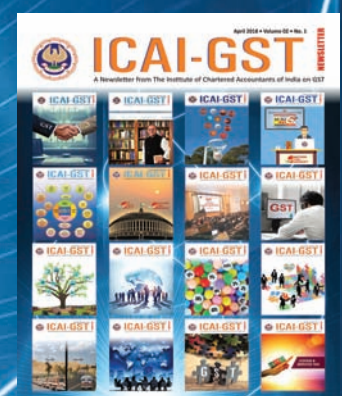
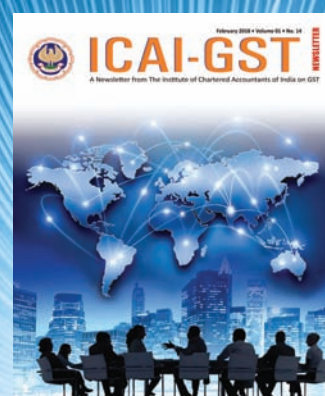
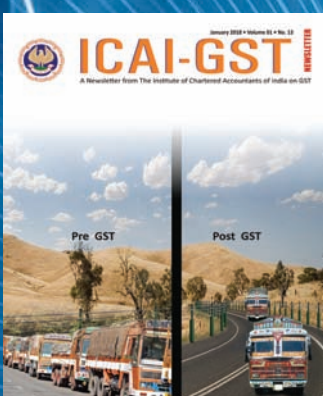
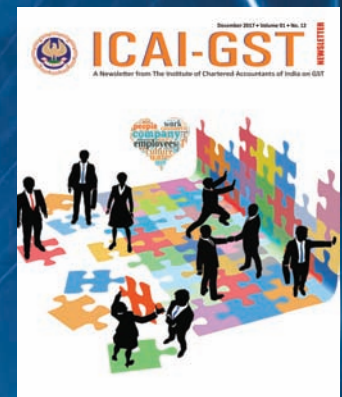
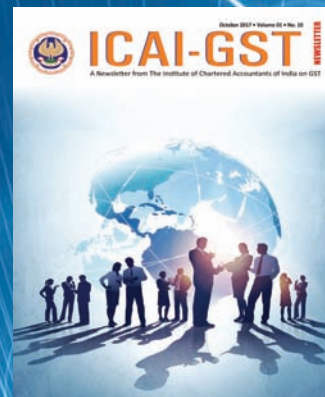
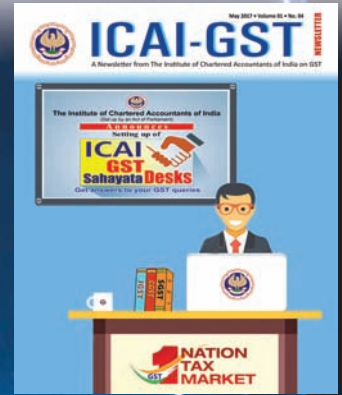
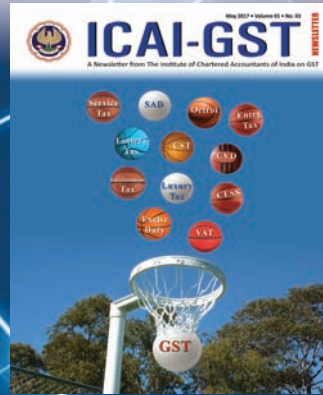
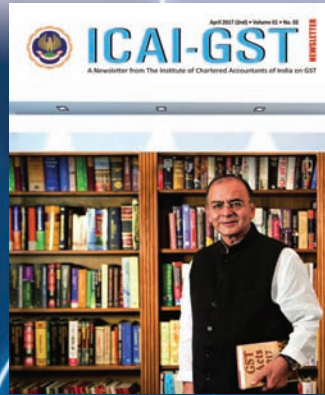




ICAI-GST

A Newsletter from The Institute of Chartered Accountants of India on GST



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President's Communication



My Esteemed professional colleagues,

From 1st April, 2018, E-way bill system has been put in place in India for inter- State movement of Goods and in case of intra- State movement of goods, more than 50% States/ Union Territories have already implemented the system. The E-way bill in the rest of the states/union territories will be implemented for intra state/ union territories by 1st June, 2018. With the new system put in place, it becomes easier for authorities to monitor the specific consignment/movement of goods from one place to another, either inter-state or intra-state.

We at ICAI have been continuously undertaking various initiatives to support the Government as well as the stakeholders for smooth implementation of GST. Thus, with the ongoing changes and implementation of E-way bill system in India, Indirect Taxes Committee of ICAI came up with the revised E-publication on "E-way bill under GST". This publication has been specifically designed to provide in-depth knowledge of provisions pertaining to E-way bill under GST in a simplified manner along with PPT and FAQs for the skill developments of our members and assisting them in the generation of E-way Bills under GST law.

GST Council recently discussed a simpler return form (three models of new return form) and the amendments required in the indirect tax regime rules and also mull over the proposal of converting GSTN into a government company. It is understood that several amendments to the law, which is now overdue

would only be taken up once the Council clears the new GST return format.

ICAI, being the accounting regulator, has been proactively supporting the Government in creating awareness and disseminating knowledge of GST among various stakeholders whereby more than 3700 workshops, seminars or conferences on GST have been organised by ICAI which have been attended and benefited by 2.9 lakh participants. Also, 62 Certificate Courses have been organised across the country. IDTC website www.idtc.icai.org also hold good as contains offline webcasts on GST, e-learning, webcast series on UAE VAT, regular GST updates, articles, information on upcoming courses, programmes/ seminars, e-publications on GST, E-learning on GST, GST Newsletter etc., for all its registered users.

Let us unite to support and assist Government in its attempt to make GST law error-free and a successful venture across in India.

With Best Wishes,

CA. Naveen N. D. Gupta
President, ICAI



GST UPDATES

Revenue Collections for the Financial Year 2017-18

Total Revenue of Rs. 7.19 lakh crore collected under GST in the period between August 2017 and March 2018

During 2017-18, total revenue collected under GST in the period between August 2017 and March 2018 has been Rs. 7.19 lakh crore. This includes Rs. 1.19 lakh crore of CGST, Rs. 1.72 lakh crore of SGST, Rs. 3.66 lakh crore of IGST (including Rs. 1.73 lakh crore on imports) and Rs. 62,021 crore of cess (including Rs. 5702 crore on imports). For this eight months, the average monthly collection has been Rs. 89,885 crore.

While the tax on domestic supplies in a month is collected through the process of returns and gets collected in the next month, IGST and cess on imports gets collected in the same month. Therefore, during the current year, GST on domestic supplies has been collected only in eight months from August 2017 to March 2018, IGST and cess on imports has been collected for nine months, from July 2017 to March 2018. **Including the collection of July 2017, the total GST collection during the financial year 2017-18 stands provisionally at Rs. 7.41 lakh crore.**

Revenue of the States

The SGST collection during the year, including the settlement of IGST has been Rs. 2.91 lakh crore and the total compensation released to the States for a period of eight months during the last financial year was Rs. 41,147 crore to ensure that the revenue of the States is protected at the level of 14% over the base year tax collection in 2015-16. The revenue gap of each State is coming down over last eight months. The average revenue gap of all states for last year is around 17%.

Return Filing During the year

There has been a progressive improvement in the compliance level observed during the course of the year. Following table shows the percentage of returns filed as on due date and the cumulative level of compliance.

Return Period	Required to file	Till due date		Cumulative	
		Returns	%	Returns	%
July '17	6647581	3834877	57.69%	6388549	96.10%
Aug '17	7370102	2725183	36.98%	6851732	92.97%
Sep '17	7823806	3934256	50.29%	7109143	90.87%
Oct '17	7721075	4368711	56.58%	6777440	87.78%
Nov '17	7957204	4913065	61.74%	6765603	85.02%
Dec '17	8122425	5426278	66.81%	6747887	83.08%
Jan '18	8322611	5394018	64.81%	6694387	80.44%
Feb '18	8527127	5451004	63.93%	6562362	76.96%
Mar '18	8715163	5458728	62.63%	5630683	64.61%

As may be seen, the compliance level as on the due date has steadily increased and, by the end of the financial year, has reached to an average of 65% from around 55-57% observed during initial months. The cumulative compliance levels (percentage of returns filed till date) for initial months has crossed 90% and for July, 2018, has reached 96%.

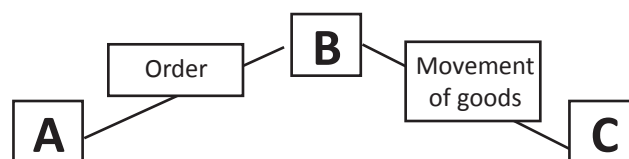
There are State-wise variations in the compliance level observed till due date. However, including delayed filings, the State-wise compliance levels converge over a period of time.

