supply of goods along with a charge for transportation, supply of goods along with installation charges etc.



Suggestion

- It is suggested that the words “made or to be made” be replaced with the words “received or to be received” so as to enable levy of GST on the full consideration received by air-travel agents who collect commission from passenger as well as from airline.
- Further, to remove any ambiguity the definition of consideration be rephrased as follows:
“Consideration in relation to the supply of goods and/or services includes.....”.

LEVY AND COLLECTION OF TAX

19. Term Provision to be included in Definition of Supply

Section 7(1) of CGST Act, 2017 provides that the expression “supply” includes—

- (a) all forms of supply of goods or services or both such as **sale, transfer, barter, exchange, licence, rental, lease or disposal** made or agreed to be made for a consideration by a person in the course or furtherance of business;

Issue

Various terms and / or phrases are cited under clause (a) of Section 7(1) of the CGST Act, 2017 as example which constitute supply. However, the term **“Provision of service”** is not included here, although the term is widely used in many places in the CGST Act, 2017 and relevant notifications / circulars etc. like Section 13 (2) of the CGST Act, 2017 (Time of Supply of Service), Section 31(2) of the CGST Act, 2017 (Tax Invoice).

Suggestion

It is suggested that an explanation be added that “supply in relation to services shall be construed accordingly”

20. Removal of words “such as” as the definition of Supply is inclusive one

Section 7(1)(a) of the CGST Act provides that

Supply includes—(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

Issue

In section 7(1)(a), the inclusion of words 'such as', while listing the various forms of supply, implies that the definition of supply is an indicative list and due to this, various concerns on the interpretation of the scope of supply arise. Amongst others, it appears that 'manufacture' would also to be liable to GST, even if it is only undertaken in preparation of supply and activities are taxed on supply. Further, contracts signed without any goods or services being appropriated also appears to attract GST.



Suggestion:

It is suggested to omit the words 'such as' in Section 7(1)(a) as, even after deletion of the words, the scope of supply would not become restricted / limited in any way. This is because, the definition of 'supply' is an inclusive one and takes into account even extraneous situations.

21. Taxability of Import of services

Section 7(1)(b) of CGST Act provides that supply includes import of services, for a consideration whether or not in the course or furtherance of business, and

Further, Schedule I Point 4 of the CGST Act provides that Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be treated as supply even if made without consideration.

Issue

Import of services is anyway covered in section 7(1)(b) and establishments outside India is a distinct person which will apply to import of services also. Dual coverage of import of services might lead to interpretational issues.

Suggestion

It is suggested that entry 4 of Schedule I of CGST Act be deleted.

22. Business Goods put to Private use by an assessee

Clause 4(b) of Schedule II of CGST Act, 2017 as specified in Section 7 provides that where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.

Issue:

As per the above provision, in the event, a car is owned by a registered person (say, a Company) and the same is being used by an employee occasionally for his personal use, then such personal use would be considered as supply of service and would be subject to GST. In the given scenario, the determination the value of such services (personal use) for the purpose of levy of GST by the registered person is either very cumbersome or impractical.

Further, as per Section 17(1) Input Tax Credit on such services (used for other purpose i.e. purposes other than business) would not be available. This is a double whammy to the registered person.

Suggestion:

If the intent of the Government is to levy GST on such services (for personal use), then Input Tax Credit on such services is also to be allowed to the registered person.



It is suggested to delete entry 1 of Schedule I (due to the available to tax under entry 4 of Schedule II)

23. Supply being regarded in section 7(1)(d) to be ‘treated as’

Supply is defined with four clauses in section 7(1) and in clause (d), the words ‘treated as’ appears to merely indicate the manner of ‘treatment’ of a transaction already included in definition of supply. But clause (d) being located within sub-section (1) appears to be a fourth definition of supply and not merely a manner of ‘treatment’ of an existing supply, there is room for much confusion in understanding the scope of section 7(1)(d).

Issue

The following two alternative interpretations arise:

- In case a transaction that comes within the definition of supply is to be passed into Schedule II only for the purposes of determining whether it is to be ‘treated as’ supply of goods or services, then section 7(1)(d) will not be a supply and this requires the entire clause (d) to be placed outside sub-section (1) but placed in a separate sub-section under section 7
- In case clause (d) is intended to be another clause in the definition of supply in section 7, the words of clause (d) should be suitably worded.

Suggestion

It is suggested that:

- In first case, shift the location of clause (d) as a separate sub-section under section 7;
- In second case, replace the words of clause (d) with “(d) the activities referred to in Schedule II whether or not in course or furtherance of business and whether or not for consideration as specified therein including their treatment as supply of goods or as supply of service respectively”.

24. Reimbursement of expense for which invoice is issued in the name of employee

As per Schedule III of the CGST Act, 2017 services by an employee to the employer in the course of or in relation to his employment are treated neither as a supply of goods nor a supply of services.

Issue

There may arise many instances wherein an employee is reimbursed by his employer for expenses incurred by an employee during course of employment but for which a bill is issued in the name if the employee.

For example:

- Mr. A hires a cab while on a tour for company work and makes the payment for the same. The bill is issued in name of Mr. A and company reimburses the amount so



borne by Mr. A. This reimbursement is not a part of Mr. A's salary. The taxability of such transactions needs to be clarified.

- Expenses incurred by the employee in furtherance of business of employer are reimbursed by the employer and these payments are not 'salary' but 'in course of employment'. Ambiguity must be removed in respect of all expenses that are 'in furtherance of business'. Securing bills in the name / GSTIN of employer does not ensure that the actual supplier reports these outward supplies as B2B and any treatment as B2C can trigger double tax payment by employer – once on the actual expense and again on reimbursement to employee.

Suggestion

It is suggested that there be provided a suitable clarification regarding taxability of reimbursements made by an employer to the employee when the bill for a service etc. is issued in the name of that employee.

25. Mandatory Registration under section 9(3) for Reverse Charge purpose need not trigger the provisions of section 9(1)

Section 9(3) prescribed that Government may by notification specify the categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods and services or both. In this case, Assessee is required to register and pay GST on reverse charge basis. Further, once they are registered, they are required to collect tax on all the goods or services supplied by them even though their turnover is less than 20 lacs.

Issue

There may arise a situation wherein an assessee has obtained registration under GST for availing certain services on which tax is liable to be paid under Reverse Charge as per section 9(3) but the outward supplies made by such assessee will be subjected to tax even if it less than the threshold limit of Rs.20 Lacs.

Suggestion:

It is, therefore, suggested that relaxation be given to such of those Assessee's who are required to register only due to the applicability of section 9(3) of the CGST Act, 2017 and having PAN-India turnover of less than Rs. 20 lacs in a financial year.

Section 24 to be 'notwithstanding section 22 but subject to section 23....'

26. Tax liability on Composite and Mixed Supply

Section 2(30) of the CGST Act provides that "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;



Further, Section 8 (a) of the CGST Act provides that a composite supply comprising two or more supplies, one of which is a principal supply, then the tax liability on a composite supply shall be treated as a supply of such principal supply.

Furthermore, as per section 2(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Issue

- There is no clarification regarding whether medicines, equipments, consumables, etc supplied along with the treatment to inpatients will be considered as composite supply.
- Lack of clarification as to whether sales from pharmacy to inpatients and outpatients would be covered under composite supply.

Suggestion:

It is suggested that definition of "Principal Supply" may be change to bring in the concept of dominant intention theory

27. Disabling the levy under Reverse Charge for supplies not in the course / furtherance of business:

Section 9(3) of the CGST Act provides the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services.

Issue:

The above sub-section provides room for taxation of such services which are not in the course or furtherance of business.

Suggestion

An explanation be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 9(3) of the CGST Act,2017.

28. Availability of Composition Scheme to all persons

Section 10 of the CGST Act provides that benefit of Composition Scheme would be available to a registered person, whose aggregate turnover in the preceding financial year does not exceed Rs. 1.5 Crore (*recommended by the GST Council, the relevant notifications are awaited*) to pay, in lieu of the tax payable by him, an amount calculated, subject to certain conditions at such rate as may be prescribed, but not less than 1% in case of a manufacturer and traders and 5% in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II i.e. supply of food and / or beverage as part of service:

Provided that the Government may, by notification, increase the said limit of Rs. 1.5 Crore to



such higher amount, not exceeding Rs. 2 Crore (*recommended by the GST Council, the relevant notifications are awaited*), as may be recommended by the Council.

Provided further that the registered person shall be eligible to opt u/s10 (1), if:

- (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;
- (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;
- (c) he is not engaged in making any inter-State outward supplies of goods;
- (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
- (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Issue:

Non-availability of composition scheme to those who are supplying services or making any supply of goods which are not leviable to tax under the Act is unfair and appears harsh on such persons. Small suppliers, supplying only services are required to comply with the normal provisions of the law which could, in most cases, prove to be cumbersome for such suppliers. Further, small suppliers, effecting a negligible / few supply that not chargeable to tax (while majority of supplies are taxable) will be hit by the conditions and will find this provision an unnecessary burden on them.

Suggestion:

- It is suggested that eligibility for composition scheme be made available uniformly to all suppliers whether supplying goods or services or both
- Alternatively, sector-specific composition schemes may be designed to cater to need of different sectors. For instance, the benefit of composition scheme can be extended to service providers up to a limit of Rs. 35 Lacs and supplier partly effecting supply of goods which are not leviable to tax under this Act.
- It is suggested that in section 10(1) the words “under this Act” be added after the words “in lieu of tax payable by him” to define and restrict the taxes liable to be paid to CGST/SGST paid under this Act / respective State Acts.
- The embargo placed on effecting inter-State supplies by the taxable person opting to pay tax under the composition scheme must be done away with. GST, being a destination based consumption tax and moving in the direction of being ‘One India – One Tax’, this embargo appears to be travelling in the opposite direction..

29. Availability of Composition Scheme to supplier of services – where credit is not eligible

Section 10 of the CGST Act, 2017 provides for Composition Scheme availability to registered persons whose aggregate turnover in the preceding financial year did not exceed Rs. 1.5 Crore (*recommended by the GST Council, the relevant notifications are awaited*).



Issue:

However, the composition scheme is not available for other set of services not eligible for input tax credit like outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, rent-a cab etc. as provided u/s 17(5)(b) of the CGST Act, 2017 except when used for making outward supply of the same category.

This goes against the very intention of GST Law which was believed to bring manufacturers, traders and service providers on parity. Such a provision may prejudice the interests of small service providers not wanting to undertake the lengthy compliances applicable to a normal supplier. This may further encourage tax evasion.

Suggestion:

It is suggested that option of paying tax u/s 10 should also be extended to goods and services covered u/s 17(5)(b), (c) & (d) and services provided by professionals having small turnover.

30. Redundancy of the Composition Scheme in certain cases

Under the composition scheme, a registered person is required to pay tax on the entire turnover, including exempted turnover. An exception has been provided only to traders, who have been permitted to pay tax on turnover of supply of taxable goods.

Issue:

- (i) A composition dealer can not avail the credit of tax paid on procurement of goods or services, leading to cascading of taxes
- (ii) Additional Turnover Tax needs to be paid by composition assessee which is part of the cost of the composition supplier which is generally equivalent to the value addition for eq. if 1% is payable then value addition is charged on 10%.

For example: Manufacturer Mr. A (regular registration) supply goods to registered dealer Mr. B (composition registration) after charging GST @ 28%. Since Mr. B has opted for composition scheme, he must pay tax @ 1% without availing input tax credit. Now Mr. C (regular registration), who has purchased goods from Mr. B and supplied the same to Mr. D (regular registration) will be liable to pay GST@28% on its supply leading to cascading of taxes on account of non-availability of credit of taxes paid to Mr. B. This restriction on the claim of credit renders the composition scheme ineffective.

Suggestion:

It is suggested that a mechanism be brought, wherein, the credit available to the registered dealer (composition registration) is passed to the recipient on similar lines to the mechanism for passing on CENVAT credit under Central Excise Law (First stage dealer provisions) or any other model of ad-hoc credit basis like 40% or 60% etc. as the procurements by a recipient from the composition dealer will affect the MSE Sector on account of the fact that the price of supplies made by the registered dealer (composition registration) are high in comparison to a person under regular registration.



31. Ineligibility to opt for Composition Scheme if the person has stock on account of inter-state purchases

Rule 5 of CGST Rules, 2017 provides that the person exercising the option to pay tax under section 10 shall comply with the following conditions, namely: -

- (a) he is neither a casual taxable person nor a non-resident taxable person;
- (b) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3;
- (c) the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9;
- (d) he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;
- (e) he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year;
- (f) he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him; and
- (g) he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

Issue:

There may arise a situation wherein an assessee who has been granted provisional registration and wishes to opt for Composition scheme satisfies all the conditions specified in Rule 5 of CGST Rules, 2017 except that he holds the stock which has been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State.

A further condition provides that his stock should not include goods purchased from an unregistered dealer where tax has not been paid under reverse charge. However, if he pays tax under reverse charge he is eligible to opt for Composition Scheme. Such a relaxation for opting for Composition scheme is not available in case of purchases made in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State.

Also, Section 10 prohibits inter-state outward supply of goods only and no such prohibition is carved for inter-state purchases or purchases from unregistered persons.

Suggestion:

It is suggested that, where the person wishing to opt for Composition Scheme holds such goods in stock which have been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, he should be allowed to opt for Composition Scheme upon payment of appropriate tax under GST.

32. Classification & HSN code in case of services are overlapping & not aligned



Notification No. 11/2017-Central Tax (Rate) ,dt. 28-06-2017 provides 4 digit classifications in the main notification, wherein annexure to the notification provides 8 digit classification.

Issue

HSN code & classification provided by annexure to the notification is overlapping to the main notification in many of services.

Suggestion

Appropriate amendment be made in the said notification to remove the ambiguity. Further, clarification on SAC codes under GST to be used on professional services rendered by chartered accountant be provided.

33. Power to grant exemption from Tax

Section 11 (1) of the CGST Act confers powers on the Central Government to exempt, either absolutely or conditionally, goods or services or both of any specified description from whole or part of the central tax, on the recommendations of the Council.

Further Section 11(3) provides that the Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Issue:

This provision empowers the Central / State Government to retrospectively change / amend / alter / modify the nature of exemption. This may lead to a situation, where the benefit of exemptions intended to be granted to the supplies envisaged under this section, with the concurrence of the GST Council, could stand denied. Under the vulnerability of introduction of changes with the Council's concurrence, by way of retrospective effect, this sub section may be detrimental to the interest of the assesseees.

Suggestion:

It is suggested that a proviso be added to sub-section 11 (3) of the CGST Act, 2017 to provide that "every such insertion / amendment / modification that has the effect of increasing the tax payable be effective from the date of such insertion only".

34. Exemption in respect of Charitable Institutions

Pursuant to Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 and Notification No. 9/2017-Integrated Tax (Rate) dated 28th June, 2017, the Government has exempted services by way of charitable activities, provided by Charitable Organisations from levy of GST. Section 23 of the CGST Act, 2017 exempts persons, engaged exclusively in the business of supplying exempted services from requirement of obtaining registration.



Issue

Although the charitable activities are exempted from levy of GST vide aforesaid Notifications, the Charitable Organisations are compelled to register where they have receipts on account of ancillary activities like providing a shop on rent to outsider (so that the visitors get tea and food), charitable hospitals running pharmacy and providing medicines at concessional rate or free etc.

Suggestion:

It is suggested to extend the exemption to all activities undertaken by such charitable organizations, as they will be negligible in nature and further, they are not in the nature of the primary activity of the charitable organizations. Alternatively, a cap could be brought on such ancillary activities like 20% of total receipts for the specific purpose of providing exemption from tax and registration.

35. Composition dealers not to be given exemption under Notification No. 38/2017(CT)

The Central Government *vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017* has exempted all registered persons (which, therefore, includes registered persons under composition scheme) from payment of tax under RCM mechanism.

In case of composition dealers rate of taxes are 1% in case of a manufacturer and traders and 5% in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II i.e. supply of food and / or beverage as part of service . In such cases, Government will get only 1%/ 5% of the value as tax on the supplies made by the registered persons under composition scheme.

The mechanism of RCM is, normally, tax neutral in case of supplies by a registered person other than registered persons under composition scheme, whereas the crux of the composition scheme is to collect a nominal amount of tax by way of forward charge or by RCM. Rates of tax of 1%/ 5% are only symbolic rate for tax on value addition by composition dealers. In such a scenario apart from loss of revenue to the Government; it will work as catalyst to increase grey economy as traders will try to purchase from URD (actual or fictitious) which will substantially reduce the cost of product as the tax burden will be very less.

Issue:

After the issuance of Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017 even registered persons under composition scheme are exempted from payment of tax on RCM basis. Therefore, genuine Government revenue gets affected and this goes against the fundamentals of composition scheme.

Suggestion:

It is suggested that either of the two options be availed:-

- Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017 be amended to provide that benefit of this notification not be available to a registered dealer under composition scheme.
- Rule 5(1) of the CGST Rules, 2017 be amended to provide that a registered dealer under



composition scheme will not be eligible to avail the benefit of Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017.

36. Possible Exempt supply in case of interest or discount

Entry No. 28 of the Notification No. 9/2017- Integrated tax (Rate) provides exemption to the services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services).

Issue

On a conjoint reading of section 7 (1) (a), section 2 (17) and section 2 (102) of the CGST Act, 2017 and entry.no 28 of the Notification No. 9/2017- IGST(Rate) dated 28.06.2017, it may be inferred that in case a manufacturing entity has advanced loan to a subsidiary and receives interest, the same will be considered as an exempt supply. Further, reversal consequences have to be followed.

Suggestion

It is suggested that the Notification 9/2017 dated 28.06.2017 (IGST-Rate) be suitably amended by inserting an explanation that the above entry only relates to supply made by the banking and other financial company. This will exclude those entities whose principal supply is taxable and it is only one of supply that they advanced loan to its subsidiary and consequently earning interest income.

TIME AND VALUE OF SUPPLY

37. Rationalization of time limit w.r.t. Time of Supply of goods and services under RCM

Section 12(3) of the CGST Act, 2017 provides that in case of supplies of goods in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely—

- (a) the date of the receipt of goods; or
- (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (c) the date immediately following **thirty days** from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Whereas Section 13(3) of the CGST Act, 2017 provides that in case of supplies of services, the time of supply shall be the earlier of the following dates, namely-

- (d) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (e) the date immediately following **sixty days** from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Issue

The time period for payment of tax under reverse charge mechanism of 30/60 days from the date of issue of invoice by the supplier is quite short considering the time taken for delivery



of goods / provision of service with invoice and may create unnecessary interest liability if payment is not made within 30 or 60 days.

Suggestion:

It is suggested that the time limit prescribed in both the cases be made 90 days in line with provision of old service tax law.

38. Correction to determination of Time of supply in case of continuous supply of goods or services

Section 12(2) of the CGST Rules, 2017 provides for the determination of time of supply of goods as earlier of the following dates, namely: -

- the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or
- the date on which the supplier receives the payment with respect to the supply.

Section 13(2) of the CGST Rules, 2017 provides for the determination of time of supply of services as earlier of the following dates, namely: -

- the date of issue of invoice by the supplier if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Issue:

By giving a reference to Section 31(1) and Section 31(2) of the CGST Act, 2017, the applicability of Section 12 and Section 13 is restricted to normal supplies and do not cover issuance of invoice for continuous supply of goods / services which are covered under Section 31 (4) and Section 31 (5) of the CGST Act, 2017.

For example: facility allowed to issue invoices under section 31(4) are denied the application of section 12 due to the above limitation. Services supplied continuously may be invoiced periodically but time of supply is limited to the date of issue of invoice only and not the periodicity recognized in section 31(4).

Suggestion:

It is suggested that reference to only Section 31 be given instead of section 31(1) in the Section 12 of the CGST Act, 2017 and Section 31(2) in Section 13 of the CGST Act, 2017.

39. Clarification w.r.t change in rate of tax for continuous supply of goods / services

Section 14 of the CGST Act, 2017 provides for determination of the time of supply where there is a change in the rate of tax in respect of goods or services. In simple words, as and



when there is a change in rate of taxes, the following three events needs to be considered for determining the time of supply:

- Date of raising invoice
- Receipt of payment
- Supply of goods/services

If any of the above two events occur (2 by 3 Rule) before the change in rate of tax then the old rate will apply, else the new rate will apply.

Issue:

The time of supply in case of change in rate of tax for continuous supply of goods / services has not been specifically addressed in the above Section, leading to multiple interpretations on the taxability of the same.

Suggestion:

In order to avoid possible litigation, it must be suitably clarified as to what is the time of supply in case of change in rate of tax w.r.t continuous supply of services/goods.

VALUATION

40. Exclusion of taxes/duties etc. paid under other statutes from the value of supply

Section 15 of the CGST Act provides for the valuation of supply. Sub-section (2)(a) of section 15 includes any taxes, duties, cesses, fees and charges levied under any statute, other than the {SGST Act/the CGST Act} and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient.

Issue:

Inclusion of any taxes, duties, cesses, fee and charges levied under any other statute would defeat the very purpose of eliminating tax cascading and may lead to interpretational issues as well as litigations at a later date. The charges such as Passenger Service Fee (PSF), User Development Fee (UDF), Mandi taxes and other alike charges are levied by Airport Authority of India, under Airport Authority of India Act, 1994, and collected by Airlines on the tickets issued to passengers

Suggestion

Any taxes, duties, cesses, fee and charges levied under any other statute be excluded from the transaction value so that spirit of GST may be maintained. Such charges, being simply in the nature of statutory levies, never form part of the taxable value, as no supply is rendered by airlines per se, in lieu of such charges.

41. Manner of determination of amount liable to be paid by the supplier

Section 15(2)(b) of the CGST Acts provides that the value of supply shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both



Issue:

Although the value of supply includes an amount liable to be paid by the supplier but incurred by the buyer, the basis for determination of such an amount that was liable to be paid by supplier is not specifically mentioned herein. It could lead to large scale litigations if the amount to be determined is left open to the discretion of taxpayers as the correctness of the same would be largely doubted by the tax authorities.

Suggestion:

It is suggested that the amount liable to be paid by supplier may have a reference to the contract or agreement between suppliers and recipient, by including the words 'by reason of or in connection with' in the Section after the words "liable to pay" so that that the said amount is defined and is limited to the scope of the contract or agreement.

42. Clarity on the nature of supply of vouchers

Section 12(4) of the CGST Act, 2017 provides that in case of supply of vouchers by a supplier, the time of supply shall be:

- (a) the date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases.

Similar provisions are provided in section 13(4) of the CGST Act, 2017.

Section 2(118) of the CGST Act, 2017 defines voucher as means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

Issue:

Vouchers are understood to be as actionable claim and since actionable claims are goods the time of supply, the inclusion of provisions of 'time of supply' of supply of vouchers as services u/s 13(4) of the CGST Act, 2017 is creating a lot of confusion. Further, the definition of 'voucher' itself is ambiguous and not comprehensive.

For example:

- a) All Pre-Paid Instruments (PPIs) approved by RBI under Payments and Settlement Systems Act, 2007 are popularly referred to as 'voucher' such as Shopper's Stop Gift Voucher but these PPIs fit the definition of money in section 2(75) in the phrase "*.....or any other instrument recognized by RBI when used as consideration to settle as obligation.....*". Also, PPIs are of 3 types and all of them are called vouchers but section 12(4) or 13(4) should not apply, these should be covered by 12(2)(b) or 13(2)(b) as being 'payment received'
- b) Loyalty points are also circulated as credits in a digital wallet or converted into a redeemable document and are popularly referred to as 'voucher'. Where the issuer-and-redeemer are one and the same, these are 'future discount entitlements' and not vouchers. Loyalty is also rewarded by coupons – Domino's coupon – or electronic code – Uber code – and these are only discounts but referred as vouchers.



- c) Vouchers are truly called vouchers (as defined) only if the issuer-and-redeemer are different distinct persons and an intermediary is undertaking trade or distribution of these vouchers to incentivize – Groupon.com now called nearbuy.com (<https://en.wikipedia.org/wiki/Nearbuy>) – where vouchers of any other company can be purchased for a price.

Suggestion:

- It is suggested that Section 13(4) be omitted from the law.
- Further it is suggested that to avoid misinterpretation the following definition of term “Voucher” be provided:

'voucher means

- (a) any instrument or entitlement received from an arrangement with one person permitting another person to accept the same in redemption against payment owed in respect of a taxable supply
- (b) any instrument or entitlement received from any Government under a law for the time being in force to redeem the same in respect of settlement of any payment owed towards any tax or duty

Explanation 1: voucher shall not include a system of payment recognized under the Payment and Settlement Systems Act, 2007 or any other law for the time being in force.

Explanation 2: voucher shall not include actionable claims"

43. Valuation in case of sale of repossessed goods

Rule 32(5) of the CGST Rules, 2017 provides for the manner of determination of value of taxable supply in case of trading in used goods and states that :

Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

Further, proviso to the said Rule specifically deals with a case where goods repossessed from a defaulting borrower would be disposed of by the lender for the purpose of recovery of loan or debt. As per the proviso to Rule 32(5) of the CGST Rules, the value of taxable supply in such case would be the purchase value of repossessed goods as reduced by five percentage points for every quarter or part thereof between the date of purchase and date of disposal by Banks/ NBFC, if the defaulting borrower is not registered under GST.

Issue:

While the proviso to Rule 32(5) of the CGST Rules makes a qualification that the defaulting borrower should be unregistered person, there is no such condition specified under Rule 32(5) of the CGST Rules. The issue that arises for consideration is that whether the option of determining the value of taxable supply as provided in Rule 32(5) of



the CGST Rules is applicable to cases where the dealer disposes repossessed goods of the defaulting borrower, even when such borrower is a registered person.

Suggestion:

The applicability of the said proviso for disposal of goods repossessed from registered persons has to be clarified.

44. Supply of Goods on which ITC was not allowed at the time of purchase.

Section 15 of the CGST Act read Rule 32 of the CGST Rules, 2017 provides for determination of value of supply in respect of certain supplies like trading in used goods, purchase / sale of foreign currency etc.

Issue:

Goods on which credit is not available at the time of purchase (eg Motor Car or Machinery purchased for manufacture of exempted supplies), gets taxed again at the time of their further supply on the transaction value. This sparks a rise in the price of product and will give birth to increase of grey market since the same will not be competitive with the new goods in market.

Suggestion:

Rule 32 of the CGST Rules may suitably be amended so as to provide that the value of such goods for the purpose of levy of GST shall be only over and above the consideration on which tax has already been paid.

INPUT TAX CREDIT

45. Exclusion of supplies liable to reverse charge from 'Exempt Supplies' for credit apportionment

Section 17(3) of CGST Act, 2017 provides that for the purposes of Section 17 (2) of the Act – which deals with restriction of claim of credit to the extent of use for effecting taxable supplies (including zero-rated supplies) only, 'exempt supplies' will include supplies on which recipient is liable to pay tax on reverse charge basis under sub-section (3) of section 9 and sub-section (4) of the Act.

Issue:

Supplies on which tax is payable under reverse charge mechanism, may it be goods or services, are input and input services for the recipient and should not be regarded on par with outward supplies that are not taxable / exempt. The inclusion of such supplies liable to tax under reverse charge mechanism as part of 'exempt supplies' for the purpose of determination of eligible / ineligible credits will have the effect of same supply being taxed twice – one by way of payment of tax by the recipient and the other by way of restricting the same as per the proposed formula. Further, it is illogical that the such supplies, on which tax has been paid by the recipient, are considered as exempt supplies.

For instance, let us assume that a Company has provided professional services of Rs. 25 Lacs – taxable as forward charge and also provided sponsorship services – liable to tax under



RCM in the hands of the recipient. As per the above formula, the credit of input services availed by the Company would not be eligible in full and will have to be reversed to the extent of sponsorship services, as such sponsorship services would form part of 'exempt supplies'.

Suggestion:

It is, therefore, suggested that supplies liable to tax under reverse charge mechanism be kept outside the ambit of exempt supplies for the purpose of determination of proportionate credits.

Alternatively, the supplier may be provided an option to either:

- pay tax on forward charge basis along with corresponding ITC claim, OR
- The recipient can pay the applicable tax under reverse charge mechanism at a reduced rate and not claim the relevant ITC, subject to the condition of no ITC has been claimed by the supplier.

Further, refund mechanism in line of erstwhile Rule 5B of CENVAT Credit Rule be provided to such supplier providing services under 9(3) where refund was available to the supplier of services liable to RCM, where he is unable to utilise the credits for payment of output tax.

46. Eligibility of input tax credit on certain services mandated to be provided by a Company / entity

Section 17(5)(b) of CGST Act, 2017 provides that no input tax credit is available on supply of goods or services or both, in respect of the following: —

- food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply
- membership of a club, health and fitness centre;
- rent-a-cab, life insurance and health insurance with provided exceptions
- travel benefits extended to employees on vacation such as leave or home travel concession.

Issue:

Certain expenditure like rent-a-cab, food and beverages etc. are obligatory for an employer to provide to its employees under certain laws and are not necessarily incurred for effecting taxable outward supplies of the same category. For instance, arranging for transport facility for women working in night shift esp. in IT/ITES Sector is mandatory as per the Karnataka Shops and Commercial Establishments Act, 1961 and providing a canteen facility to workers is mandatory as per the Factories Act, 1948. It is unfair to make such expenses mandatory under other laws and not permit availment of credit under the GST laws as the same are incurred in the course of business.