[PIB Release ID :178962 dated 27th April, 2018]

Issues regarding "Bill To Ship To" for e-Way Bill under CGST Rules, 2017

A number of representations have been received seeking clarifications in relation to requirement of e-Way Bill for "Bill To Ship To" model of supplies. In a typical "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:

- 'A' is the person who has ordered 'B' to send goods directly to 'C'.
- 'B' is the person who is sending goods directly to 'C' on behalf of 'A'.
- 'C' is the recipient of goods.



- In this complete scenario two supplies are involved and accordingly two tax invoices are required to be issued:

- **Invoice -1** which would be issued by 'B' to 'A'.
- **Invoice -2** which would be issued by 'A' to 'C'.

- Queries have been raised as to who would generate the e-Way Bill for the movement of goods which is taking place from 'B' to 'C' on behalf of 'A'. It is clarified that as per the CGST Rules, 2017 either 'A' or 'B' can generate the e-Way Bill but it may be noted that only one e-Way Bill is required to be generated as per the following procedure:

Case -1: Where e-Way Bill is generated by 'B', the following fields shall be filled in Part A of GST FORM EWB-01:

1.	Bill From:	In this field details of 'B' are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.

3.	Bill To:	In this field details of 'A' are supposed to be filled.
4.	Ship to:	In this field address of 'C' is supposed to be filled.
5.	Invoice Details:	Details of Invoice-1 are supposed to be filled

Case -2: Where e-Way Bill is generated by 'A', the following fields shall be filled in Part A of GST FORM EWB-01:

1.	Bill From:	In this field details of 'A' are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
3.	Bill To:	In this field details of 'C' are supposed to be filled.
4.	Ship to:	In this field address of 'C' is supposed to be filled.
5.	Invoice Details:	Details of Invoice-2 are supposed to be filled

Comment: This is an important clarification which resolves a highly-debated topic in today's scenario and it clarifies that only one E-way bill needs to be generated following the given procedure.

[PIB Release ID 178856 dated 23rd April, 2018]

Roll-out of e-Way Bill system for Intra-State movement of goods in the States / Union Territory of Arunachal Pradesh, Madhya Pradesh, Meghalaya, Sikkim and Puducherry from 25th April, 2018

As per the decision of the GST Council, e-Way Bill system for Inter-State movement of goods has been rolled-out from 01st April, 2018. As on 20th April, 2018, e-Way Bill system for Intra-

State movement of goods has been rolled-out in the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Telangana, Tripura, Uttarakhand and Uttar Pradesh. E-Way Bills are getting generated successfully and till 22nd April, 2018 more than one crore eighty four lakh e-Way Bills have been successfully generated which includes more than twenty two lakh e-Way Bills for Intra-State movement of Goods.

It is hereby informed that e-Way Bill system for Intra-State movement of goods would be implemented from 25th April, 2018 in the following States/Union Territory: -

- Arunachal Pradesh
- Madhya Pradesh
- Meghalaya
- Sikkim
- Puducherry

With the roll-out of e-Way Bill system in these States / Union Territory, it is expected that trade and industry will be further facilitated insofar as the transport of goods is concerned, thereby eventually paving the way for a nation-wide single e-Way Bill system. Trade and industry and transporters located in these States/Union Territory may obtain registration /enrollment on e-Way Bill portal namely <https://www.ewaybillgst.gov.in> at the earliest without waiting for the last date.

Comment: The given press release indicates the successful implementation of the E-way bill in majority of the States and it will soon be implemented across India.

[PIB Release ID 178859 dated 23rd April, 2018]

Central Goods & Service tax (Fourth Amendment) Rules, 2018

The Central Government vide Notification No. 21/2018- Central Tax dated 18th April, 2018 has notified following rules further to amend the Central Goods and Service Tax Rules, 2017.

Particulars	Existing provision	Revised provision
Rule: 89 Refund of input tax credit on account of inverted duty structure.	Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods Explanation: "Net ITC" shall have the same meanings as assigned to them in sub-rule (4).	Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services. Explanation: "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.
Rule: 97 Consumer welfare fund	All credits to the consumer welfare fund shall be made under sub rule (5) of rule 92	All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified in sub-section (2) of section 12C of the Central Excise Act, 1944 (1 of 1944), section 57 of the CGST Act, 2017 (12 of 2017) read with section 20 of the IGST Act, 2017 (13 of 2017), section 21 of the UTGST, 2017 (14 of 2017) and section 12 of the GST (Compensation to States) Act, 2017 (15 of 2017) shall be credited to the Fund

Audit of consumer welfare fund	-	Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India. Remarks: Earlier there was no provision for audit of consumer welfare fund. Now, by this insertion fund shall be subject to audit by the Comptroller and Auditor General of India.
Meeting of committee	The Committee shall meet as and when necessary but not less than once in three months.	The Committee shall meet as and when necessary, generally four times in a year at such time and place as the chairman of the committee deem fit after giving 10 days' notice in writing to every member which shall contains the particulars like place, date and hour of the meeting and also contain the statement of business to be transacted thereat. Further, no proceedings of the committee shall be valid, unless it is prescribed over by the chairman or vice- chairman and attended by a minimum of three other members. Remarks: Earlier it was mandatory for committee to meet once in three months now, Committee shall meet as and when necessary, generally four times in a year following the prescribed procedure.
Power of committee	-	The Committee shall make recommendations: - (a) for making available grants to any applicant; (b) for investment of the money available in the Fund; (c) for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication; (d) for making available grants for any other purpose recommended by the Central Consumer Protection Council (as may be considered appropriate by the Committee); (e) for making available up to 50% of the funds credited to the Fund each year, for publicity/consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty five crore rupees per annum.
Explanation to Form GST ITC- 03	The value of capital goods shall be the invoice value reduced by 5 percentage points per quarter of a year or part thereof from the date of invoice.	The value of capital goods shall be the invoice value reduced by 1/60th per month or part thereof from the date of invoice. Remarks: Earlier the registered person who has availed ITC and later on opt for composition scheme or whose supply become wholly exempt is required to pay an amount equivalent to credit of input tax availed on capital goods by reducing 5 percentage points per quarter Now, the value of capital goods will be taken as invoice value reduced by 1/60th per month.
Insertion of Form GSTR-10	-	Final Return form has been released. Remarks: Section 45 of CGST Act, 2017 provides that every registered person required to furnish a final return therefore form for filing final return has been provided

[Notification No. 21/2018- Central Tax dated 18th April, 2018]

Clarification on the manner of filing the Quarterly Return by Composition Dealers in FORM GSTR-4

Doubts are being raised about the manner of filing the quarterly return by composition dealers in FORM GSTR-4. In particular, there is a doubt with respect to the instruction at Sl. No. 10 appended to the said FORM which reads as below:

For the tax periods July, 2017 to September, 2017 and October, 2017 to December, 2017, serial 4A of Table 4 shall not be furnished.

In this regard, it is hereby clarified that since auto-population of the details of the inward supplies including supplies on which

tax is to be paid on reverse charge is not taking place, taxpayers who have opted to pay tax under the composition levy shall not furnish the data in serial number 4A of Table 4 of FORM GSTR-4 for the tax periods January, 2018 to March, 2018 and subsequent tax periods.

[PIB Release ID 178724 dated 17th April, 2018]

Clarification regarding queries on processing of refund applications for UIN agencies

The Central Government vide Circular No. 43/17/2018-GST dated 13th April, 2018 clarified certain issues arising out of Circular No. 36/10/2017 regarding the processing of refund to agencies which have been allotted UINs:-

A. Providing statement of invoices while submitting the refund application:

As per rule 95 of the CGST Rules, refund application shall be made on quarterly basis in Form RFD-10 along with a statement of inward invoices in FORM GSTR-11. Where system generated FORM GSTR-11 does not have invoice-level details, UIN agencies have to furnish a statement containing the details of all the invoices on which refund has been claimed, along with refund application. Further, the officers would not request for original or hard copy of the invoices unless necessary.

B. No mention of UINs on Invoices:

As per rule 46 of the CGST Rules, 2017 suppliers are required to record the UINs on the invoices issued to UIN agencies and in case, suppliers / vendors are not recording the UINs, action may be initiated against them under the provisions of the CGST Act, 2017.

Further, in cases where, UIN has not been recorded on the invoices pertaining to refund claim for the quarters of July – September 2017, October – December 2017 and January – March 2018, a one-time waiver is being given by the Government, subject to the condition that copies of such invoices will be submitted to the jurisdictional officers and will be attested by the authorized representative of the UIN agency.