Suggestion:



It is suggested that the facility of availing input tax credit not be blanketly blocked when goods and/or services are used or intended to be used in the course or furtherance of business and especially, when incurring of certain expenses are mandated for an entity.

47. Disallowance of Credit in respect of works contract services

Section 17(5)(c) of the CGST Act provides that 'works contract services' when supplied for construction of immovable property, other than plant and machinery, is not eligible as input tax credit except where it is an input service for further supply of works contract service.

Section 17(5)(d) of the CGST Act provides that goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, is not eligible as input tax credit, even when used in course or furtherance of business.

Explanation 1.- For the purpose of this clause, the word "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Issues:

- The definition of works contract services is limited to activities undertaken in relation to immovable property and hence, the language used in Section 17(5)(c) of the CGST Act i.e. *when supplied for construction of immovable property* is redundant.
- Further, assume that a person constructs a Factory Building, Hotel Building or a building which he wants to or has let out on rent. As per provisions of Section 17(5) (c) and (d) of the CGST Act, the credit of any taxes paid on construction of such immovable property would not be allowed. This is a differential treatment being meted out to the persons on account of the fact that being a tenant of a building, the person would be eligible for credit of the taxes paid on the rent to the owner of the immovable property but if the person has constructed the building himself, then he would not be getting any credit of the taxes paid. This would be a huge negative for the Hotel Industry or the Manufacturing Industry wherein large investment is required towards infrastructure for the rendering of the services. Being an important part of the supply chain, they cannot be treated as being used for self-consumption.
- It leads to cascading of taxes which is not the spirit of GST Law; one of which is to provide seamless credit.

Suggestion:

- It is suggested that Section 17(5) (c) be rephrased as "works contract and goods or services used in a works contract except where it is an input for further supply as works contract".
- It is suggested that the provisions under Section 17 relating to the Input Tax Credit be rationalized and brought at par with the simple concept that if outward supplies of a person are taxable then the inward supplies of the goods or services or both may be allowed as credit.



- Further, it is suggested that renovation works, repairs etc. be eligible for credit if they are in course / furtherance of business.
- The restriction of ITC in respect of all works contracts resulting in immovable property at large be removed since in a large number of contracts which qualify as works contracts, the end result would be immovable property'.

48. Section 17(5)(b) of the CGST Act provides for restriction from availing input tax credit in respect supply of certain goods or services or both.

Issue

In certain industries, the canteen expenses are borne by the company itself and the burden is not passed on to the employees. Moreover, reference could be taken from the provisions of The Factories Act (Sec. 46) which casts a responsibility on the occupier, to provide and maintain such canteen services. Section 17(5)(b)(i) of the CGST Act expressly disallows input tax credit in respect of supply of goods or services or both by way of the outdoor canteen.

The said canteen expenses fall under the definition of outdoor catering as provided in the erstwhile service tax law. This has an implication of GST becoming a cost in the hands of the supplier and thereby imposing cascading effect in the value chain.

Suggestion

It is suggested that an exception may be carved out under Section 17(5)(b) for outdoor catering just like the rent-a- cab service. If an analogy is drawn between the treatment given to Rent-a- cab services and outdoor catering, the exception would be required under GST Law.

49. Non-availability of ITC on motor vehicle to developers/builders

Section 17(5)(a) of CGST Act, 2017 restricts the input tax credit on certain items including motor vehicle and other conveyances except when they are used –

- (i) for making the following taxable supplies namely:
 - A. Further supply of such vehicles or conveyances; or
 - B. Transportation of passengers; or
 - C. Imparting training on driving, flying, navigating such vehicles or conveyances
- (ii) for transportation of goods.

Issue:

- A plain reading of this provision provides that assesseees who use their own vehicles to transport goods such as mining companies, food companies, etc., stand to lose credit and are indirectly forced to constitute another registered person (for the limited purpose of GST laws) to undertake transport activity in order to claim the credit on the same.
- Builders providing construction services regularly use special purpose motor vehicles to carry out construction activities that are not necessarily in the nature of transportation of goods. Thus, although the construction sector relies heavily on the use of Motor Vehicles / Motor Vehicle Mounted Machineries for making outward supply of construction services, the input tax credit on such motor vehicles is restricted under



Section 17(5) when used for any purpose other than the specified purposes. Indirectly, the entire burden of tax on motor vehicle falls on the customer in the form of increases prices of infrastructure.

- Further, businesses that are involved in transportation of items not covered under definition of goods will get suffered from denial of input tax credit. For example, business of transportation of money (as defined) i.e. those who are engaged in refill of ATM's.
- Lastly, there is doubt whether "petroleum products", "Alcohol" would be treated as goods under GST where transportation is involved largely.

Suggestion:

- It is suggested that Clause (ii) of Section 17 (5) (a) be rephrased as follows:
“(ii) for transportation of goods, including own supplies, whether or not any amount is separately charged therefor”
- Further, clarification regarding transportation of items like money, securities, alcohol, petroleum products etc. be suitably provided.
- It is suggested that credit of motor vehicles be allowed if the motor vehicle is used in the course of business for business purposes including construction services.

50. Restriction of credit on goods confiscated or detained

Section 17(5) (i) of the CGST Act, 2017 provides that input tax credit shall not be available in respect of the any tax paid in terms of section 74, 129 or 130 dealing with confiscation and detainment of goods.

Issue:

When the confiscated goods are released and sold, it will be subject to tax and hence, it is not appropriate to deny the credit thereon on such goods which will be supplied eventually.

Suggestion:

It is suggested that there be no denial of ITC on goods confiscated or detained. Interest & penalty may be charged but denial of credit will lead to cascading and multi-point tax philosophy.

51. Eligibility of credit on capital goods and stock in certain cases

Section 18(1) of CGST Act provides that a person who has applied for registration under this Act within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take *credit of input tax* in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;



Section 18(1)(d) of CGST Act provides that where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

Issue:

- Though the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act is allowed, no clarification is provided as to credit of Capital Goods lying on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.
- Law only allows the Input Tax Credit for registered persons applying for registration within thirty days from the date on which he becomes liable for registration and does not provide for registered person applying for registration beyond the period of thirty days. The law is trying to penalize the registered person on a wrong front. For not obtaining registration within the prescribed time limit, penalty provisions are available, but he should not be denied credit.
- Bona fide view entertained about non-eligibility to tax should not become such a burden that industry will be forced to look for ways to escape from such consequences.

Suggestion:

- It is suggested that suitable credit be allowed on purchase of capital goods after deducting appropriate depreciation as the registered person enjoyed some exemption earlier and now come under the taxable chain. Article 14 of the Constitution of India provides right of equality and if credit to such person is not allowed then it will lead to non-equality among the equal.
- It is suggested that in the principle of Natural Justice, the persons not obtaining registrations within the prescribed limit be allowed to set off the tax paid on the goods supplied by him (i.e. output tax payable) as he will be liable to pay tax from the date when he became liable for registration.
- Following explanations be added to Section 18(1)(d)
"Explanation 1 - exempt supply becomes a taxable supply includes when a bone fide view is overturned by law or decision of a Court or Tribunal and such bona fides declared in the law so laid down.



Explanation 2 –notwithstanding anything to the contrary in this Act, entitlement to take credit on input tax shall refer to input tax related to input, input service and capital goods, computed as aforesaid, used in relation to such supply.

52. Tax treatment of supply of Capital Goods on which credit has been claimed

Section 18(6) of CGST Act provides that in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Issue:

The provision deals, in essence, with reversal of input tax credit in case of removal of capital goods but the use of the words "*In case of supply of capital goods or plant and machinery*" have a far-reaching impact.

Firstly, it uses the term supply which includes even renting / leasing of capital goods in which case Section 18(6) will get triggered and there would be reversal of ITC which is not the intention. Secondly, the use of word plant and machinery is not required as they are already covered under the meaning of capital goods.

Suggestion:

It is suggested that the in place of words "in case of supply of capital goods or plant and machinery" the words "In case of supply of capital goods, on which input tax credit..." be used. It will help give the provision the intended scope and give no room for ambiguity.

53. Rationalization of certain conditions for claim of credit and eligibility

Section 16(1) of the CGST Act provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Issue:

- Where tax is payable by a person other than the supplier, such as principal or agent in Schedule I or in cases covered under Section 9(5), the books of account will not reflect the turnover although such turnover will have to be considered for tax purposes. In such



cases, it is necessary to include a proviso that the payer of the tax will not be denied all credits subject to compliance with section 16(2).

- There may arise a situation where after the appointed day, an unregistered person buys inputs from a registered person on payment of tax and such unregistered person obtains registration subsequently. He would want to claim the input tax credit on the purchases made during the period where he had not obtained registration and still held in stock as on date of obtaining registration. This facility, which is available under the Central Excise and Service Tax Laws on the premise that such inputs were used for manufacturing output goods and/or providing output services, is not provided for in Section 16(1).

Suggestions:

- It is suggested that a proviso be added to Section 16(1) as follows:

"Provided further that every registered person will be entitled take credit of input tax in accordance with this section even though tax is paid on outward supply is in accordance with section 7(1)(c) or section 9 (5) or any such provision from time to time"

- It is suggested that the mechanism to avail input tax credit on the purchase of inputs made during the period where he was unregistered be incorporated by way of proviso to Section 16(1) or by suitably changing the wordings contained in Section 40 to "effective date of First Purchase" instead of 'effective date of registration'.
- It is also suggested that a suitable mechanism, in case of matching the credit, be provided for.

54. Streamlining of provisions for time-limit for claim of credit

Section 16(4) of the CGST Act, 2017 provides that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Issue:

The time limits prescribed for rectification of errors / omissions of GSTR-1 u/s 37 (3) of the Act are linked to the filing of the return for the month of September following the end of financial year whereas for GSTR-3 u/s 39 (9), they are linked to the due date for filing of the such return, creating a lot of confusion.

Further, there is no clarity as to whether belated claim of ITC should be claimed in the return for the tax period of September following the end of the financial year or in the annual return, as the case may be.

Suggestions:



- It is suggested that the time-limit to claim Input Tax Credit in respect to any invoice be linked with the due date of filing the return rather than the actual filing of the return.
- Further, it is suggested that the provision regarding belated claim of Input Tax Credits be suitably clarified.

55. Eligibility of credit on purchase of dumpers, tippers or other motor vehicle

Section 17(5)(a) of CGST Act, 2017 restricts the input tax credit on certain items including motor vehicle and other conveyances except when they are used –

(i) for making the following taxable supplies namely:

- A. Further supply of such vehicles or conveyances; or
- B. Transportation of passengers; or
- C. Imparting training on driving, flying, navigating such vehicles or conveyances

(ii) for transportation of goods.

Issue:

Dumpers and tippers are integral to the provision of services in the nature of works contract / construction. Works, such as road making, earth work etc. are not possible without the usage and assistance of such motor vehicles. Disallowing the claim of input tax credit on such motor vehicles will result in extreme hardship to the works contractors.

Suggestion:

It is suggested that the credit of taxes paid on the purchase of dumpers and tippers or other motor vehicles of similar nature & kind be allowed. Further, it is suggested that the dumpers and tippers or other motor vehicles of similar nature & kind be included in the definition of “plant and machinery” in the explanation provided to Section 17 for the purposes of Chapter V (Input Tax Credit) and Chapter VI (Registration) and hence be eligible for Input Tax Credit and excluded from the definition of motor vehicles specifically as these motor vehicles are not used for transportation but construction (furtherance of business).

56. Exclusion of ‘Any other civil structure’ from the definition of ‘Plant and Machinery’

Explanation to Section 17 of the CGST Act, 2017, for the purposes of Chapter V (Input Tax Credit) and Chapter VI (Registration) provides that the ‘Plant and Machinery’ means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

Issue:

Inclusion of the term “Other civil structures” may lead to numerous disputes on the eligibility of credit on various plant and machineries as in most cases, various plant and



machineries require civil works to support their operation.

Suggestion:

It is therefore suggested that the words “other civil structures” be removed from the said Explanation. Clear statement also be made with respect to inclusion of passive structures as ‘plant and machinery’ i.e. those used for the furtherance of business, even if they are considered as ‘immovable property’ for purposes of municipal taxes by special provisions in that law.

57. Disallowance of Credit in respect of Rent-a-cab services and other services

Section 17(5)(b) of the CGST Act *inter-alia* provides that input tax credit will not be available in respect of supply of the following;

- rent-a-cab, life insurance and health insurance except where except where-
 - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
 - (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply;
- travel benefits extended to employees on vacation such as leave or home travel concession;

Issue:

- Rent-a-cab, today, has become a significant mode of transport of employees for business purposes. Placing such restrictions are arbitrary. Like other services, credit of rent a cab should also be allowed to the extent it is used in the course / furtherance of business i.e. for meeting with business partners, business travel etc. Non-availability of Input Tax Credit in respect of such specified services will lead to cascading effect of taxes under the GST regime.

Suggestions:

- It is suggested that restriction of availing credit on Ren-a-cab services be dispensed with and credit be allowed for rent-a-cab used in course / furtherance of business under Sec17(4)(b) (iii). Furtherance of business or personal use is sufficient test in relation to cab services.
- Further, it is suggested to remove restriction on availing credits on travel benefits extended to employees on vacation such as leave or home travel concession as provided in Sec17(4)(b)(iv) `

58. Credit of taxes paid prior to grant of registration be allowed for 6 months

As per Section 16 of the CGST Act, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.



Issue:

Many of the persons had made an application for fresh registration from May 2017 onwards till July, 2017; however, due to system error or otherwise, registration to many of them have been granted in August or September, 2017. Going by the above provisions, since the person was not registered, input tax credit would not be allowed to the person on inward supplies prior to the date of registration.

Suggestion:

It is suggested that persons be allowed to take credit of duty paid by them to their supplier in the initial 2 months of GST implementation, considering that it is the initial period of implementation of GST and the persons, along with the department and the general public in large was struggling to adopt to the new law.

59. Eligibility of credit w.r.t. renting of immovable properties

Section 17 (5) (d) of the CGST Act, 2017 restricts claim of credit in respect of all goods or services or both on all contract services which are for construction of an immovable property unless, such immovable property is 'plant and machinery'.

Issue:

Where a building is constructed and let on rent, it is important to understand that such building would qualify as 'plant' – hence the corresponding input credits used in constructing the said building should be allowed. Similarly, for construction of factories, office premises etc where such premises are used in business, such structures would qualify as 'plant' and the corresponding credits should be allowed.

Suggestion:

A clarification to be issued in respect of the above to consider such civil structures as 'plant' and allow the corresponding credit on the same. This would address the concerns of the community at large and prevent avoidable litigation at a future date.