Comment: It is learnt that UIN-holders have internal policy restrictions (from respective Governments) on engaging external advisors with respect to refund of GST and are undertaking these activities on their own. The procedural relaxation allowed in these cases is impressive and enviable by exporters awaiting refund.

[Circular No. 43/17/2018-GST dated 13th April, 2018]

Clarification regarding procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit-reg.

The Central Government vide Circular No. 42/16/2018-GST dated 13th April, 2018 specified the procedure to be followed for recovery of arrears arising out of proceedings under the existing law.

A. Legal provisions relating to the recovery of arrears of central excise duty and service tax and CENVAT credit thereof arising out of proceedings under the existing law

i. Recovery of arrears of wrongly availed CENVAT Credit:

Any claim for CENVAT credit recoverable out of any proceeding of appeal, review or reference initiated, whether before, on or after the appointed day, under the existing law, shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(6)(b) of the CGST Act].

ii. Recovery of CENVAT Credit carried forward wrongly:

CENVAT credit of central excise duty/service tax availed under the existing law, not admissible in terms of section 140 of the CGST Act, shall be recovered as an arrear of tax

under section 79 of the CGST Act.

iii. Recovery of arrears of central excise duty and service tax:

a. Any amount of tax, interest, fine or penalty becomes recoverable as a result of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(8)(a) of the CGST Act refers].

b. Any amount of output duty or tax becomes recoverable, as a result of any proceedings of appeal, review or reference relating to output duty or tax liability initiated, whether before, on or after the appointed day, under the existing law, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(7)(a) of the CGST Act refers].

iv. Recovery of arrears due to revision of return under the existing law:

Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(9) (a) of the CGST Act refers].

B. Procedure prescribed for the recovery of arrears:

i. Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:

a. The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

b. The arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed above, shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

ii. Recovery of interest, penalty and late fee payable:

a. The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

- b. The arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed above, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).
- iii. Payment of central excise duty & service tax on account of returns filed for the past period:
- With effect from 1st April, 2018, the return filed on portal www.aces.gov.in, the registered person shall be automatically taken to the payment portal i.e. ICEGATE portal for the payment relating to Central Excise / Service Tax return.
- iv. Recovery of arrears from assesseees under the existing law in cases where such assesseees are not registered under the CGST Act, 2017:

Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in point iii above.

Comment: It is important to note that recourse of recovery as arrears of GST is a remedy available not optionally but only after exhausting recovery measures prescribed under the earlier laws. Hence, attempts to invoke provisions under GST law may require establishment of the failure of recovery measures under earlier laws. Also, currently 'other payments' in the GST returns populates the payment under CGST and SGST. Some resolution is required to allow only CGST payment if provisions of section 140(6) to (9) are to be invoked.

[Circular No. 42/16/2018-GST dated 13th April, 2018]

Procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances

The Central Government vide Circular no. 41/15/2018-GST dated 13th April, 2018 has issued the following instructions regarding the procedure to be followed in case of interception of conveyances for inspection of goods in movement and detention, seizure and release and confiscation of such goods and conveyances:

- The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. The proper officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. An e-way bill number may be available with the person in charge of the conveyance. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to <http://mis.ewaybillgst.gov.in> or the Mobile App or through SMS by sending EWBVER to the mobile number 77382 99899 (For

e.g. EWBVER 120100231897).

- Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within 24 hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.
- The proper officer shall conclude the inspection proceedings within 3 working days (extendable with the permission of commissioner), either by himself or through any other proper officer authorised in this behalf.
- On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST MOV-04 and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST EWB-03 within 3 days of such physical verification/inspection.
- Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention and a notice, specifying the tax and penalty payable.
- The proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules release the goods and conveyance by an order in FORM GST MOV-05. Further, the order shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.
- Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in FORM GST MOV-05, after obtaining a bond in FORM GST MOV-08 along with a security in the form of bank guarantee equal to the amount payable under clause (a) or clause (b) of sub-section (1) of section 129 of the CGST Act. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the

security provided may be adjusted against the demand arising from such proceedings.

- Where any objections are filed against the proposed amount of tax and penalty payable, the proper officer shall consider such objections and thereafter, pass a speaking order in FORM GST MOV-09, quantifying the tax and penalty payable.
- In case the proposed tax and penalty are not paid within 7 days from the date of the issue of the order of detention in FORM GST MOV-06, action under section 130 of the CGST Act shall be initiated by serving a notice in FORM GST MOV10, proposing confiscation of the goods and conveyance and imposition of penalty.
- No order for confiscation of goods or conveyance, or for imposition of penalty, shall be issued without giving the person an opportunity of being heard.
- An order of confiscation of goods shall be passed, after taking into consideration the objections filed by the person in charge of the goods (owner or his representative), and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such goods shall stand transferred to the Central Government. In the said order, a suitable time not exceeding 3 months shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and get the goods released.
- An order of confiscation of conveyance shall be passed, after taking into consideration the objections filed by the person in charge of the conveyance and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such conveyance shall stand transferred to the Central Government. In the order passed above, a suitable time not exceeding 3 months shall be offered to make the payment of penalty and fines imposed in lieu of confiscation and get the conveyance released.
- In case neither the owner of the goods nor any person other than the owner of the goods comes forward to make the payment of tax, penalty and fine imposed and get the goods or conveyance released within the time specified in FORM GST MOV11, the proper officer shall auction the goods and/or conveyance by a public auction and remit the sale proceeds to the account of the Central Government
- The procedure narrated above shall be applicable mutatis mutandis for an order or proceeding under the IGST Act, 2017.
- Demand of any tax, penalty, fine or other charges shall be added in the electronic liability ledger of the person concerned. Where no electronic liability ledger is available in case of an unregistered person, a temporary ID shall be created by the proper officer on the common portal and the liability shall be created therein. He shall also credit the payments made towards such demands of tax, penalty or fine and other charges by debiting the electronic cash ledger of the concerned person.
- A summary of every order in FORM GST MOV-09 and FORM

GST MOV-11 shall be uploaded electronically in FORM GST-DRC-07 on the common portal.

List of Forms prescribed to follow the above procedure:

Sl. No.	Form	Purpose
1.	FORM GST MOV01	For recording statement of the person in charge of the conveyance
2.	FORM GST MOV-02	An order for physical verification/ inspection of the conveyance, goods and documents
3.	FORM GST MOV-03	For taking permission, for extension of time beyond three working days of concluding the inspection proceedings
4.	FORM GST MOV-04	Report of such physical verification
5.	FORM GST MOV-05	Release order to allow the conveyance to move further
6.	FORM GST MOV-06	An order of detention of goods
7.	FORM GST MOV-07	Notice specifying the tax and penalty payable
8.	FORM GST MOV-08	Bond for release of goods and conveyance
9.	FORM GST MOV-09	Form for release of goods on payment of tax and penalty.
10.	FORM GST MOV10	Notice proposing confiscation of the goods and conveyance and imposition of penalty.
11.	FORM GST MOV-11	An order of confiscation of goods

Comment: Commendable circular laying down detailed steps to be adhered to. While inspections cannot call for vague information (on the part of tax administration) as it must be 'prima facie' satisfactory, failure to adhere to the requirements (on the part of trade) may not be viewed with any lenience.

[Circular no. 41/15/2018-GST dated 13th April, 2018]

Clarification regarding GST on supply of food and drinks in educational institutions.

With a view to remove any doubt or uncertainty regarding rate of GST applicable on supply of food and drinks in educational institutions, it is clarified that: -

- GST rate on supply of food and drinks in a mess or canteen in an educational institution attracts GST at 5% without INPUT Tax Credit (ITC).
- If schools up to higher secondary level supply food directly to students, then the same are exempt from GST."

Comment: Please note that this clarification does not subvert the exemption available in case of food and drink supplied to all students without a separate charge.

(PIB Release ID :178603 dated 11th April, 2018)

Setting up of an IT Grievance Redressal Mechanism to address the grievances of taxpayers due to technical glitches on GST Portal

The Central Government has decided to put in place an IT-Redressal Mechanism, the details of the said grievance redressal mechanism are provided vide Circular No. 39/13/2018-GST dated 3rd April, 2018 which are as follows:

Introduction

Where an IT related glitch has been identified as the reason for failure of a class of taxpayer in filing of a return or a form within the time limit prescribed in the law by a large section of taxpayers and there are collateral evidences available to establish that the taxpayer has made bonafide attempt to comply with the process of filing of form or return, GST Council has delegated powers to the IT Grievance Redressal Committee to approve and recommend to the GSTN on matters identified by it and the steps to be taken to redress the grievance and the procedure to be followed for implementation of the decision.

Suggested solutions

1. GST Council Secretariat shall obtain inputs of the Law Committee, where necessary, on the proposal of the GSTN and call meeting of GIC to examine the proposal and take decision thereon.
2. The committee shall examine and approve the suggested solution with such modifications as may be necessary.
3. IT-Grievance Redressal Committee may give directions as necessary to GSTN and field formations of the tax administrations for implementation of the decision.

Legal Issues:

GST Council has delegated the power to the IT Grievance Redressal Committee to recommend waiver of fine or penalty, in case of an emergency, to the Government in terms of section 128 of the CGST Act, 2017 under such mitigating circumstances as are identified by the committee. All such notifications waiving fine or penalty shall be placed before GST Council.

However, where adequate time is available, the issue of waiver of fee and penalty shall be placed before the GST Council with recommendation of the IT-Grievance Redressal Committee.

Resolution of stuck TRAN-1s and filing of GSTR-3B

It has been decided that all such taxpayers, who tried but were not able to complete TRAN-1 procedure (original or revised) of filing them on or before 27.12.2017 due to IT-glitch, shall be provided the facility to complete TRAN-1 filing. It is clarified that the last date for filing of TRAN 1 is not being extended in general and only the identified taxpayers (on the basis of electronic audit trail) shall be allowed to complete the process of filing TRAN-1.

The taxpayer shall not be allowed to amend the amount of credit in TRAN-1 during this process vis-à-vis the amount of credit which was recorded by the taxpayer in the TRAN-1, which could not be filed. If needed, GSTN may request field formations of Centre and State to collect additional document/data etc. or verify the same to identify taxpayers who should be allowed this procedure.

The taxpayers shall complete the process of filing of TRAN 1 stuck due to IT glitches, as discussed above, by 30th April 2018 and the process of completing filing of GSTR 3B which could not be filed for such TRAN 1 shall be completed by 31st May 2018.

Comment: This is a welcome measure that must be utilized with eagerness. Care must be taken not to alter the values of transition credits.

[Circular No. 39/13/2018-GST dated 3rd April, 2018]

Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports

The Central Government vide Circular No. 40/14/2018-GST dated 6th April, 2018 has clarified regarding the acceptance of LUTs being submitted online in FORM GST RFD-11 by making certain modifications in Circular no. 8/8/2017 dated 4th October, 2017. Modifications made are explained below:

- a) **Form for LUT:** Earlier the (exporters) were required to download the FORM GST RFD-11 from the website of the Central Board of Excise and Customs (www.cbec.gov.in) and furnish the duly filled form to the jurisdictional Deputy/Assistant Commissioner. Now, the registered person (exporters) shall fill and submit FORM GST RFD-11 on the common portal and the LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.
- b) **Documents for LUT:** Earlier, self-declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37/2017- Central Tax dated 4th October, 2017. Now, by this circular it has been clarified that no such document needs to be physically submitted to the jurisdictional office for acceptance of LUT.
- c) **Acceptance of LUT/bond:** Earlier, LUT/bond should be accepted within a period of 3 working days of its receipt along with the self-declaration and if not accepted within a period of 3 working days from the date of submission, it shall be deemed to be accepted. Now the LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-Central Tax, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio."

Comment: Much needed clarity comes from this circular both to trade and administration. This extent of clarity was sought by local tax administration as much as trade bodies.

[Circular No. 40/14/2018-GST dated 6th April, 2018]



CUSTOM UPDATES

Clarification regarding Import by EOU/EHTP/STP/BTP without payment of duty by following Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

Central Government vide Circular No. 10/2018 dated 24th April, 2018 clarified the issues faced by EOUs regarding imports due to requirement of submitting information to the DC/AC of Customs at the Custom Station of importation by way of forwarding a copy of such information by the Jurisdictional DC/AC of Customs under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

As per Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, EOUs are required to provide information in duplicate regarding estimated quantity and value of goods to be imported to Jurisdictional DC/AC of Customs. EOU is also required to submit one set of the said information to DC/AC of Customs at the Custom Station of importation who shall allow the benefit of exemption notification to the importer. Thus, Rule 5 nowhere prescribes that information provided by EOU under sub-rule(1)(a) of said Rule 5 is required to be approved by Jurisdictional DC/AC of Customs on prior basis for imports. It appears that the misconception is arising out of wrong interpretation of sub-rule (3) of Rule 5 of the said rules wherein it has been prescribed that the Jurisdictional DC/AC of Customs shall forward one copy of said information received from importer to DC/AC of Customs at the Custom Station of importation. However, this forwarded copy by Jurisdictional DC/AC of Customs is not a prerequisite for allowing duty free import by the DC/AC of Customs at the Custom Station of importation.

The Board further prescribes that Jurisdictional DC/AC of Customs of EOU/EHTP/STP/BTP shall ensure that the intimation received under sub-rule (1)(a) of Rule 5 of the said rules are properly scrutinized so that only eligible goods as prescribed under notification No. 52/2003-Customs dated 31-3-2003 as well as those eligible as per Letter of Permission (LOP) granted by Jurisdictional Development Commissioner are imported duty free by the EOUs. After prompt scrutiny, one copy of such information shall be forwarded to DC/AC of Customs at the Custom Station of importation as prescribed under sub-rule (3) of the Rule 5 of said rules. The DC/AC of Customs at Custom Station of importation would reconcile the Bill of Entry against which goods were imported duty free by EOU on receipt of such information from Jurisdictional DC/AC of Customs. In case of any discrepancies noticed, the DC/AC of Customs at Custom Station of importation would inform the Jurisdictional DC/AC of Customs for taking necessary steps to protect revenue.

[Circular No. 10/2018 dated 24th April, 2018]

Pre-notice consultation Regulations, 2018

The Central Government vide Notification no. 29/2018-Customs (N.T.) dated 2nd April, 2018 has provided the Pre-notice consultation regulations, 2018 which are as follows:

Manner of conducting pre-notice consultation: - Pre-notice consultation shall be made in the following manner: -

- (1) Before the notice is issued, the proper officer shall inform, in writing, the person chargeable with duty or interest of the intention to issue the notice specifying the grounds and the process of pre-notice consultation shall be initiated as far as possible at least 2 months before the expiry of the time limit mentioned in sub-section (3) of section 28 of the Act.
- (2) The person chargeable with duty or interest may, within 15 days from the date of communication referred to in sub regulation (1), make his submissions in writing on the grounds so communicated. Provided if no response received, the proper officer shall proceed to issue the notice to the said person without any further communication:
Provided further that while making the submissions, the person chargeable with duty or interest shall clearly indicate whether he desires to be heard in person by the proper officer.
- (3) The proper officer, may if requested, hear the person within 10 days of receipt of the submissions referred to in sub-regulation (2) and subject to the provisions of section 28, decide whether any notice is required to be issued or not: Provided that no adjournment for any reason shall be granted in respect of the hearing allowed under this regulation.
- (4) Where the proper officer, after consultation, decides not to proceed with the notice with reference to the grounds communicated under sub-regulation (1), he shall, by a simple letter, intimate the same to the person concerned.
- (5) The consultation process provided in these regulations shall be concluded within sixty days from the date of communication of grounds as provided in sub-regulation (1).
- (6) Where the proposed show cause notice is in respect of a person to whom a notice on the same issue but for a different period or documents has been issued after pre-notice consultation, the proper officer may proceed to issue the show cause notice for subsequent periods without any further consultation.

[Notification no. 29/2018-Customs (N.T.) dated 2nd April, 2018]



GOODS – AN ANALYSIS

Introduction:

- 1.1 It is of paramount importance to understand the meaning of goods in any taxing statute related to goods. The meaning of goods is not the same for all the statutes. Many statutes have defined the term 'goods' in different manner. The levy of tax on goods is very old whereas levy of tax on services is very recent. Though the goods have been subjected to tax since ages, even today it is not free from litigation.

Importance of goods in GST:

- 1.2 Under the GST, goods have been defined under section 2 (52) of the CGST Act, which we will discuss further, to understand the concept of goods more clearly, in comparison to the meaning of services. The service has been defined widely in the GST law to be 'anything other than goods...'. Thus, it shall have impact on classification, rate, time of supply, place of supply, etc. Therefore, the term goods is to be clearly analysed and understood to avoid wrong application of law.
- 1.3 Section 2(52) of the CGST Act defines "goods" to mean 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."
- 1.4 Whereas Section 2(102) of the CGST Act defines "Services" means 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;
- 1.5 Since the definition of goods given in other statutes and as driven from the settled judicial pronouncements on movable property provides more clarity on 'goods', the meaning of money, securities and actionable claim are discussed first and then the detailed analysis of goods is being done in this article. Let us have a look on the meaning of terms used in the explanation of the definition of goods.

Money:

- 1.6 Section 2(75) of the CGST Act defines ""money" as the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal

tender of another denomination but shall not include any currency that is held for its numismatic value".