60. Interest on Reversal of Capital goods

Rule 43(h) of the CGST Rules, 2017 provides that the amount of input tax credit along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

Issue

Assesses are practically facing a problem while first claiming input tax credit on Capital goods being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies and after then paying interest on the proportionate amount of reversal.



Suggestion

It is suggested that the words “along with applicable interest” be omitted.

REGISTRATION

61. Provision of Centralized Registration

Section 22 of CGST Law provides that every supplier shall be liable to be registered under GST Act in the State from where he makes a taxable supply of goods or services or both ,if his aggregate turnover in a financial year exceeds Rs. 20 lakhs

Issue

The requirement of separate registration in each state will lead to additional costs and increased litigation specially for few sectors like telecom, financial institutions, education institutions etc...

Suggestion

The concept of Centralized Registration be provided for as it will facilitate ease in doing business. Further, the assessee be mandated to provide in his return details of all the locations from which supply of goods/ services is made by him.

62. Exclusion of certain income to arrive at threshold limit for registration for all persons

Section 22 on the CGST Act, 2017 provides that every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakhs.

Further section 2(6) of CGST Act, 2017 provides that (6) “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Issue:

The inclusion of non-operational income like interest income as ‘exempt supplies’ for the purpose of determining the aggregate turnover for registration would bring into the forte a huge number of persons who are otherwise undertaking only a minimal amount of supply. In case a person is earning interest income from Fixed Deposit Receipts (FDR) of Rs. 15 Lakhs and a Rental income from renting of immovable property of Rs. 6 Lakh, he would need to take registration and collect GST on such supply of rental services). However, interest income on FDR is not liable to GST. By including interest income in the aggregate turnover, unnecessary burden is imposed on various persons including senior citizens who



are at present not involved in carrying business and for that person complying the law is very difficult.

Suggestion:

It is suggested that for determining the aggregate turnover limit of Rs. 20 lakhs for obtaining mandatory registration, non-operational income (like interest income) earned without any business motive not be considered.

63. EVC-OTP option for private limited companies too in GST

Issue:

For private limited companies, the New registration application form, Monthly returns (GSTR3B, GSTR1) can be filed only through e-filing with DSC option (and not by EVC-OTP Option).

Suggestion:

It is suggested that e-filing with EVC-OTP option be allowed for private limited companies also in GST system. This will save lot of time, Cost for taxpayers & tax practitioners.

64. Registration for interstate supply of goods

The Central Government vide Notification No. 10/2017 – Integrated Tax dated October 13, 2017 has exempted the persons making inter-State supplies of taxable services and having an aggregate turnover not exceeding an amount of Rs. 20 lakhs in a financial year from obtaining registration.

Further, aggregate turnover limit should not exceed Rs. 10 lakhs for availing exemption from registration for the states specified in Article 279A (4) (g) of the Constitution

Suggestion

It is suggested that the benefit of twenty lakh for interstate service providers should be extended to interstate supply of goods also

65. Relaxation of time-limit for effective date of registration

Section 25(11) of the CGST Act provides that a certificate of registration shall be issued in the prescribed form, with effective date as may be prescribed.



Rule 10(2) of the CGST Rules, 2017 states that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of thirty days from such date.

Rule 10 (3) of the CGST Rules, 2017 states that where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration under sub-rule (1) or sub-rule (3) or sub-rule (5) of rule 9.

Issue:

There are numerous ground level issues faced by the assessee w.r.t. IT infrastructure glitches, plethora of notifications / circulars, corrigendum, amendments, interpretation of laws etc. on account of which the industry has been grappling with various issues including registration procedures.

Suggestion:

It is suggested that even in cases where the application for registration has been belatedly made, the effective date of registration be granted from the date of liability itself.

66. Cancellation of Registration

Section 29(2) of the CGST Act provides that the proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, —

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Issue:

If cancellation of registration is permitted from anterior (earlier) date, it would lead to disruption of whole credit chain and difficulties will be faced by persons who have already availed credit.

In some cases, persons who have obtained voluntary registration may not be able to commence business within 6 months for want of clearance of registration norms, permissions and requirements etc. from other laws.

Suggestion:



It is suggested that clause (d) be deleted. Alternatively, the time-limit for commencement of business from the date of obtaining registration be extended to 1 year.

Further, it is suggested that the facility of cancellation of registration from an earlier date be prohibited as this would disrupt the entire credit chain.

67. Certificate of Incorporation issued by ROC

Section 22 (4) of the CGST Act provides that in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Issue:

The said clause provides that the effective date of registration would be the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court. Although a Certificate of Incorporation will be required for the new entity, the ROC does not issue any Certificate of Incorporation specifically to give effect of the order of the High Court on amalgamation or demerger under Scheme of Arrangement.

Suggestion:

It is suggested that the words “giving effect to such order of the High Court or Tribunal” be deleted.

68. Activation of registration number w.r.t. deemed registration

Section 26(1) of the CGST Act provides that the grant of registration or the Unique Identity Number under the SGST Act or the UTGST Act shall be deemed to be a grant of registration or the UIN under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in section 25(10).

Issue:

Even after grant of deemed registration, the registered person would not be able to proceed with GST compliances such as payment of taxes, filing of returns, etc. unless the registration number is activated by the tax authorities.

Suggestion:

It is suggested that the activation of the registration number be done on an immediate basis, so as to facilitate the registered persons in compliance with the provisions of the law

69. Anomaly in registration Provision



Section 9(3) of the CGST Act provides that the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

In terms of Section 23(1)(a) of the CGST Act, any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act.

Section 24 of the CGST Act *inter alia* provides that a person required to pay tax under reverse charge mechanism is required to obtain compulsory registration irrespective of the threshold limit of registration and does not make any reference to Section 23 of the CGST Act, 2017.

Issue:

Although a person engaged exclusively in the supply of exempted goods/services is exempted from obtaining registration u/s 23 of the Act, he will be required to obtain registration u/s 24, if he procures the notified goods /services (covered under the provisions of Section 9(3) of the CGST Act), even though Section 23 gives immunity to such persons from registration.

Section 23 and Section 24 of the Act are independent section and Section 24 cannot override Section 23 of the Act (or vice-versa) and mandate registrations for such persons who are exempted from registration under Section 23 of the Act

For e.g.:- A person engaged in the supply of printed books, which is exempt from payment of tax is exempted from obtaining registration u/s 24 of the Act. If he avails sponsorship services / legal services from an advocate (notified services u/s 9(3) of the Act), in terms of Section 9(3) of the Act, he will be liable to obtain registration and pay tax despite the exemption provided u/s 23 of the Act.

Suggestion:

It is suggested that in Section 23 of the CGST Act, an over-riding clause be inserted: "Notwithstanding anything contained in section 22 & 24..."

70. Requirement of registration in respect of construction works undertaken outside the State:

Section 22 of the Act provides that every supplier is liable to be registered under the Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakh.

Section 2(50) of the Act defines 'fixed establishment' as a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;



Issue:

Works Contractors, having a principal place of business in 1 state may undertake execution of works across India in many States. The registration provisions require the works contractor to obtain registration in each such State even though he has no place of business in those States and the administration and control of such a person lies in Maharashtra itself. It is also possible that the person will not have a fixed establishment in each such State.

For e.g.: XYZ, a works contractor (fabricator) having principal place of business in Maharashtra undertakes execution of fabrication works in 10 States across India. In such scenario, he is expected to obtain 11 registrations (i.e. 1 In Maharashtra and 10 in the States where the projects are executed).

Suggestion:

It is suggested that a suitable clarification be provided in respect of registration requirements on construction works undertaken outside the registered State. Perhaps based on nature of works undertaken could guide this categorization. Mere installation works appear to attract registration where securing registration becomes cumbersome.

71. Registration for an agent

Section 24 of the CGST Act, 2017 *inter alia* provides that persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise is required to obtain registration, compulsorily, regardless of the fact that the agent's turnover may be below the threshold limit specified in Section 22 of the CGST Act, 2017.

Issue:

In India, the trade practice of commission to middlemen is widely practised. Although the annual commission that an agent earns is far below the turnover threshold, agents are compulsorily required to obtain registration pursuant to section 24 of CGST Act, 2017. Moreover, Schedule I of the CGST Act, 2017 requires treatment of all dispatches made by an agent to the principal, and vice versa, as supplies, although the same lacks consideration.

Suggestion:

It is suggested that supply of goods between principal and agent, when made on account of agency, should be kept out of the list of transactions specified in Schedule I. It is also suggested that the requirement of obtaining registration regardless of the turnover being below the specified threshold limit be done away with.

Also, one may consider introducing a concept like a 'pure agent' as is applicable in case of supply of services, in case of supply of goods as well.



PROCEDURE RELATED ISSUES

72. Reason of Validation error not provided during registration

At the time of filing the application for registration, if there is a validation error, the reason for error is not provided through email sent to the authorised signatory.

Issue:

If there is a validation error, the reason for the error is not provided through an email sent to the authorised signatory, and appears much later on the portal.

Suggestion:

It is suggested that the reason for validation error be communicated to the applicant through email etc. so that he can take immediate corrective action by providing the correct particulars.

73. Option of having multiple Trade Names with single GSTIN

Under earlier law, in case of proprietorship, an assessee was entitled to have multiple trade names while having a single registration, for running his business. However, under the GST Laws, there is no provision for having multiple trade names against single GSTIN.

Issue:

The GST Registration application forms do not provide for declaring various trade names under which the registered person operates.

Suggestion:

It is suggested that the option of having multiple trade names against one GSTIN be provided to all registered person, regardless of the constitution of business, to facilitate ease of doing business.

74. Effective date of cancellation of registration in case of automatically migrated from earlier regime

Section 29(3) of CGST Act,2017 provides that cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether such tax and other dues are determined before or after the date of cancellation.

Issue

Where a person was registered under earlier law but is not liable to register under GST than he has to file an application for cancellation of registration within 30 days to proper officer and as per section 29(3) cancellation effect will be prospective i.e. even a delay by one day from appointed day in filing cancellation application makes the assessee liable to file return, pay tax and to comply with other obligations which is difficult for him as he has not collected tax on his supplies made before the date of filing application for cancellation of registration .



Suggestion

It is suggested that appropriate notification providing that if cancellation application has been filed within the specified time limit it will be effective from the appointed date to give relaxation to such assesses..

75. Registration related issues under GST

The GST laws came into force with effect from July 01, 2017. However, for most interfaces between Department and the Taxpayers, the GST Common Portal has been effective since June 22, 2017. It is the backbone for the functionalities under the GST Laws. There are several areas whereby requisite functionality is not available, or is not properly working. Some of the issues faced are as follows:

S. No.	Relevant Law	Particulars	Issue/ Comment
1	Sec. 24 Rule 14 Form GST REG-10	Registration by Taxable Person proving OIDAR Services	Registration functionalities not in operations as of now.
2	Sec. 25	Validation Errors	Many a times validation errors are there, in case of fresh registrations, but reason has not been communicated by GSTIN.
3	Sec. 25 Rule 10 Form GST REG-06	Registration Certificate are not digitally signed.	REG-06 issued to the registered person is not digitally signed by the proper officer and section under which registration has been granted is not mentioned on the form.
4	Sec. 25(9) Rule 17 Form GST REG-13	Assignment of UIN to special entities	Registration functionalities not in operations as of now.

Suggestion:

It is suggested that aforesaid issues of registration be provided for and resolved appropriately.

76. Mismatch in GST Registration Number

Issue:

In many cases GSTIN issued by department and that mentioned on the GST certificate when downloaded are different, which is creating confusion among assesseees to determine their GSTIN against which they have to comply with all requirements of GST.

e.g.: In a particular case, wherein GSTIN number issued is 24ACCFS6822N2ZS but when the GSTIN certificate is downloaded the number generated is 24ACCFS6822N3ZR. This has raised a confusion as to which number needs to be used while complying with GST



requirements. Also by using 24ACCF56822N2ZS GST Registration number to login, the return dashboard showed no records.

Suggestion:

It is suggested that such system glitches be looked into and resolved so that the genuine assessee are not penalised for system defaults. Further, where multiple GSTINs have been issued against a single PAN (may be due to migration from various registrations, or any other reason), within the same State, a communication can be sent to the respective persons to intimate them regarding the multiplicity of registrations within the State. Accordingly, where a person has wrongly been allotted more than one GSTIN in a State, he can apply for cancellation of such registration.

77. Registration taken under the Wrong Head

It has been observed under many cases that the assessee has taken registration under a head other than the head he intends to. For example, a small dealer who was covered under the Composition Scheme in VAT wants to register as a Composition dealer under GST but mistakenly selects nature of business as ISD, EOU etc. As the system doesn't have any checks or a certification of such activities the genuine applicant might lose on to apply as Composition dealer.

Suggestion

It is suggested that while making an application for registration under a particular head an option for reconfirmation field be added and later on assessee be permitted to modify such fields.

78. Issues faced while applying for GST Registration

Chapter III 'Registration' under the CGST Rules, 2017 provides for detailed registration processes.

(a) Date of grant of Registration Certificate

Rule 10(2) of the CGST Rules, 2017 provides that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

Issue:

Certain assessee have faced the issue wherein the effective date of registration appearing on the certificate is the date on which registration was granted instead of the date of liability for obtaining registration, although the application was made within the prescribed time.

Suggestion:

It is suggested that the registrations so granted be checked for such anomalies and a provision for revision of effective date of registration be made in genuine cases.

(b) Delay in grant of Registration Certificate



Rule 9(1) of CGST Rules, 2017 provides that the application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of 3 common working days from the date of submission of the application.

Issue:

In many cases, even where all the documents have been submitted and the response to show cause notice issued by the proper officer has also been filed in a timely manner, the Registration Certificate has not been issued within 3 common working days.

Suggestion:

It is suggested that proper officers be requested to adhere strictly to the timelines laid down by law and support the assessee with timely grant of Registration Certificate.

(c) Proof of Business Premises

Assessee at the time of registration is required to submit the proof of business premises being owned by him.

Issue:

Many a time, the owner of a property does not update the name at the property tax office and for the purposes of the electricity bill, given that property ownership is mainly decided by its sale deed or Index 2.

Suggestion:

It is suggested that the sale deed/ Index 2 in name of owner be accepted as a valid proof of business premises in the application for registration.

(d) Size of Documents to be uploaded while undertaking registration

At the time of registration, supporting documents are required to be attached, for which the uploaded file must be within the prescribed file-size.

Issue:

Several documents such as agreements, are larger than the prescribed maximum size of 1 MB, and therefore, the assessee must resort to compression of files, or deletion of certain pages. Both the options would not serve the purpose of attaching the documents, as they would not be comprehensible.

Suggestion:

It is suggested that the size limit of the uploaded files be increased so as to maintain the quality and readability of the documents uploaded.

(e) Requisite Forms be activated on GST portal

It is suggested that forms related to Registration, Cancellation or Modification in Registration be activated now so that the assessee requiring amendments or cancellations to their registrations may apply for the same at the earliest.