- 1.7 Numismatics is the study or collection of currency, including coins, tokens, paper money and related objects. The above definition itself is very exhaustive and gives the clear meaning of money.

Securities:

- 1.8 Section 2(101) of the CGST Act defines ""securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956."
- 1.9 As per section 2(h) of the Securities Contracts (Regulation) Act, 1956;
- ""securities" include —
- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
 - (ia) derivative;
 - (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
 - (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - (id) units or any other such instrument issued to the investors under any mutual fund scheme;
 - (ii) Government securities;
 - (iia) such other instruments as may be declared by the Central Government to be securities; and
 - (iii) rights or interest in securities."
- 1.10 Section 2(zg) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 defines ""security receipt" means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation."

Actionable claim:

- 1.11 Section 2(1) of the CGST Act defines ""actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882." As per this

section, Transfer of Property Act, 1882 “actionable claim” means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Other Statutes containing the definition of Goods:

- 1.12 The Article 366(12) of the Constitution of India defines the goods as ‘goods include all materials, commodities, and articles’.
- 1.13 The general interpretation of the term material is inclusive and not limited to raw and processed material, components, parts, assemblies, sub-assemblies, fuels, lubricants, coolants, cleaning agents, and small tools and accessories that may be consumed directly or indirectly. Similarly, a commodity is a reasonably interchangeable term of goods or materials, bought and sold freely as an article of commerce. Commodities includes agricultural products, fuels, and metals and are traded in bulk on a commodity exchange or spot market.
- 1.14 We can understand from reading the above definitions that all movable properties except money and securities are goods. Therefore, it is now essential to know the meaning of movable property so that the meaning of goods can be interpreted in a more expeditious manner. The term movable property has not been defined in the GST law. Though section 3(36) of the General Clauses Act, 1897 defines “movable property” shall mean “property of every description, except immovable property”. The property is a or things belonging to someone; or possessions of someone or the owner. To know what is movable property, it is necessary to understand the meaning of immovable property.
- 1.15 Section 3(26) of the General Clauses Act, 1897 defines “immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.”
- 1.16 Section 2(6) of Registration Act defines “immovable property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.”
- 1.17 Things attached to the earth or permanently fastened to anything which is attached to the earth is immovable property. To attract excise duty, the goods must be movable. Therefore, the case laws on movable goods or immovable property in central excise and VAT would be useful to understand immovable property.

1.18 The land, building and other civil structures are immovable properties. Land is the part of the earth’s surface that is not covered by water. The benefit to arise out of land is a very restricted element. The interpretations of the Honourable Supreme Court on benefit to arise out of land is as under:

- Lake is an immovable property and therefore the petitioner’s right to enter in that estate, which he does not own and take away fish from the lake is a ‘Profit a Prendre’ and in India it is regarded as a benefit to arise out of the land and hence it is immovable property .
- Felling, cutting and removing bamboos from forest for the manufacture of paper is a benefit to arise out of land and hence it would be an interest in immovable property .
- Right to enter upon land and cut trees is a benefit arising out of land .
- Congregation of buyers and sellers is enough to constitute a bazaar and the right to hold a bazar is an interest in the land .

1.19 The Mumbai High Court, in the case of Chheda Housing Development held FSI/TDR being a benefit arising from the land, consequently must be held to be immovable property and an agreement for use of TDR consequently can be specifically enforced, unless it is established that compensation in money would be an adequate relief.

1.20 In the case of Sumer Corporation , the Mumbai High Court held that under the provisions of VAT law, sale of goods can be for money or any other valuable consideration. Development Rights Certificate (DRC) is the consideration for construction activities done. The DRC by itself has been sold for a price in the market depending upon demand and supply conditions. This is to be understood as a valuable consideration and equivalent to money. So long as the TDR is understood by law to be equivalent to cash compensation and which can be dealt with in the market for a price as it is able to command, then, the tax liability can be clearly computed and by recourse to the machinery provisions contained in the Maharashtra VAT Act.

1.21 If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods .

1.22 Attachment of plant with nuts and bolts intended to provide stability and prevent vibration not covered as attached to earth - Attachment easily detachable from foundation and not permanent .

1.23 Whether goods embedded in earth or building would be excisable has to be decided on the touchstone of permanency. If the goods or the chattel was movable

from one place to another in the same position or liable to be dismantled and re-erected at the latter place, it will be movable property. But if erected permanently without being shifted from place to place, then it would be treated as permanently attached to the earth .

1.24 Installation or erection of turbo alternator on the platform specially constructed on the land cannot be treated as a common base. Therefore, such alternator would be immovable property as such .

1.25 Just because plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property. Embedding it in a concrete base to ensure its wobble free operation does not make it immovable property in the sense a building or a tree is .

1.26 In the case of Larson & Toubro Ltd , the Hon. Supreme Court analysed the meaning of goods and held that the definition of “goods” in clause (12) is inclusive. It includes all materials, commodities and articles. The expression, ‘goods’ has a broader meaning than merchandise. Chattels or movables are goods within the meaning of clause (12). Sub-clause (b) of Clause 29A refers to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The expression “in some other form” in the bracket is of utmost significance as by this expression the ordinary understanding of the term ‘goods’ has been enlarged by bringing within its fold goods in a form other than goods. Goods in some other form would thus mean goods which have ceased to be chattels or movables or merchandise and become attached or embedded to earth. In other words, goods which have by incorporation become part of immovable property are deemed as goods.

1.27 The above clarifications of the Apex Court are very important in case of works contracts where generally goods once being put to use, becomes immovable property. Accordingly, from the suppliers (service provider) point of view, the inputs used in the works contract deemed to be goods though the same is embedded to the earth.

1.28 The Hon. Supreme Court, in the case of Delhi Cloth and General Mills. Co. Ltd., held as under;

“On the meaning of the word ‘goods’ an interesting passage is quoted in the Words and Phrases, Permanent Edition, Vol. 18 from a judgment of a New York Court thus:

“The first exposition I have found of the word “goods” is in Bailey’s Large Dictionary of 1732, which defines it simply “merchandise”; and by Johnson, who followed as the next lexicographer it is defined to be movable in a house; personal or immovable estates; wares; freight; merchandise.”

Webster defines the word “goods” thus: -

“goods, noun, plural; (1) movables; household furniture; (2) Personal or movable estate, as horses, cattle, utensils,

etc., (3) Wares; merchandise; commodities bought and sold by merchants and traders.”

These definitions make it clear that to become “goods” an article must be something which can ordinarily come to the market to be bought and sold, and that satisfy human wants and provide utility.

1.29 In the case of Ambalal Sarabhai Enterprises , the Hon. Supreme Court held that for articles to be goods, these must be known in the market as such or these must be capable of being sold in the market as goods. It was in the context of excisability.

1.30 ‘Goods’ in Sale of Goods Act, 1930 (Section 2(7)) is defined to mean “every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale”

1.31 Anything that is attached to earth is not goods. There was one interesting observation of the Mumbai Tribunal in connection with service tax on repair and maintenance service. In this case, it was held that it is also moot whether a ship or vessel may, with some degree of accuracy, be described as ‘goods.’ During the relevant period, taxability was limited to repair, maintenance or servicing of goods which were restricted to movable property; this itself is defined in the General Clauses Act as all property excluding immovable property which does not, per se, enable resolution of the dilemma of being so described. Land is, undoubtedly, immovable property. Definition of ‘goods’ in the Sale of Goods Act, 1930 is, however, attracted to certain appendages of land to the extent that they can be separated from land before sale as part of contract of sale. Hence, structures that can be detached from the land are considered to be movable. Logically, the oceans and the seas are equivalences of land and the inextricability of a vessel or ship from the waters should bring them within the ambit of immovable. Ships before launch and for breaking up are goods but vessels or ships that are afloat are not goods except for the time being that they are the subject of a sale agreement. That ships, vessels and motor vehicles need not exclusively be goods is also apparent in Section 2 of Customs Act, 1962; they could also be conveyances. As conveyances, ships/vessels and motor vehicles move easily on water or land but, not being goods that are amenable to severance from land/water, are not distinguishable from immovable property.

1.32 ‘Goods’ includes both tangible and intangible movable properties, materials, commodities and articles and also corporeal and incorporeal materials. It is not a term of art and its meaning varies from statute to statute

1.33 Storage units, running counters, overhead unit, rear and side unit, wall unit, kitchen unit and items ordinarily immovable or not removable without cannibalizing are not furniture and are not excisable. Items like desks and

chairs are furniture and excisable. From this, it may be said that plywood cut to size and fixed using screws and nails to make fixtures are not goods.

- 1.34 Air-conditioning plant is an immovable article whereas Asphalt drum/Hot mix plant is a movable article
- 1.35 Replenishment licences (REP licence) have their own value and could be bought and sold as such. Original licence purchaser was not bound to import goods thereunder, and he could sell them to another and that another to yet another person. They were not chose-in-action, actionable-claim or title deed. They were property freely bought and sold in market. Their content was far more substantial and real than that of lottery ticket, which were goods. Definitions of "goods" and "property" in Sale of Goods Act, 1930 were in material particulars similar to definition of "goods" in Tamil Nadu, Karnataka and Kerala Sales Tax Acts, all of which uniformly say "goods" mean "every kind of movable property" (Sale of Goods Act) and "all kinds of movable property" (Tamil Nadu, Karnataka and Kerala Acts). REP Licence/Exim Scrip were not securities within meaning of Clause (h) of Section 2 of Securities Contracts (Regulation) Act, 1956. Hence, they could not be excluded from definition of "goods" in Tamil Nadu, Kerala and Karnataka Sales Tax Acts as well as Central Sales Tax Act .
- 1.36 Unbranded/Customized software developed and sold by petitioner with or without obligation, for system upgradation, repairs and maintenance or employee training are 'goods' within Article 366(12) of Constitution of India read with Section 2(d) of Central Sales Tax Act, 1956 and corresponding to Section 2(j) of Tamil Nadu General Sales Tax Act, 1959 .

- 1.37 All tangible movable articles are goods for charge of customs duties under Section 12 read with Section 2(22) (e) of Customs Act, 1962, irrespective of what the articles may be or may contain. It may be that what the importer wanted and paid for was technical advice or information technology, an intangible asset, but the moment the information or advice was put on a media, whether paper or cassettes or diskettes or any other thing, that what is supplied becomes chattel. Drawings, designs, manuals and technical material are goods liable to customs duty.
- 1.38 Section 2(12) of the Maharashtra Value Added Tax Act, 2002 defines "goods" means every kind of movable property not being newspapers, actionable claims, money, stocks, shares, securities or lottery tickets and includes live stocks, growing crop, grass and trees and plants including the produce thereof including property in such goods attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Conclusion:

- 1.39 From the above, we may conclude that to know what is goods, it is crucial to know what is movable property and what is immovable property, which depends upon the facts and circumstances of each case. There is no straight jacket formula to decide this. The judicial pronouncements under other laws especially central excise law will help in deciding what is movable and what is immovable. Money and securities are exhaustively defined in the GST law. Thus, term 'goods' is to be clearly understood before applying the provisions of GST law to it.

FORTH COMING EVENTS UNDER THE AEGIS OF INDIRECT TAXES COMMITTEE

21st to 24th May, 2018

Place : Nashik • CPE Hours : 24 Hours

Title of the Seminar : Advance Workshop on GST
Contact Details : Nashik Branch of WIRC of ICAI
Ph: 0253-2236107/2236012
Email: nashik@icai.org

Title of the Seminar : Two Days National Conference on GST
Contact Details : Ernakulam Branch of SIRC of ICAI
Ph: 484-2396238/2372953/2396258
Email: ernakulam@icai.org

1st and 2nd June, 2018

Place : Ernakulam • CPE Hours : 12 Hours

2nd and 3rd July, 2018

Place : Indore • CPE Hours : 12 Hours

Title of the Seminar : Two Days National Conference on Indirect Taxes
Contact Details : Indore Branch of CIRC of ICAI
Ph: 0731-4298198, 2570052, 53
Email: indore@icai.org

ISSUES RELATING TO SEZ

1. SEZ – Migration to GST

1.1. Statutory Provision

- 1st proviso to Rule 8 of the Central Goods and Services Rules, 2017 provides that a SEZ unit / developer shall make a registration application for registration as a business vertical which will be separate from other units located outside the SEZ;
- Application for registration under GST is required to be filed in Form GST REG 01. SI No 12 and 13 of the Form requires the applicant to confirm if they are applying for registration as an SEZ unit / Developer and also asks for the details of the SEZ approval;
- Section 7 of the Integrated Goods and Services Tax Act, 2017 provides that all the supplies of goods and services to SEZ would be treated as inter- State supplies and accordingly the same will be liable to IGST based on Section 5(1) of the IGST Act, 2017;
- A supplier to SEZ is required to provide the GST Number of the customer while filing the returns of Outward Supply in Form GSTR 1. If the GST Number of the customer is registered as SEZ on the GST Portal, then based on the provisions of Section 7 of the IGST Act, 2017, the portal automatically treats the supply as inter state even though the supplier and the SEZ are located in the same State.

1.2. Implementation Challenge

- The tax payers registered under the pre GST laws (Excise, VAT, Service Tax etc) were required to migrate into GST between January 2017 and March 2017 and obtain the GST Number;
- The requirement of obtaining a separate business vertical registration was introduced in the Rules which were available in the public domain only in the month of June 2017. Further, the requirements in table 12 and table 13 were not available at the time of migration from the pre GST laws into GST and accordingly all the SEZ registrants were migrated as “Regular” registrants in GST;
- The GST Portal recognized this issue – Self or based on recommendations received from various quarters based on which mails were received by certain SEZ from the GST Helpdesk to confirm if they were SEZ and if they would like to convert their registration type to “SEZ”. SEZ’s have responded to this mail but the registration type appearing on the portal has not been changed from “Regular” to “SEZ”.

1.3. Tax Effect

- In case the supplier supplies the goods or services to SEZ on payment of tax then based on the provisions of Section 7 of the IGST Act, 2017, they are required to

charge IGST and not CGST + SGST. However, since the GST portal does not recognize the customer as “SEZ” but recognizes it as a “Regular” tax payer, the supplier is unable to file the return by disclosing tax applicable as IGST.

1.4. Possible Solution

- The supplier can choose Place of Supply as “097 – Other” while uploading the returns based on which the type of supply will change from “Intra State” to “Inter State” on the basis that SEZ are territory outside India. However, this option has been provided to report transactions covered under Section 7(5)(c) i.e. Supply of Goods or services or both in the taxable territory, not being an intra state supply and not covered elsewhere in this Section and accordingly this work around would be incorrect;
- Additionally, the SEZ will not be able to claim credit of the taxes charged since the place of supply is different from the location of the registration. This restriction of no credit when place of supply is different from the location of the registration is not provided for in the GST Law but is based on the limited experience of filing return of inward supplies in Form GSTR 2 where the portal did not allow for claiming of CGST portion of the Hotel Accommodation Charges when the location of the supply (being location of the hotel) was different from the location of the recipient (being place of registration of the recipient);
- In the recently concluded meeting of GST officials at the office of one of the Industrial Associations in Maharashtra, it was informed that SEZ can approach their jurisdictional officers and inform them about the registration problem. The officers would in turn be required to contact GSTIN to update them on the issue and get the same resolved. We are not sure if this solution will work;
- Recent update dated March 19, 2018 – News and Updates tab on the GST Portal provides that “taxpayers who have not migrated as SEZ, can send their request to become SEZ on the email reset.sezflag@gst.gov.in and attach the copy of Letter of Approval as SEZ unit / developer”

2. Requirement of Legal Undertaking

2.1. Statutory Provision

- Section 16(1) of the IGST Act, 2017 provides that supplies to SEZ units and developers will be treated as zero rated. Further Section 16(3) of the IGST Act, 2017 provides that the supplier will have two options to claim refund for supplies made to SEZ units and developers

- Option 1 – Refund of unutilized credits provided supplies are made under bond / Legal Undertaking
- Option 2 – Refund of IGST charged on supplies made.
- Rule 96A(1) r/w Rule 96A(6) of the CGST Rules, 2017 provides that any person availing the option to supply goods / services to SEZ without payment of IGST shall furnish, prior to such supply, a bond / legal undertaking binding himself to pay the tax along with interest if the payment for such services is not received within 1 year + 15 days from the date of invoice or if the goods are not exported within 3 months + 15 days from the date of the invoice.

2.2. Implementation Challenge

- Section 16(3) of the IGST Act, 2017 provides for execution of Bond / Legal Undertaking only in a case where the supplier to SEZ intends to supply goods / services without payment of tax and claim refund of the unutilized input tax credit;
- However, Section 96A(1) r/w Rule 96A(6) of the CGST Rules, 2017 which deals with refund of taxes provides for execution of LUT in case of supplies to SEZ without payment of duty even when the supplier does not file claim for refund of unutilized input tax credit.