(f) Selection of Commissionerates code under state & central while applying registration



Issue:

At the time of registration, certain assesseees would not have provided the proper information about the jurisdiction code, and in a few cases, the proper officer has rejected the application for the reason that wrong Commissionerates code is entered by the applicant.

Suggestion:

It is suggested that system selects the appropriate system code on the basis of the area and PIN code entered by applicant, at both Centre and State jurisdictions.

TAX INVOICE, CREDIT AND DEBIT NOTES

79. Treatment of tax paid on units cancelled

Under CGST Act, Section 34(2) provides that 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 in such manner as may be prescribed.

Issue

A Builder has issued demand note in the month of March. Buyer has cancelled the unit in December i.e. after filing of GSTR for the month of September. Now, how builder can avail credit/benefit of GST paid earlier at the time of demand note or builder has the option to go for refund.

Suggestion

Suitable clarification be provided.

80. One Consolidated Credit and debit notes on monthly basis

In terms of section 34 of the CGST Act, 2017, 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 exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or 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 containing such particulars as may be prescribed.

Further, 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 (include a supplementary invoice) containing such particulars as may be prescribed.

Moreover, any registered person who issues a credit/debit note in relation to a supply of goods or services or both shall declare the details of such credit/debit note in the return for



the month during which such credit/debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Issue:

The GST Law requires a registered person to issue a credit note / debit note for each of the aforesaid cases, and such documents must be linked to a single tax invoice. This will unnecessarily increase clerical activity at both ends – supplier's and recipient's.

Suggestion:

It is suggested that the law provides an option to issue a consolidated debit / credit note, per month, per recipient (GSTIN), while the benefit of reduction in output liability in case of credit note can continue to be based on acceptance of such credit note by the recipient in his Form GSTR-2, upon matching of details. This option can be made available only in respect of supplies to registered persons, as tracking of debit / credit notes would be difficult in case of supplies to unregistered persons, and also because supplies to unregistered persons would normally not include issuance of multiple debit / credit notes during a month.

81. Receipt Voucher in case of receipt of Advances against supply of goods or services in same month

Section 31(3)(d) of the CGST Act, 2017, provides that a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

Issue:

The GST Law requires a registered person to issue a receipt voucher each time an advance is received. However, it is possible that the supply against an invoice is made in the same month in which the advance is received. This requirement for issuance of receipt voucher in such cases, will unnecessarily increase clerical activity.

Suggestion:

- It is suggested that complexity in documentation should be simplified to avoid pressure on the IT system without compromising on the revenue implications.
- It is also suggested that the Receipt Voucher for advance be made mandatory only for cases where the advances are to be adjusted for supplies to be made beyond the month in which the advances are so received.
- Accordingly, a consolidated receipt voucher can be issued on a monthly basis, at the end of each month, to every recipient from whom advances are received.

82. Issuance of invoice in case of supply from unregistered person

The Central Government *vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017*, has amended *Notification No. 8/2017 – Central Tax (Rate) dated 28th June, 2017* by omitting proviso under Paragraph 1 which deals with the exemption limit of Rs. 5000 per day available to the registered person on inward supplies from any or all unregistered suppliers. Thus, exemption shall be available to all the registered persons till March 31,



2018 without any limit in case of supply of goods and/or services received from unregistered suppliers.

Issue

Although an exemption has been granted from payment of tax on effecting inward supply of goods and/or services from unregistered persons under section 9(4) of the CGST Act, 2017, no exemption has been provided from the operation of section 31(3)(f) of the CGST Act, 2017. Accordingly, there is no clarity on whether registered persons effecting such inward supplies would be required to issue invoices, despite the fact that the inward supply is an exempt supply.

Suggestion:

Clarification is sought as to whether an invoice under section 31(3)(f) is required to be issued until the operation of Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017, i.e., so long as the exemption from payment of tax under section 9(4) of the CGST Act, 2017 is effective.

83. Invoice and Value in case of Barter transactions

In terms of section 7 of the CGST Act, supply includes barter transactions

Issue

In the barter supply, there is a confusion regarding

- issue of invoice by both parties exchanging goods or services.
- Value in respect of barter transactions

Suggestion

- It is suggested that a specific rule may be inserted to prescribe for the issue of tax invoice in case of a barter transaction.
- Clarification is sought as to whether different value from both the parties i.e. supplier and receiver can be considered and GST can be levied accordingly may be in one case at lower value and another case it would be on higher value.

PROCEDURE RELATED ISSUES

84. Difficulty in keeping quantitative record of stock.

Retails traders are worried about stock keeping, as they have wide range of different products. It is very tough to keep quantitative details of all products.

85. Multiple Details required to be provided in an invoice

Rule 46 of CGST Rules, 2017 provides that a tax invoice referred to in section 31 shall be issued by the registered person containing the specified particulars. The requirement of



providing multiple fields in an invoice takes up a lot of time. Mandating the mention of all the fields makes invoicing process cumbersome.

Suggestion

It is suggested that till an appropriate system is in place, GSTIN and product general details with some identification marks to correlate with Invoice or delivery challan be sufficient for invoicing. Place, HSN and other mandatory details be implemented when GST system is set to run smoothly.

PAYMENT

86. One cash ledger instead of separate cash ledger(s)

Issue:

Credit in Cash ledger is segregated into different heads which made assessee unable to set off the cash credit of one head for other which can be possible if there is a uniform cash ledger. E.g.: If a person has 1,000/- in interest & a short amount of Rs.100/- in late fee then again, he need to transfer amount from Bank Account although an excess amount is lying Electronic cash ledger.

There are a number of instances where flexibly to appropriate amounts deposited in cash ledger is necessary for ease of doing business because the exact tax liability may not be known at the time of making cash deposit. Also, this is similar to request for TDS-TCS to remain in this common can ledger so that Deductor-Collector does not get to decide the nature of supply.

Suggestion

It is suggested that in cash ledger there should be only one cash ledger and as this money is not (yet) revenue of the Government, it can remain with the Union. Let cash ledger act as a E-wallet but, not as a dedicated column for the payment type. Adjustment of late fee, interest, penalty be possible in cash ledger with any head.

ACCOUNTS AND RECORDS

87. Definition of Books of Accounts for the purpose of GST

Section 35 of the CGST Act provides that every registered taxable person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods or services or both, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf

Issue:

The meaning of 'books of account' is not provided by law and therefore, many taxable persons are not in a position to understand that what is the records that is required to be maintained. Each person would derive their own understanding of the term 'books of account'.

Suggestion



It is suggested that the term “Books of Account” be defined for the purpose of GST Laws. The reference to ‘books of account’ has also been made in the provisions pertaining to time of supply. A clear meaning established by law would thus support correct interpretations and would guide taxable persons in maintaining the bare minimum records.

88. Audited Annual Accounts

Section 35(5) of the CGST Act, requires every registered person to get its accounts audited by a Chartered Accountant or Cost Accountant and its submission along with reconciliation as mentioned under section 44(2). However, the format for the audited accounts and audit report is yet to be prescribed.

Suggestion

It is suggested that a format of the Audit Report / Reconciliation Return should be specified to bring in clarity so that the assessee can plan and make necessary changes in their IT applications in a timely manner.

PROCEDURE RELATED ISSUES

89. HSN code is required to be mention in GSTR 1

Notification No. 12/2017 – Central Tax dated 28th June 2017 provides that a registered person having annual turnover in the preceding financial year less than Rs.1 .5 Crore is not required to mention the digits of HSN codes in a tax invoice issued by him. However, in GSTR 1 he must give the details of stock sold HSN code wise.

Issue

In such cases although the small trader is not required to mention HSN code in invoice but he is required to give HSN code details in his returns.

Suggestion

It is suggested that an alternative way of identifying the rate-wise supplies being reported to give relief to small traders who are otherwise not required to mention the digits of HSN codes in a tax invoice issued by them.

90. Liability to pay interest on late payment of tax due to extension of due date of filing GSTR 1 due to technical problem

As per section 50 of CGST Act, 2017 every person who is liable to pay in accordance with the provision of this Act or the rules made there under, but fails to pay the tax or any part thereof to the government within the period prescribed shall for the period for which tax or part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18%, as may be notified by the government on the recommendation of the council.

Issue



In case if excess ITC availed or some supply is omitted to be furnished in form GSTR 3B, as it cannot be revised, the information furnished wrongly, if any, needs to be corrected at the time of filing GSTR 1. If there is any increase in liability on this account, then interest is also payable on the excess liability. It may be noted that due date for filing GSTR 1 has been extended upto 10th January. Technical snags faced may lead to delay in discharging excess liability for which interest will also be liable to be paid

Suggestion

It is suggested that the interest payable on late payment of tax at least be waived off for the initial months for which due date for filing GSTR 1 has been extended due to technical problem in GST network. Alternatively, a payment mechanism of debit of cash or credit ledger be made available to the assessee at any time during such time period

GSTR 3B Related Issues

91. Password for login

The copy-paste option has been disabled for passwords required for logging-in into the GST Common Portal. The portal also mandates a change of the password beyond a specified period. This requirement only increases the compliance burden.

Suggestion:

It is suggested that the copy-paste options be enabled in passwords, and the requirement to change password beyond a specified time be done away with.

92. No option to add an Authorised Signatory without the authorisation of the existing Authorised Signatory

The option to modify the details of an authorized signatory can be exercised only with the authorisation of the existing authorised signatory. This requirement under law was not clear to many assesseees at the time of migration / registration. Accordingly, most assesseees provided details for a single authorised signatory. This has caused difficulty in compliance with law wherever person appointed as authorised signatory has left the Company / Firm, or has expired, etc.

Suggestion:

It is suggested that there must be an option to change the details of the authorized signatory wherever the existing authorised signatory cannot approve amendments in the application for registration, by way of a manual submission / a separate online application for intimating the reasons for requiring change of authorised signatory without the approval of the existing authorised signatory

93. No acknowledgement for return filed

No Formal receipt of Acknowledgement is generated by the system on submission of various returns and forms except a message being displayed, which make it difficult for professionals to provide any evidence of work done to the clients.



Suggestion:

It is suggested that an option for generation of receipt in 'ARN-tracking' or 'View my Submissions' tab should be made available for each filing done on GST portal.

94. Pure agent reimbursement would go as non-taxable supply - may lead to excess reversal

Column 3.1(c) of **GSTR 3B Detail of Outward Supplies and Inward supplies liable to reverse charges** requires total taxable value of other nil rated and exempted supplies

RULE 33 of CGST Rules provides that Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply

Further section 17 of CGST Act, 2017 provides that Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Issue

As per section 17 of CGST Act, 2017 credit shall be available for input goods or services used for providing taxable supplies only. Since service provided as pure agent is not outward taxable supply so it is required to mention in column (c) **i.e.** value of nil rated or exempted supplies it leads to excess reversal of proportionate credit on service provided as pure agent

Suggestion

It is suggested that required column in the return to be inserted to show service provided as pure agent so that while calculating the proportionate ineligible credit, service provided as pure agent will not be considered as non-taxable supply.

95. Actual date of Return filing missing

Issue:

The filing date is not displayed / does not appear in the portal, and if the officers are in need of such details for which they would have to follow up with the assesseees.

Suggestion:

It is suggested that the actual date of return filing must appear in the record of the assessee on the GST portal, along with the record of filings made by the assessee.

Return related



96. Reduction In Late fee for non-filing of Form GSTR 1

Issue

Assessees across the country are facing difficulties in filing Form GSTR 1, which includes the following:

1. System is not generating summary within 5 minutes. Sometimes it takes around 12 hrs. due to which assesses are not be able to proceed.
2. Even though assesses are generating json file in the Latest version of Offline Tool, on uploading such file system shows it as generated in old version.
3. In B2B sheet, assessee round off the tax dues, bill wise. But the System is finalising without rounding it off to rupees.
4. The filing of refund claims manually defeats the fundamental premise of GST being paid for supplies by exporters. In the interim till matching is firmly in place, it is suggested that the 90% be paid provisionally subject to verification within next 2 months.

due to such system errors assesses are finding it difficult to file the return before due date

Suggestion

It is suggested that waiver of late fees *vide Notification No. 64/2017 – Central Tax dated 15th Nov, 2017* provided in case of Form3B return filing be extended for GSTR 1 return also.

97. Issues faces by assesses while filing Form TRAN 1

Issue

some assesses who were required to file TRAN 1 before the due date i.e. 27th December were unable to submit due to website www.gst.gov.in issues, as before due date on saving data, website was showing " Some uploaded record are in progress, Kindly submit once it is processed" due to which such assesses would not be able to claim TRAN 1 transitional credit..

Suggestion

It is a genuine hardship to the assessee because of delayed functionalities and system failure. Accordingly, it is suggested to resolve the issue related to TRAN 1 to enable such assesses to claim transitional credit

98. Payment provision be made available in Form GSTR 1

Issue:

Payment option of tax liability is only available at the time of filing GSTR 3b. Although there is a reconciliation procedure and any discrepancy in liability found will get rectified by making



payment in GSTR 3. However no dates has been specified yet for filing GSTR 2 & 3 leading to delay in payment of tax and increasing the interest amount.

Suggestion:

it is suggested that payment option be provided in Form GSTR 1 so that any liability which left to be recorded while filing Form GSTR 3b get paid off at the time of filing GSTR 1.

99. Facility be provided for Rectification of data/ return before or after payment of tax

Issue:

If a wrong liability of tax is created due to an inadvertent error, the assessee is left with no option but to pay the tax. In some cases, the erroneous liability so created is exorbitant for the assessee to pay, thereby terming him as a defaulter with the passing of each successive day.

Suggestion:

It is suggested that rectification menu be inserted especially in case of Form 3B return, which be applicable —

- (c) for rectification of data/returns before payment of tax; and
- (d) rectification even after payment of the tax,

wherein if the assessee is liable to pay more tax on rectification, the same may be required to be paid immediately. However, if rectification results into a refund to the assessee, the system should credit the refund amount to his account after due verification.

100. First Return cannot be filed if registration is granted in next month

Section 40 of the CGST Act, 2017 provides that every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

Rule 10(2) of the CGST Rules, 2017 provides that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

Issue:

There have been cases wherein an assessee has applied for registration within prescribed time limit i.e. For July 2017 assessee applied for registration on 27th July 2017 and has been granted registration on 2nd August 2017 but is not allowed to file return for July. Dealer has inward supplies as well as outward supplies but is not able to insert bill wise details in GSTR 1 and thus unable to claim ITC for July.

Suggestion:



It is suggested that there be made available a facility to enable filing of GST returns for the month(s) preceding the month in which registration is granted, if registration has been applied for within prescribed time limit.

101. GSTN related problem

Processing time of the GST Common Portal is high as compared to other online portals due to which persons need to login number of times for the same task, which leads to unnecessary load on the portal.