2.3. Tax Effect

- Based on the CGST Rules, the tax payer is required to execute LUT / Bond for the purpose of supplies to SEZ, though there is no requirement under the Act;
- Execution of LUT / Bond comes with an indirect compliance of annual renewal (which is again coming out of various circulars and the online application form for LUT available on the GST portal and from the law) and also requires the supplier to ensure that supplies of services are realized or goods are exported within prescribed time;
- In case the supplier is unable to meet the prescribed time line for export of goods or realize the export proceeds in case of services, then as per Rule 96A(3) of the CGST Rules, 2017, the facility of the LUT / Bond would be withdrawn and the tax payable on such supplies would be recovered with interest;
- Additionally, Rule 96A(4) provides that the facility of LUT / Bond will be restored upon payment of tax dues and interest. This would mean that in case the supplier has missed tracking payment of say a particular invoice which was outstanding for more than a year and realizes the same only after say 3 years then his facility of LUT / Bond is withdrawn at the expiry of the 1st year and all the exports made by him in the next two years will be liable to GST. This could prove dangerous to suppliers of SEZ.

2.4. Possible Solution

- Execution of LUT / Bond has been held to be procedural even in the excise laws where there was a requirement to furnish a Legal Undertaking for export of goods without payment of excise duty on manufactured goods. The same principle can be applied here;

- Circular No. 37/11/2018-GST dated March 15, 2018 in the context of refund of unutilized input tax credit with respect to export of goods without payment of IGST provides relaxation in case of delay in furnishing of LUT and provides that “The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case”.

3. Refund of taxes charged on supplies to SEZ

3.1. Statutory Provision

- Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 lays down the procedure to be followed for claiming refund of IGST paid on supplies made to SEZ. The Rules provide that the refund application should be accompanied by endorsement from the specified officer of the zone that the goods have been admitted in full in the SEZ for authorized operations or services have been received in the zone for authorized operations.

3.2. Implementation Challenge

- While the specified officer can definitely endorse the fact that goods have been admitted to SEZ (based on delivery of goods into the zone), how can the officer endorse if such goods have been admitted for authorized operations. Additionally, how will the specified officer endorse the receipt of services / use of such services for authorized operations given that the services are intangible and could have been entirely performed outside the SEZ.

3.3. Tax Effect

- The vendor claiming refund of taxes charged on SEZ supplies need to obtain a declaration from SEZ that the unit / developer has not availed tax credit of the taxes paid by the supplier. Since the invoices are uploaded online and there is a possibility of the SEZ inadvertently claiming credit of taxes charged by vendor at the time of filing the GSTR 2. The refund will in this case be denied in the hands of the supplier due to non compliance by the SEZ;
- Additionally, refund will be allowed only if the supplies are used for “authorized operations”. The supplier is unaware of the use of his supplies by the SEZ and hence the obligation cast of the supplier when the manner of utilization of goods / services is with SEZ can create an issue for suppliers;
- SEZ having non SEZ business may seek exemption of employee related ineligible credits like say rent a cab services by stating that such supplies are for their SEZ business and the supplier will have no way to cross check this claim.

3.4. Possible Solution

- The vendor will have to ensure that the supplies to be made to SEZ are part of the list of goods or services approved by the SEZ authorities apart from the default list of services as mentioned in the Annexure to letter issued by the Ministry of Commerce (SEZ Section) F

No. D12/19/2013-SEZ dated January 2, 2018. Hence, it is suggested that vendor obtains the list of goods / services approved for authorized operations (apart from default list) before making any supplies to SEZ (whether without payment of tax or on payment of tax);

- It would be important to note that in case of services which are not forming part of the default list of services mentioned in the aforementioned list, the vendor should charge IGST unless the SEZ obtains approval from the Unit Approval Committee for such additional services as being used for authorized operations;
- With respect to employee related services, it would be relevant to note that Rule 70 of the SEZ Rules, 2003 requires SEZ units to issue ID cards to their employees in Form K. The supplier can insist on the copy of the ID card as an additional proof that the supplies executed by them have been used by the employees of SEZ.

4. Sales by SEZ to DTA

4.1. Statutory Provision

- Section 29 r/w Section 30 of the SEZ Act, 2005 provides that removal of goods (procured, produced or manufactured) from SEZ to DTA will be chargeable to duties of customs, as leviable on such goods when imported and the rate of duty shall be the rate in force on the date of such removal. Section 53 of the said Act also provides that SEZ shall be deemed to be a territory outside the customs territory of India for the purpose of undertaking authorized operations and be deemed to be port, inland container depot, land station or land customs station for Customs Act, 1962. Section 51 of the said Act also provides that provisions of the SEZ Act shall have the effect notwithstanding anything inconsistent with any other law;
- Section 7(2) of the IGST Act, 2017 provides that supply of goods imported into the territory of India till they cross the customs frontiers of India shall be treated as Inter State Supply. Further, proviso to Section 5(1) provides that integrated tax on goods imported into India shall be levied under Customs Law;
- Section 2 of the Customs Act, 1962 defines the term imported goods to mean goods which have not been cleared for home consumption;

4.2. Tax Effect

On collective reading of the above provisions, the taxability of DTA sales by SEZ would be as under

- Supply (sale / removal) of goods into DTA will be considered as import of goods into India. The said supply will attract customs duty including IGST under the Customs Tariff Act, 1975;
- IGST has the powers to levy tax on supplies of goods made before the goods cross customs frontier and such transaction is outside the purview of CGST + SGST Act;
- The supply of goods which are still not imported are ejected out of the IGST Act, 2017 by proviso to Section 5 and hence will not be liable to IGST;

- Till the SEZ does not de-bond the goods by filing bill of entry for home consumption, these goods have not crossed customs frontier and according supplies made before the crossing of customs frontiers is an inter state transaction which will be liable to IGST payable under the Customs Law and will not be subjected to IGST on supplies to DTA;

In addition to the above, following grounds can also be considered

- “Imported goods” has been defined under Customs Law but “goods imported” has not been defined. In this regard, it would be relevant to note that the expression “goods imported” has company of expressions “till they cross customs frontier”;
 - If for some reason, we believe that “imported goods” are not equivalent to “goods imported” then the term “goods imported” would include goods cleared for home consumption in which case the relevance of “till they cross customs frontier” is lost since only goods which are not cleared for home consumption do not cross customs frontier. Accordingly, it would be safe to conclude that the terms “imported goods” and “goods imported” are referring to the same condition of the goods – Not cleared for home consumption;
- Additionally, supply of goods till they cross customs frontiers will be said to a transaction “in the course of import” which cannot be levied to tax based on the Article 286 (1)(b) of the Constitution of India. “Supply of goods imported into territory of India” has been deemed to be supply in the course of inter-state trade or commerce but “Supply of goods in the course of import into territory of India” has not been deemed to be a supply of goods in the course of inter state trade and commerce and hence even on this count, goods sold by SEZ to DTA will not attract IGST.

4.3. Possible Solution

- While the interpretation of multiple provisions provide us with the answer that supplies by SEZ to DTA would not attract IGST, majority of the SEZ are clearing the goods on payment of IGST on the ground that the credit of such tax is anyways available to the DTA and with a fear that in case the demand is confirmed on them at a later point in time then they will not be able to recover the same from their customers and the time limit of credit availment by the customer would have also expired;
- We understand that representations have been made on this issue and we may have to wait for the same before we conclude on the tax position.

5. Bill to DTA but ship to SEZ and vice versa - explain the workings and applicability of law

Depending on the location of the DTA and SEZ involved in the transaction, we can have multiple combinations of transactions. The same have been tabulated below with possible tax implications

5.1. Sale from DTA to DTA and then to SEZ

DTA Vendor 1	DTA Vendor 2	Tax-ability (Note 1)	SEZ	Tax-ability (Note 2)
Bangalore	Bangalore	CGST + SGST	Bangalore	Zero Rated
Bangalore	Bangalore	CGST + SGST	Mumbai	Zero Rated
Bangalore	Mumbai	IGST	Bangalore	Zero Rated

Note 1 – This transaction is covered under Section 10(1) (b) of the IGST Act, 2017 which provides that in case the goods are delivered by supplier to recipient based on the instruction of a third person then the place of supply shall be deemed to be the principal place of business of the third person.

Note 2 – This transaction is covered under Section 16 of the IGST Act, 2017 which provides that supplies to SEZ will be treated as Zero rated.

5.2. Sale from DTA to SEZ and then to DTA

DTA Vendor 1	SEZ	Tax-ability (Note 3)	DTA Vendor 2	Tax-ability (Note 4)
Bangalore	Bangalore	IGST / Zero Rated	Bangalore	IGST
Bangalore	Bangalore	IGST / Zero Rated	Mumbai	IGST
Bangalore	Mumbai	Zero Rated	Bangalore	IGST

Note 3– This transaction is covered under Section 16 of the IGST Act, 2017 which provides that supplies to SEZ will be treated as Zero rated. It would be relevant to note that the supplies to SEZ can be made on payment of tax and such tax can be claimed as refund by supplier or the SEZ. However for claiming the refund of the taxes, an endorsement is required from the SEZ officer that the goods have been admitted into the SEZ. This may not be possible in the instant case and hence it is suggested that the supplier opts for zero rating of such supplies by furnishing LUT instead of charging tax with an intent to claim refund of the tax charged.