Suggestion:

It is suggested that processing be made on real time basis to avoid system failure due to heavy load of users.

102. Non-availability of provision for filing of return without payment of tax

Everyone likes to file the return well before time but not to pay heavy taxes before time. Govt wants that return filer should not wait for last date and should file it earlier so that there is no load on the portal but the reason for filing the return in last days is payment of tax not the return.

Suggestion

It is suggested to allow return filing without payment so that Tax can be paid till last date i.e. 20th, which will be credited automatically in the ledger.

PAYMENT OF TAX

103. No interest recovery on the credit reversal on date of completion of building

Section 50 of the CGST Act provides that every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18%, as may be notified by the Government on the recommendations of the Council.

Issue

There may be cases of reversal of input tax credit at a later date, and such reversals may occur after the financial year as well (e.g., reversal due to grant of occupancy certificate for buildings) which would render supplies as activities not to be treated as supplies. In such cases, demanding the interest recovery on the GST amount would be inequitable.

Suggestion

It is suggested that a proviso is inserted in the section as under: -



"Provided that interest payable would be computed from the date on which the credits become ineligible".

104. Extension of time limit to furnish information by the Electronic Commerce Operator

Section 52(12) of the CGST Act provides that any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceeding under this Act, requiring the operator to furnish such details relating to—

- (a) Supplies of goods or services effected through such operator during any period, or
- (b) stock of goods held by the suppliers making supplies through such operator in the godown or warehouses, by whatever name called, managed by such operators and declared as additional places of business by such suppliers –

Also, Section 52(13) of the CGST Acts provides that every operator on whom a notice has been served under sub-section (12) shall furnish the required information within **fifteen working days** of the date of service of such notice.

Issue

Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice. There is no provision for extension of this time period which may lead to difficulties.

Suggestion

- It is therefore suggested to relax the given provision by providing extension of the time limit for furnishing of details by the Electronic Commerce Operator.

105. Certificate of tax collection in case of e-commerce operators

Section 52 of the CGST Act provides that every electronic commerce operator, not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by the operator.

Issue:

The provision regarding issuance of certificate for payment of taxes collected at source appears to be missing. Accordingly, it would be difficult for the supplier to claim credit of tax collected by the electronic commerce operators.

Suggestion:

It is therefore suggested that the enabling provisions regarding issuance of tax collection certificate be incorporated and suitable forms be notified by way of rules.

GSTN Related Issues

106. Delay in responses from GSTN Helpdesk



GST helpdesks have been a boon for resolving transitions, registration etc. issues/ queries and is helping one and all with smooth transition to GST regime. Considering the bulk of enquiries made to the help desks, it results in minimum waiting time for each call to shoot up beyond 30 minutes, delay in revert by emails being more than 15 days which may or may not cater to the issue/ query so raised.

Suggestion:

Owing to above concerns, it is suggested that additional manpower be deployed for resolving queries/ issues, reduce call/ email revert time to help keep up the good work undertaken by GST helpdesk. An assistance provided by properly trained officials will add to the smooth functioning of the GST helpdesk and providing specific answers to the queries/ issues as against being referred to GST Acts, Rules, FAQs etc.

107. High rate of interest in case of default in payment or wrong availment of credit

In terms of Notification No. 13/2017—In exercise of the powers conferred by sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council fixed the rate of interest per annum, for the purposes of the sections as specified in column (2) of the Table below, as mentioned in the corresponding entry in column (3) of the said Table

Serial Number	Section	Rate of interest (in per cent)
1.	Sub-section (1) of section 50	18
2.	sub-section (3) of section 50	24
3.	sub-section (12) of section 54	6
4.	section 56	6
5.	proviso to section 56	9

Issue

Comparing the notified interest rate of 18% or 24% with the present bank rate, which is not more than 7-8% per annum, is too high.

Suggestion

In the implementation phase of GST, the notified interest rate should be equivalent to present bank rate and in any event not exceeding 9% per annum, as tax payers would lack awareness, given that GST is a new law, and taxpayers may have made some inadvertent errors / mistakes.

Even post first year, the notified interest rate should not exceed 12% per annum.

REFUNDS

108. Refund in case of inverted duty structure

Sec 54(3)(ii) of the CGST Act, 2017 provides that no refund of unutilised input tax credit shall be allowed in cases other than where the credit has accumulated on account of **rate of tax on inputs** being higher than the rate of tax on **output supplies** (other than nil rated or



fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Issue:

Any registered person, (especially manufacturers or service providers) may have accumulated credit balances for the reason that they are availing input services which attract at higher rate of GST (say, 18% or 28%) whereas the final product or output service / goods attract GST rate of 5% or 12%. However, the authorities may deny refund on the grounds that the provisions of the law merely allow refund benefits in respect of inputs subjected to higher rate of GST and not in case where the input services attract a higher rate of GST. If a strict interpretation is taken that refund would be allowed only if the GST rate on “inputs” is higher without considering the rate of input services, then the very object of the provision would stand defeated.

Suggestion:

It is suggested that:

- the word ‘inputs’ be replaced with the phrase ‘inputs and input services
- Also, the word ‘Output Supply’ be replaced with the word ‘Outward Supply’.
- A mechanism for computation of the refund due on account of an inverted duty structure, given that the rate of tax applicable to various components of the inward supplies used for effecting outward supplies taxable at a lower rate, may vary from one category of goods / services to another.

109. Payment of refundable amount to applicant

Section 54(8) of the CGST Act, 2017 provides that the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

- (a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
- (b) refund of unutilised input tax credit under sub-section (3);
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax in pursuance of section 77;
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Suggestion:

It is suggested that all the input tax credits be seamlessly covered under the provisions of Section 54(6).

110. Execution of LUT / bond for export



In terms of Rule 96 A of the CGST Rules, any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under section 50 (1) within a period of 15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

Issue

Execution of LUT / bond for export of services is not practical and it does not serve any purpose

Suggestion:

- It is suggested that execution of LUT / bond be removed for export of services and also for third country trading cases.

111.Deemed exports

Rule 89 of the CGST Rules interalia provides that any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 which shall be accompanied by various documentary evidences in Annexure 1 . one such document in terms Rule 89(1) (g) is

“a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports”

Further, the Central Government vide Notification No. 49/2017-Central Tax dated October 18,2017 (“**NN49/2019-Central Tax**”) notifies the following, as evidences which are required to be produced by the supplier of deemed export supplies for claiming refund, namely:-

- (1) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
- (2) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
- (3) An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

Issue:



- There is no 'end use' test in case of Deemed exports in terms of NN49/2019-Central Tax
- Non-creditable supplies and ineligible supplies can also be claimed as 'deemed exports' due to the benefit under NN49/2019-Central Tax read with Rule 89 ; which appears to by-pass the tests in section 16 and 17 of the CGST Act.

This implies that credit that would be available now becomes refundable and this appears to be unfair to non-EOUs and other supplies

Suggestion

It is suggested that NN49/2019-Central Tax to be made 'subject to' section 16 and 17 of CGST Act. There is no section granting entitlement to refund in case of deemed exports. Merely including in the definition of refund in section 54 does not become a substantive provision for entitlement to refund in these cases

112. Refund for 'deemed exports'

Refund is permitted in respect of deemed exports

Issue

There is no section in the Act that grants 'entitlement' to claim refund in respect of deemed exports. There's section 16 of IGST Act for exporters, section 54(3) for the cases specified, section 55 for UIN-holders but none for deemed exports.

Suggestions:

- It is suggested that a substantive section in the Act be drafted to provide this entitlement to refund

ADVANCE RULING

113. Advance Ruling

Issue

Present provisions of Sections 96 & 97 of the CGST Act, 2017 are procedurally complicated and would be out of reach of small & medium taxpayers. Advance ruling can only be filed by the "applicant" who is the registered person / person intending to be a registered person but not an association representing the industry, or in the capacity as a member of such association / industry.

Suggestions:

- It is suggested that Advance Rulings provisions as per Section 96 & 97 of the CGST Act, 2017 be made simple and exhaustive.
- It is suggested that Advance Ruling provisions be extended for filing of application on behalf of an association representing its members (with a unanimous vote from the members), whereby the decision rendered by the Authority would mutatis mutandis apply to all the members of association representing such issue /industry.

ASSESSMENT



114. Provisional Assessment – Security or Surety to be furnished with the Bond

Section 60(2) of the CGST Act, 2017 provides that payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

Further as per Assessment & Audit rules, the proper officer shall issue an order in FORM GST ASMT-04, either rejecting the application, stating the grounds for such rejection or allowing payment of tax on provisional basis indicating the value or the rate or both on the basis of which the provisional assessment is to be made and the amount for which the bond is to be executed and security to be furnished not exceeding 25% of the amount covered under the bond.

The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub rule (3).

Issues:

The requirement of security or surety to be submitted along with the bond will cast additional financial burden on the taxpayer. There already exist adequate safeguards in the law to protect the interest of the Revenue and the taxpayer need not be burdened for the same.

When the registered person is required to give an indemnity bond, there should be no further requirement of a bank guarantee equivalent to 25% of the amount covered under bond. Obtaining bank guarantee would mean that the registered person has to block funds to get bank guarantee (i.e. by opening an account for a Fixed deposit with the bank to obtain bank guarantee). In addition to that, the Bank will charge commission on the same to the tune of 1% to 2% which can be a huge cost and a wasteful expenditure for the registered person. In addition to this, GST will be levied on the bank commission which would further increase the cash outflow.

Suggestion:

It is suggested that requirement of executing surety in the form of bank guarantee or security with prescribed bond be done away with.

115. Adjustment of additional tax paid – Section 60(3)

In the provisions pertaining to provisional assessment, the law does not clearly state as to the manner in which any additional tax is payable upon receipt of final order shall be adjusted by the registered person (i.e., whether by way of reduction in the input tax credit / increase in output tax liability).



In terms of the proviso to Section 39(9) of the CGST Act, 2017: Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

Even if we assume that the decision shall be delivered by proper officer within a period of one year then the period of September of the following year would have lapsed, where the application for provisional assessment is filed at the end of the financial year. In such a case, the registered person would not be entitled to utilise the input tax credit to discharge additional liability, nor would a registered recipient be entitled to avail in put tax credit on the additional liability arising on account of the order finalising the provisional assessment, by virtue of the aforesaid proviso to Section 39(9) and the provisions of Section 16(4) of the CGST Act, 2017.

Suggestion:

The provisions of Section 60 (for provisional assessment) should be amended to provide for utilisation of credits to discharge additional liability, and availment of additional credits for the recipient, upon finalisation of provisional assessment, and such provisions should have an overriding effect on the provisions of Section 16(4), Section 37, 38 and 39(9) of the CGST Act, 2017.

DEMANDS AND RECOVERY

116. Time limit for issuance of order for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any will full misstatement or suppression of facts

Section 73(10) of the CGST Act provides that the proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund

Issue

The time limit for issuance of order under sub-section (9) is in excess of the time limit prescribed under the erstwhile laws. All the transactions are reported online and the compliance systems are designed with enough safeguards & cross tally. In such a tech-savvy environment, the time frame of 3 years is not warranted.

Suggestion:

It is therefore suggested that the time limit be reduced to 12 months in the cases covered by Section 73 (i.e., other than fraud, suppression etc. in which case it can be 3 years (as per limitation Act)).

117. General provision related to demand

Section 75(11) of the CGST Act provides that where an issue on which the First Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is



prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the First Appellate Authority or the Appellate Tribunal or as the case may be, the High Court is pending, the following periods be excluded in computing the period referred to in Section 73(8) or Section 74(8), as the case may be, where proceedings are initiated by way of issue of a show cause notice under Section 73:

- between the date of the decision of the First Appellate Authority and the date of decision of the Appellate Tribunal or
- the date of decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be or
- the date of the decision of the High Court and the date of the decision of the Supreme Court

Issue

Section 75(11) provides exclusion of time limit for issuance of order by proper officer, where the matter was under challenge before any court of law. The provision does not limit itself to matters which are pending to the specific registered person's own case and accordingly, this could result in varied interpretations. For e.g. where a decision is passed in case of some other assessee, the period of limitation gets extended for all other assessees. Similarly, the provisions of excluding of time limit should apply only on account of the appeals pending in that particular State – otherwise, it could result in situations where some States may have already completed assessment on a particular matter and the same would be re-opened based on the decision of dispute pertaining to some other State.

Suggestion:

It is suggested that exclusion of time limit under Section 75(11) be qua registered person and qua State.



OFFENCES AND PENALTIES

118. Incorrect Classification of goods or services

Section 122 of the CGST Act, 2017 provides that where a taxable person who supplies any goods or services or both without issuance of any invoice or issues an incorrect or false invoice with regard to any such supply he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Issue

There may arise a situation wherein a product or a service is wrongly classified by an assessee, due to lack of information, owing to which he collects & pays incorrect tax amount to the Government. The amount of penalty may burden a genuine assessee who, due to lack of information or incorrect guidance, has classified the goods or services provided by him incorrectly, and consequently becomes liable to penalty under section 122.

For Example: Mr. A (a dealer) sells a television set to Mr. B (a dealer) and charges GST @ 18% under the HSN 8528. However, the rate of tax applicable to television is 28%, which also falls under the HSN 8528. In such a case, Mr. A would be penalized for incorrect classification and issue of incorrect invoice.

Suggestion:

It is suggested that initially (say for a period of 1 year), to support assessee during transition process, the cases of wrong classification of goods or services be treated as tax neutral, and any additional liability arising on account of incorrect classification be demanded with interest alone, and not penalty, unless the incorrect classification is on account of fraud or wilful suppression, etc.

TRANSITIONAL PROVISIONS

119. Refund claims filed after the appointed day for goods cleared or services provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law

Section 142(4) of the CGST Act provides that every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Issue



The given provision denies the refund claim of any amount of CENVAT credit if it is so rejected and it does not provide for an opportunity of being heard in such a case

Suggestion

It is therefore suggested that a proviso be included in section 142(4) of the CGST Act by virtue of which the CENVAT credit may lapse only after being given an opportunity of being heard and based on the grounds of rejection given in writing.

120. Stage wise deduction for an Immovable property

Issue:

The current provisions for taxation of supply of under-construction flat / premises do not take into consideration the status of the construction at the time of execution of the contract. Thus, the flat that is booked, say when 60% of the construction is completed; attracts same tax as it would attract when construction is yet to begin or where the construction is 90% complete. During the course of the construction, by virtue/nature of the activity of laying each brick, it acquires the status of **immovable property** even while the building is getting constructed in the process. Therefore, such “immovable property” cannot be subjected to levy of GST. Therefore, an appropriate deduction should be provided to ascertain a value to the extent of such “immovable property” at the time of entering into contract with the buyer of the flat. This is popularly referred to as “stage wise deduction” under the Maharashtra VAT Act, 2002. Rule 58(1B) of the Maharashtra Value Added Tax Rules, 2005 is reproduced herein under.

- a) Where the dealer undertakes the construction of flats, dwellings, buildings or premises and transfers them in pursuance of an agreement along with the land or interest underlying the land then, after deductions under sub-rules (1) and (1A) from the total contract price, the value of the goods involved in the works contract shall be determined after applying the percentage provided in column (3) of the following TABLE depending upon the state at which the purchaser entered into contract.

TABLE

Sr. No.	Stage during which the developer enters into a contract with the purchaser.	Amount to be determined as value of goods involved in works contract.
(1)	(2)	(3)
(a)	Before issue of the Commencement Certificate.	100%
(b)	From the Commencement Certificate to the completion of plinth level.	95%
(c)	After the completion of plinth level to the completion of 100% of RCC framework.	85%
(d)	After the completion of 100% RCC framework to the Occupancy Certificate.	55%
(e)	After the Occupancy Certificate.	Nil%



Suggestion:

It is suggested that a provision similar to the above be brought in under the GST laws.

121. Aggregate turnover figure entered wrongly in return

Issue:

There could be instances where the assessee has inadvertently entered a wrong amount of aggregate turnover while filing a return. The GST portal does not allow for rectification / revision of the same.

Suggestion:

It is suggested that a facility be provided to the assesseees to correct the amount of aggregate turnover which has been furnished wrongly by the assessee.

MISCELLANEOUS

122. Input tax credit in respect of inputs sent for job work

As per section 143 (3) & (4) of the CGST Act, if the goods sent to job worker are not received within stipulated time then, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.

Issue:

In case of any delay in return of goods by the job worker (or direct dispatch for supply from the location of the job worker), i.e. after the period of 1 or 3 years, as the case may be, interest would be liable to be paid from the date on which the goods were sent to job worker until the date on which the time limit prescribed by law expires. Such a demand from the principal would be harsh on the principal.

The law must also provide for availment of credits upon receipt of goods / direct dispatch for supply from the premises of the job worker, where the event takes place after such a deemed supply.

Suggestions:

It is therefore suggested that the deeming provision for supply should consider the date on which the time period prescribed by law expires as the date on which the goods are deemed to be supplied by the principal to the job worker.

It is further suggested that the law expressly provides that the job worker would be entitled to input tax credit thereon, although the supply is made without consideration, regardless of the provisions of Section 16(2) read with Rule 37 of the CGST Rules, 2017; a similar provision should also be made to enable the principal to avail credit on receipt of goods from the job worker (or direct dispatch for supply from the premises of the job worker) where the event takes place after the expiry of the time period prescribed by law.

Where the job worker is not a registered person, the principal must be entitled to avail the credit of taxes paid by him pursuant to the 'deemed supply', when the principal receives



the goods from the job worker / directly dispatches the goods for supply from the premises of the job worker.

123. The duties and responsibilities and powers of the Officers at various levels be specifically put up for public comment.

Suggestion:

- Officers to be trained in respect of mind-set of trust and support to the industry as against tax terror, which is prevalent even today.
- Forum for mandatory audit be made public as early as January 2018. Such audits can begin - which would be useful for the trade/ industry rather than starting after the year end.
- Officers to be trained in GST as the vast majority are unable to answer basic questions. If this is not the case, the concept of a proper examination can be introduced for officers.
- Those who adjudicate and hear appeals to compulsorily go through a special learning and test of understanding.

IGST ACT

124. Location of the recipient where the address on record exists

Section 12(2) of the IGST Act refers to the location of the recipient where the address on record exists (wherever they occur) which is potentially litigative and could result in multi-routing in the case of retail trade thereby depriving the appropriate State of their legitimate right to collect revenue.

Suggestion

- It is suggested that appropriate clarification be provided for the cases in retail trade.

125. Place of Supply of Service

Section 12(4) of the IGST Act provides that the place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.

Issue

In case services mentioned in Section 12(4) of the IGST Act, pertaining to supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break of various places should be clearly spelt out

Suggestion

- It be suitably clarified that the list of services provided in the sub-section is an exhaustive list.



- Section 12(4) be rephrased as follows:

“(4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment **and** health service including cosmetic and plastic surgery shall be the location where the services are actually performed.”

126. Section 12(6): Place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park etc.-

Section 12(6) of the IGST Act provides that the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

Issue

The words “or where the park or such other place is located” may turn out to be potentially litigious. The purpose is served without these words and without any ambiguity. Furthermore, if services mentioned in section 12(6) are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break of various places should be clearly spelt out

Suggestion

- It is suggested that the words "or where the park or such other place is located" be deleted.
- Also, a mechanism be provided for cases where services are provided at multiple locations under a single contract.
- A proviso be added as: **Provided** where the basis of allocation is not forthcoming, the duration in each State as a proportion to the total duration of the event shall be applied.

127. Insurance of Immovable Properties-

Section 12(13) of the IGST deals with situation where the place of insurance does not cover immovable properties. It is suggested that a mechanism for such coverage be incorporated in the statute.

Suggestion

It is suggested that a mechanism for insurance of immovable properties be incorporated in the statute by way of following proviso:

Provided that in the case of insurance of immovable property, where the basis of allocation is not forthcoming, the value of immovable property situated in each State as a proportion to the total value of the immovable property shall be applied.



128. Place of supply of services provided by tourism accommodation services such as hotels, cruises, campsites etc.

Section 12(3) of the IGST Act inter alia provides that the place of supply of services

- by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or [Section 12(3)(b)]
- by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property [Section 12(3)(c)]

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.

Thus, it can be inferred that place of supply of accommodation services is the location of the immovable property.

Issue:

Persons not having registration in the place of where the immovable property is located would lead to restriction of credit, despite the fact that the consumption of the services (such as accommodation) is by the registered person.

Thus, the taxes paid in such other State would become a cost to the business, and it discourages businesses to hold seminars, conferences and other gatherings outside the State. Consequently, while the Government of the State in which the immovable property is located would receive the revenue from such taxes, tourism and business visits to such State would gradually reduce.

Suggestions:

- It is suggested that suitable amendment in the place of supply provisions be made to achieve seamless flow of credit and avoid any harm to the tourism industry.
- Place of supply of accommodation (B to B) service provided to
 - registered person shall be the location of recipient;
 - person other than a registered person shall be the location of immovable property.

129. Place of supply of services in case of works contractor

The place of supply of services, —

- (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
- (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or



- (c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
- (d) any services ancillary to the services referred to in clauses (a), (b) and (c),

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation. —Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Issue

In terms of Section 12(3) of the IGST Act, the works contractor need to register in the State where he performs the work.

In practical scenario, where most of the works contractors comes with a group of people, led by one person and they go for civil works wherever they get a contract and later dissolve or A contractor himself gathers the people and take them for work. Once the contract work is completed they will dissolve, till the contractor gets new work order. Since, most of the work contractors are illiterate, they are unable to decide whether multiple registration is required or they can opt for IGST billing by taking single registration.

Suggestion

In case of works contract being service movement of goods from one state to another state is not industry friendly, therefore appropriate amendment be made in CGST Rules.

An equivalent provision similar to section 10(1)(b) be enabled in relation to services involving goods or all services to enable free flow of trade.

130. Relief from payment of IGST to Representatives in India earning foreign exchange from Overseas Suppliers

Section 13(8) of the IGST Act provides that the place of supply of the following services shall be the location of the supplier of services:

- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (b) intermediary services;
- (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Issue:



The inclusion of intermediaries in above section might work against members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products in return for which they receive commission in convertible foreign exchange and no consideration is received from Indian customers. Though these activities satisfy all the remaining conditions of 'Export of Services', the same has surprisingly been proposed to be taxed under the category of 'intermediary services' for the reason that the place of supply would be the location of the supplier, i.e., in India.

Further, the proposed provision is a clear case of double/multiple taxation within India. For example, IGST would be required to be paid on the entire value of commission received by an intermediary and the same would also be an intrinsic part of the CIF value of goods imported into India, which would be again subjected to Basic Customs Duty and IGST. It is also a settled principle of taxation to not levy the same tax on the same value twice. In fact, recently, the Tribunal in the case of United Shippers Ltd. vs. CCE, Thane –II reported in 2015 (37) S.T.R. 1043 has held, that on the same value, a component of service tax as well as Customs duty cannot be imposed by the Government. This judgment has been upheld by the Supreme Court also vide its order reported in 2015 (39) S.T.R. J369 (SC). Also, this sub-rule is opposed to 'destination principle' of GST.

Suggestion:

If this 'origin based tax' rule cannot be omitted, it is suggested that the general definition of an "intermediary" in Section 2(13) of the IGST Act be reconsidered, by excluding intermediaries for goods, in order to provide a level-playing field to members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products.

131. Export of Service

Issue

Indian entrepreneurs have started making global business out of India. The service and goods purchased by them in one Country and sold / delivered in another Country and all that business done from India, are treated as service import and service export when it is accounted in the Books.

Moreover, if tax authorities intent to tax these services as import which may adversely affect the global competitiveness

Suggestions:

- It is suggested that suitable rules to be framed in respect of Third country trading / manufacturing /service Business Modules in the Indian Global Economy.
- It is also suggested that, third country trading / manufacturing /service companies need to be exempted from GST implications in respect of their global business done from India

132. Dual Levy on Export of services



Section 2 (6) of the IGST Act defines the Export of services as supply of any service where:

-

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Issue

By virtue of section 5 of the IGST Act, if location of supplier is in India and the place of supply is outside India, it qualifies as an inter-state supply. However, in certain cases, convertible foreign exchange is not received, and therefore, it fails to qualify as an export of service. Taking the same forward, such transaction will also be taxed by the receiving country as an import of service. Thereby it is being taxed twice.

Suggestion

It is suggested that such transactions be notified as an exempt service. This will have reversal on account of input, input service and capital goods. Also, it would help to avoid dual levy and one can undertake such transactions with ease.

133. Levy of IGST in respect of goods ‘imported into India’

Issue

Proviso to section 5(1) excludes levy of IGST under IGST Act and requires these goods to be subject to IGST levied under section 3(7) of Customs Tariff Act. But the usage of the words ‘goods imported into India’ is not the same as ‘imported goods’ as defined in Customs Act. Hence, it is important to ensure consistency in use of expressions in IGST Act and Customs Act.

Suggestions:

- It is suggested that words “goods imported into India” in proviso to section 5(1) be replaced with “imported goods”
- It is suggested to withdraw circular 46/2017-Cus which states that ‘IGST is levied but deferred’ which is unauthorized in law.

134. Levy of IGST on import of services from outside India by SEZ

Issue

SEZ is admitted to be ‘territory outside India’ as per section 53 of SEZ Act. Now to levy IGST on services received from outside India by an SEZ is a contradiction. And an exemption 18/2017 to resolve this contradiction is not harmonious.



Suggestions:

- Withdraw exemption to SEZs
- Issue circular that services from outside India is not leviable to IGST

135. Place of Supply in case of supply to SEZ

Issue

Due to the prescriptions in section 7 and 8 of IGST Act, a DTA-supplier supplying goods and services to an SEZ is liable to charge IGST but the Place of Supply applicable to the goods/services may well be outside the zone.

Often supplies may be 'delivered' to zone but billed to a different entity outside the zone and vice versa. Zero-rating benefit will apply only in respect of supplies that SEZ authorities approve to be 'authorized'. This list of authorized supplies are not static and change based on policy of SEZ. Though place of supply may be outside the zone, zero-rated benefit may be available. Hence, clarity is required.

Suggestions:

- It is suggested that section 12 and 13 of IGST Act contain an explanation that "provisions of this section shall not apply to supplies to SEZ developer or unit and qualifying as zero-rated supply"
- Accordingly, either ISGT will be charged on all supplies 'billed to' SEZ or zero-rated benefit allowed.

136. Nature of Supply under IGST – Correct nomenclature to be used

While Section 7 of the IGST Act, 2017 refers to cases where supply of goods / services is in the course of inter-State trade or commerce, Section 8 of the Act refers to intra-State supplies.

Issue:

The phrase used in Section 7 of the IGST Act, 2017 is "*in the course of inter-state trade or commerce*", which has been borrowed from various entries of the Constitution and from the erstwhile CST Act, 1956. However, the phrase has not been defined in the GST law. Moreover, Section 8 that refers to intra-State supplies does not use such a phrase. This phrase creates a confusion since it is not necessary that a trade or commerce constitutes a supply, and appears only in respect of inter-State transactions.

For Example- In case of clause 4(b) of schedule II where business assets are used for personal purpose outside the State of registration, such transaction is not one which is "in the course of inter-State trade or commerce", while it still tantamounts to a supply, i.e., an inter-State supply.

Suggestion:

It is suggested that in order to avoid any confusion, the phrase used in Section 7 being "in the course of inter-state trade or commerce" be replaced with "inter-State supply" with appropriate grammatical variations.



137. General Suggestion(s)

- (a) **Settlement Commission provision be restored**
Provisions related to Settlement Commission as provided in Chapter VIII of the Model GST Law to be reinstated as genuine mistakes may occur in the initial phases of the GST regime due to complexity of the law.
- (b) **Kar Samadhan Schemes** under existing laws (both Central and state) be introduced to help the assessee clear their issues/ dues under existing law, support with hassle-free transition and reduce **litigations**.
- (c) In order to maintain a level playing field, **all goods must be brought into the purview of GST** at the earliest, including petroleum, alcoholic liquor, and electricity, and repeal the other laws that levy taxes / duties on such goods. The businesses that consume the products of these industries, if kept outside the purview of GST, would face issues like cascading of taxes, non-availability of credit, maintaining separate books of accounts for claiming ITC etc.
- (d) **Anti-Corruption measures** need to be strengthened by building and grooming Revenue officers, to induce a sense of accountability at all levels. A 360-degree Compliance Rating concept to be introduced, which shall be given to the officers to ensure compliance on their part.
- (e) Exemption to exporters from payment of tax on inward supplies until the system stabilizes:
A general exemption may be issued for a period of 6 months to enable export of goods as well as services, whereby payment of taxes on supplies made to them (i.e., inward supplies of exporters) is wholly exempted, given that the refund mechanism has not been fully established due to system glitches, margin erosion and difficulty in practical implementation
- (f) A relaxation may be provided to small assessee to facilitate payment of tax on receipt-basis. In the erstwhile service tax law, upto Rs. 50 Lacs assessee was permitted to pay tax on receipt basis.
- (g) Delete duplication of definition in IGST Act and CGST Act, example, location of supplier of services, location of recipient of services, etc.

COMPENSATION CESS ACT

138. GST Compensation Rules to be prescribed:

Section 12 of GST (Compensation to States) Act, 2017 empowers the Central Government to make rules in relation to Compensation Cess. Presently, these rules have not yet been notified.

Issue:

Inference of the applicability of the same is drawn from the cells / columns in the return formats in GSTN as to how the compensation is to be levied. Such rules are required to clarify the law related to the input credit of compensation cess particularly. Absence of Rules regarding the manner of collection and input credit in case of Compensation Cess



Suggestion:

It is suggested that appropriate rules may be prescribed in relation to charge and credit of Compensation Cess.

TWITTER OR FAQ RELATED ISSUES

139. Solution provided through Twitter and /or FAQ in some cases are contradictory in nature and even FAQ are having disclaimer which is creating confusion.

(i) Supply of Business Assets on which Credit has not been availed is subject to tax again

Twitter has clarified that tax on the sale of capital assets is not subject to tax whereas provision of law does not provide such mechanism.

(ii) Salary to Partner by Partnership firm

Twitter has clarified that salary paid to partner by partnership firm is not subject to tax whereas it has not been clarified through circular or any notification exemption being provided.

(iii) An Individual renting residential dwelling to Pvt Ltd Co. for residential use of director /officer.

Twitter replied liable to GST wherein exemption is provided for residential use.

(iv) Credit of tax paid on RCM

Twitter has clarified that tax paid under RCM be allowed in the next month and as well as same month, dual answer. No such official clarification being provided.

(v) Credit of KKC

Twitter has clarified that tax paid under KKC is not allowed, however it was an eligible duty under earlier law and restriction of credit is unnecessary leading to cascading.

CONSTRUCTION INDUSTRY RELATED ISSUES IMPACTED TO ALL SECTORS

140. Deemed deduction towards land in case of sale of apartments

CBEC vide Notification No. 11/2017- Central Tax (Rate) specifies that the supply of services by way of Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply



Issue

The law does not take cognizance of the fact that the values of undivided share in land for construction of apartments are different in different localities in the cities across India.

The Government's move to provide a blanket deduction of 1/3rd of the total value of the contract / agreement with the customer irrespective of where the land / apartment complex is erroneous. The Government must appreciate that cost of construction of such apartment complexes (considering the quality of construction, inputs used, labour cost, nature of facilities provided etc.,) does not vary beyond 15% to 20% irrespective of the location. It appears billing in real estate sector has almost come to a standstill.

Eg: If an Apartment coming up in the prestigious MG Road area at Bangalore and another apartment coming up in outskirts of Bangalore get the same proportion of deduction, it is incorrect.

Suggestion:

It is suggested that: -

- c) A deduction may be provided for the market value of the land – as per the agreement between the developer and customer; OR based on certification by an approved valuer OR provide for different rates of deemed deduction based on location, areas or cities or distance from cities etc.
- d) Also, following clarifications may be provided vide circular to be issued :
 - The said deduction towards land cost must be allowed to be availed upfront out of the first few instalments received.
 - The components of receipts that would form part and parcel of the consideration towards availing the land cost deduction must include – Car park charges, club house charges, reticulated gas supply charges, modular kitchen, preferential location charges, floor rise charges, water and power charges, DG set charges, maintenance charges etc. This is because these costs are in the nature of construction costs.
 - In case of unsold flats on obtaining OC / PC, the reversal of input tax credits must not be arbitrary (but based on area unsold) and must not be subject to consequential levies such as interest / penalties.

141. Joint Development Agreements (JDAs) – time and valuation for payment of GST

In a JDA, it is important to note that the consideration provided by the Developer to a Land Owner (for transfer of undivided interest in land [UDI] by the Land Owner) is the future delivery of a constructed portion to the Land Owner.

Contractually and legally, the UDI in land does not get transferred to the developer (except in cases where the developer sells the units to his customers and the land owner is a consenting party to the contract).

The field formations are of the firm belief that GST triggers as soon as the JDA is signed – on the premise that the consideration is already received from the Land Owner.

Suggestion



It is suggested that GST becomes payable, only when, and to such extent that the units are sold; In respect of unsold units relating to the Land Owner, the GST be made payable at the time of obtaining the OC / PC from the prescribed authorities.

Further a circular need to be issued in respect of the following:

- (a) Who is required to pay taxes on the Land Owners constructed portion?
- (b) Whether such taxes payable, are required to be remitted monthly, quarterly or annually?
- (c) What is the mechanism for valuation in such cases? Cost basis or cost-plus basis?
- (d) Alternatively, is it permissible for a developer to reverse input tax credits based on the constructed area to be handed over to the Land Owner?

142. Revenue sharing under Construction service

One of the most recent and emerging concepts in a construction industry is where the Land Owner and the Developer enter into agreements to share the revenues generated from the project. Assuming that the revenue sharing arrangement is 40% to the Land Owner and 60% to the Developer.

Suggestion

Suitable clarifications may be issued on the following points:

- a) How is the land cost to be determined?
- b) Can it be said that what is paid / payable to the Land Owner would be the Land Cost and therefore permissible as deductions?

143. Input Tax Credit for Real Estate developers

Section 17 of the CGST Act, 2017 mandates that credit of tax on works contracts can be availed only if the output is also works contracts – specifically for developers, while the sub contract work is ‘works contracts’, the output is ‘construction services’. Keeping in line with the objective of the GST law, outward supply being ‘construction services’ will not disentitle the developer from claiming input credit.

Suggestion

A clarification may be issued in respect of the said understanding which would address the concerns of the community at large and prevent avoidable litigation at a future date.

144. Transfer of immovable property by way of long lease

A transfer of land under a long lease is essentially a ‘transfer of said property’ and is liable to State level stamp duties. However, under the GST law, it is proposed to treat even such transfers as ‘taxable supplies’.

However, if an upfront fee is paid in respect of transfers by State Government Industrial Development Corporations or Undertaking to Industrial Units (such supplies for a period exceeding 30 years) then such supplies are exempt in terms of notification no. 12/2017 dated 28th June 2017 (Central Tax-Rate).



It may be noted that under the GST laws, such upfront fee would remain taxable if the period of lease is lower than 30 years or to any person other than Industrial Units.

Suggestion:

It is suggested that similar exemption may be extended to all transfers irrespective of the period of lease and whether or not to an Industrial Unit and for any purpose as acquiring land on long lease is one of the well-known recognized methods of acquisition of land and levy of tax on land is a State subject.

145. Transfer of immovable property by way of Assignment of Lease - GST implications

One of the means of acquisition of land is acquiring the leasehold interest of any Lessee in the land by way of an Assignment of Lease such that all the rights of the Lessee are transferred in favour of the Assignee. In law, title can be in different forms such as freehold title, leasehold title, etc.

Under the Service Tax law, transfer of title of any immovable property is a carve-out from the definition of Service and hence not liable to Service Tax. Moreover, under the Service Tax law, any service is defined to be an 'activity' carried out by a person for another. Therefore, Assignment of Lease is considered as transfer of title and not liable to Service Tax.

Under GST law, 'services' is defined to be anything other than goods. The point being that the concept of an activity in order for it to be a service is absent in the GST law. Under GST law, in Schedule III, item 5, sale of land and sale of building (in the case of building after its completion) is exempt as it is considered neither as supply of goods nor as supply of services.

Suggestion:

Accordingly, it may be suggested that the assignment of an existing lease by one Lessee to another (Assignee) would not amount to an activity and would amount to a transfer of title and therefore, be exempt under GST on the same basis as sale of land is exempt.

146. Transfer of immovable property by way of grant of Development rights - GST implications

It is a well-recognized fact that transactions for transfer of land take place under various forms such as sale of land or lease of land or assignment of an existing lease of land or grant of development rights in respect of a land. It is also well-recognized in law that property is a bundle of rights whereby the property can be transacted by transfer of any, or all rights. Development right is one of the constituent of such a bundle of rights. Therefore, a transaction of grant of development rights would be similar to a transaction of transfer of land.

Suggestion:

Accordingly, it may be suggested that any transaction of grant of development rights also needs to be exempted under GST laws on the basis of the exemption granted for sale of land.



147. Rate of tax on sale of under construction units

Hitherto, the sale of under construction units (which is on the basis of considering it as a Works Contract) was subject to both Service tax and VAT. The Service tax law allows an abatement of 70% on the total agreement value (where such value includes land value). Thus, Service tax is applicable @ 15% on 30% of the agreement value, making the effective Service tax burden only 4.5%.

On the VAT side, some of the States typically provide two ways of taxation in case of real estate construction contracts. Either the land value is included in the total taxable value which is then taxed at a very low rate or VAT is levied on the value after providing for standard deduction towards the value of land and labour. Effectively, on VAT side a substantial value of about 50% to 60% is reduced from the agreement value towards the land value. As against this, in Maharashtra the general Works Contract rate of VAT is around 5% which is brought down to 1% due to land value being included in the agreement value.

Thus, the net Service tax and VAT is about 7.5% of the agreement value. Both under Service tax law and VAT law, there is no levy of Service tax and VAT for sales after completion of the project.

Under GST, general rate for Works Contract is 18%. However, for sale of under construction real estate, deduction for land value is provided @ one-third of the sale value. Therefore, on account of land value, the GST rate is reduced from 18% to 12% which effectively results in an abatement of about 33%. Compared to this, currently the abatement both under Service tax law and VAT law is 50% to 60%. This has clearly resulted in a worse of situation under GST compared to the present law by almost halving the abatement from an average 55% to 33%.

Another consequence of such an abatement is that in projects where the land value is higher than 33% of the sale value of the property, then effectively the sale of land suffers GST. Although, under the GST law, there cannot be GST on sale of land. The constitutional validity of this needs to be examined.

Under the present Service tax law and VAT, there is a saving of 7.5% for any purchaser if the purchase is after completion of the project. However, under GST such saving will be higher at 12% which means effectively during the construction period there will not be any sales as every purchaser would look to save 12% GST by purchasing after completion of the project. This will wipe out the market for under construction project which will have adverse repercussions for everyone.

Given below is an example computing the GST liability together with passing on of the Input Credit.

In any building construction, the ratio between cost of material and labour + works contract is 4:6. Considering the same given below is an estimated GST as part of Input costs.



Particulars	Ratio	Applicable GST rate
Cement and RMC (goods)	1.2	28%
Steel (goods)	1.2	18%
Sanitary fittings / Marble / Granite / Tiles (goods)	0.8	28%
Miscellaneous materials (goods)	0.8	18%
Cost of labour + Works Contract (services)	6.0	18%

Thus, the average GST as a percentage of constructions cost will be 22%. On one hand, the Input Credit is 20% of the construction costs, while the Output liability is 12% of the sale price. Therefore, the Output GST liability although at a lower percentage is on a higher value while Input GST percentage is on a lower amount of cost of constructions. This would not result in any higher set off and will ultimately lead to higher GST liability as compared to the ST and VAT liability.

Suggestion

It is suggested that the GST rate for sale of under construction real estate not to be more than 6% on the agreement value which will make it comparable to the present situation.

148. Taxability of Transferable Development rights

Transferable Development Right (TDR) means making available certain amount of additional built up area in lieu of the land area relinquished or surrendered by the owner of the land, so that he can use the permissible extra built up area (on account of allotment of TDR) either by himself or transfer it to another person in need of the extra built up area for an agreed sum of money.

If the owner of any piece and parcel of land / property is required to surrender the same to the Government or Governmental Agency for the purposes of road widening, formation of new roads or development of parks, play grounds, civic amenities etc., as per the proposed plan of the said Government or Governmental Agency he shall be eligible for the award of Transferable Development Rights. Such award will entitle the owner of the land in the form of a Development Rights Certificate (DRC) which he may use for himself or transfer it to any other person.

Suggestion:

A clarification needs to be issued that such TDRs are not taxable under the GST Laws since it is an immovable property right.

149. Movement of goods within same business not to be treated as supply



As per section 7 of the CGST Act, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Further, Rule 28 of the Determination of Value of Supply i.e., Valuation Rules under CGST Rules, 2017 *inter alia* provides that value of supply of goods or services or both between distinct or related persons, other than through an agent will be determined sequentially:

- open market value of such supply
- value of supply of goods or services of like kind and quality
- value as per of rule 30 or rule 31

Issue

Taxability of movement of capital goods within the same business including branch transfers will cause lot of financial hardship. Capital goods like machines, cranes etc. require huge capital deployment and levy of tax when they are moved for business purposes will prove to be a huge financial burden for entities owning these and moving them from one place of business to another.

Suggestion

The supply of capital goods (whether to own depot or to the customer) be kept outside the purview of GST, and only the leasing/ renting/transfer of right to use the asset be subject to tax. Movement of capital goods for provision of services like renting/ leasing/ transfer of right to use be excluded from the scope of supply under GST regime.

150. Levy & Collection under Reverse Charge

Section 9(3) of the CGST Act provides that the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of the CGST Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Suggestion

It is suggested that, an explanation be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 9(3) of the CGST Act.



151. Deletion of Anti-profiteering clause under GST

In order to pass the benefit on account of GST implementation, the Government of India has brought anti-profiteering provisions. In the said provisions, benefits are required to be passed on following situations:

- Any reduction in rate of tax on any supply of goods or services.
- Any benefit of input tax credit passed by the supplier to recipient.
- Any reduction in price of goods by way passing the benefit of input tax credit.

National Anti-Profiteering Authority is therefore constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him - this is to ensure that the consumer is protected from arbitrary price increase in the name of GST.

Issue:

Only the benefits accruing from the implementation of GST have been factored by the Government while drafting the anti-profiteering clause. The additional costs arising from implementation of GST like additional compliance burden in each State, up gradation of software, additional manpower requirement and so on, have been ignored.

Suggestion:

It is suggested that :

- (v) Some margin (may be 0-5%) depending on the value and volume of product may be allowed to the industry considering that GST has been recently implemented and therefore, avoiding the frivolous issues. Further, investment made by Industries on implementation of GST in regards to changes in software & compliance cost be also considered for.
- (vi) The view of professional be sought before taking final decision to invoke the Anti-profiteering clause i.e. before referring the matter to the Director General of safeguards for investigation.
- (vii) To ensure that only genuine complain are being filed, a condition be imposed on the applicant that in case complain are found to be bogus, some penalty would be imposed.
- (viii) Some restriction be imposed on the no. of complain to be filed against a particular company.

152. Change in GST Rate on Railway/ Metro fare

Vide exemption notifications, Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017 and Notification No. 8/2017-Integrated Tax (Rate) dated June 28, 2017 railway/metro fare is subjected to NIL rate of Goods and Services Tax.



Issue

Railway/ Metro fare being chargeable to NIL Rate of GST results in increased fare for general public as GST paid on all the Inputs and Input services will become part of cost

Suggestion

- It is suggested that instead of exempting railway/ metro fare, make it zero rated or 5% to enable availment of input tax credit.
- It is also suggested not to restrict refund of input tax credit on expenses. (e.g. Operations and Maintenance)