It would be important to note that in case of supplies to SEZ, the goods are required to be admitted into the SEZ area for claiming the tax benefits (this is based on the provisions of the SEZ Law). In a bill to SEZ and ship to DTA scenario, the goods are not getting admitted to the SEZ and hence it is suggested that IGST be charged on sale of goods instead of considering the same as zero rated transaction. However, where the goods are being shipped

to DTA being a job worker of SEZ, the transaction can be treated as zero rated on the ground that there has been a delay in admission of goods to SEZ but eventually they have been admitted to SEZ.

Note 4– This transaction is covered under Section 7(5) of the IGST Act, 2017 which provides that supplies by SEZ will be treated as Zero rated. In this context, it would be relevant to note that Section 29 r/w Section 30 of the SEZ Act provides that removal of goods from SEZ to DTA would be considered as import of goods and will attract customs duty. However, in the instant case the goods are not admitted to SEZ and hence they cannot be removed from SEZ and accordingly the said provisions of SEZ Act will not apply to the above transaction.

6. Why import of services by SEZ needs exemption specifically?

- Import of Services is liable to GST under reverse charge mechanism under Section 5(3) of the IGST Act, 2017 but import of services by SEZ are exempt from GST vide Notification 18/2017 –IT (R) dated July 5, 2017;
- Section 26(2) of the SEZ Act enumerates the list of fiscal benefits extended to SEZ units and developers. This includes exemption from service tax on taxable services provided to SEZ units / developers. The SEZ Act has not been amended to provide for exemption from GST on supplies made to SEZ and hence GST is applicable on rendering of services to SEZ. However, supplies to SEZ are zero rated under Section 16 of the IGST Act and hence the domestic suppliers are not required to charge GST on rendering services to SEZ provided they furnish Legal Undertaking;
- In case of import of services, since the taxes are required to be discharged by the recipient ie SEZ and not the supplier, exemption from GST was granted on services imported by SEZ to ensure that SEZ do not end up paying taxes on import of services though there is no specific exemption provided under the GST Act;
- Alternatively, it would be relevant to note that in case of reverse charge mechanism the liability to discharge the tax shifts from the supplier to the recipient and the GST Act applies to such recipient “as if he is the person liable for paying the tax”. Thus, for transactions attracting GST under reverse charge mechanism including import of services, SEZ will step into the shoes of the vendor and will need to comply with the GST Law as if they are supplier of services;
- A supplier of service to SEZ can comply with the requirements of Section 16 of the IGST and render services without payment of tax since the supplies made to SEZ will be treated as zero rated. This view has been clarified vide F No 334/335/2017-TRU dated December 18, 2017 which was issued in the context of reverse charge mechanism liability on procurement of goods from unregistered dealers by International Financial Services Centre, SEZ.

Contributed by Bangalore Study Group

GST CASE LAW UPDATE

1. **M/s Global Agency vs The Director General Goods And Services Tax (Respondent) [2018 (3) TMI 389 - Karnataka High Court]**

The Petitioner had entered into a contract with the South Western Railways during the erstwhile regime which did not specifically provide for reimbursement of GST. With the introduction of GST from 1st July, 2017 the Assessee, was required to pay GST, therefore had preferred the writ petition directing the Respondent Railways to reimburse the additional burden and restrain the GST Authorities enforcing any penalties for non-payment of GST.

The writ petition cannot be entertained under Article 226 of the Constitution of India for reimbursement of the additional burden due to implementation of GST which was not part of the original contract to maintain status-quo ante of the contract as there is absence of any cause of action arising by way of an impugned action / order.

2. **M/s. Vajra Rubber Products (P) Ltd. (Petitioner) Vs. The Commercial Tax Officer, Irinjalakuda, Asst. State Tax Officer And Superintendent of Central Tax & Central Excise, Irinjalakuda (Respondent) [2018 (3) TMI 972 - Kerala High Court] and Shankar Mohan (Petitioner) Vs. Intelligence Inspector, The Intelligence Officer, Commissioner Goods & Service Tax Authority, State Of Kerala (Respondent) [2018 (1) TMI 179]**

The goods were seized on the grounds that the quantity on physical verification during the movement were found in excess of what was mentioned in the invoice. Thereon, the assessee filed writ petition wherein it was held that the goods shall be released on payment of 50% of the tax along with interest and penalty and furnishing of a bond for the balance amount.

Aggrieved by the judgment in the writ petition, assessee preferred the writ appeal. The Hon'ble High Court setting aside the judgment in the writ petition, issued directions to the Petitioner Department, to conclude the adjudication on the Respondent Assessee within one week and release the goods on provisional basis. In this regard, the Hon'ble High Court did give due reference to Section 129(2) and Section 67(6) of the CGST Act read with Rule 140 wherein it is specified that seized goods may be released on provisional basis upon execution of bond in Form GST INS – 04. The Hon'ble High Court did take cognizance of the said provisions and set-aside the judgment pronounced in the writ petition.

Thus, the adjudication proceedings on the goods detained / seized should be completed expeditiously. Where the registered person complies with filing of bond and security, the Proper officer should release the goods forthwith.

3. **K. K. Ramesh (Petitioner) vs. The Union of India, The Secretary, Office of the GST Council Secretariat, New Delhi And The Commissioner, Commercial Tax Officer, Cheupakkam, Chennai (Respondent) [2018 (3) TMI 1451 - Madras High Court]**

The Petitioner file a litigation that whether the Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can issue a positive direction to the Goods and Central Services Tax council to bring petroleum and diesel within the ambit of Goods and Service Tax.

On the grounds that IGST / CGST Act is implemented with an objective of 'One Nation One Tax' and accordingly, petrol and diesel should be brought within the ambit of the said law since price of the petrol and diesel is fixed on a daily basis and as a consequence of which, prices of goods and essential commodities would reduce, ultimately benefitting the common man, especially the poor and the down trodden.

It was held that it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair and a policy decision can be interfered with only if it is found to be arbitrary or based on an irrelevant consideration or malafide or against any statutory provisions. It is for the Central Government to act on the recommendations of the Goods and Service Tax Council as to bring the petrol and diesel within the ambit of the Goods and Service Tax net.

Thus, Policy formulation in relation to bringing petroleum and diesel within the ambit of GST is beyond the jurisdiction of the High Court.

4. **Rajeevan V.N. (Petitioner) vs The Central Tax Officer -1 Circle, Cochin And Jose Thomas, Kottayam, (Respondent) 2018 (2) TMI 1717 (Ker)**

The Petitioner preferred this writ petition pursuant to the rejection of the registration application by the competent authority under the GST law on the grounds that the Petitioner failed to provide explanation sought as regards the discrepancies in the documents.

The Hon'ble High Court held that the Petitioner is free to prefer a fresh application for registration with the requisite documents. If the Petitioner prefers a fresh application, the same shall be considered and appropriate decision shall be taken thereon by the competent authority.

Thus, the Petitioner was allowed to furnish the fresh application for registration subsequent to rejection of the earlier application on account of discrepancies in documents

5. M/s Radhey Lal Jaiprakash Neadarganj Dadri (Petitioner) vs. State Of U.P. And 5 Others 2017 (11) (Respondent) TMI 1022 – Allahabad High Court

The Petitioner-Assessee was unable to file the returns under the GST laws since, the provisional ID and password allotted, were not functioning. The Petitioner-Assessee was also unable to migrate the registration.

The Hon'ble High Court directed the Respondent-Department to not initiate coercive recovery measures till the judgment is pronounced after observing the instructions sought by the Respondent-Department on the peculiar issue.

Thus, non-migration of registration and non-filing of returns would not result in initiating of coercive actions against the registered persons whose provisional ID and password are not functioning.

6. M/s KTL (P) Ltd. (Petitioner) vs Union of India, (Respondent) 2018 (3) TMI 679 (All)

Despite his best and continued efforts, the Petitioner was unable to file Form GST TRAN-1 on the last date, owing to the GST portal being unresponsive, likely to result in the Petitioner having to suffer loss of eligible transitional credit by passage of time.

Government directed to reopen the portal for filing of declaration in Form GST TRAN-1 or accept manual filing of the said form and pass orders on it after due verification of the credits as claimed by the Petitioner. They will also ensure that the Petitioner is allowed to pay its taxes on the regular electronic system also which is being maintained for use of the credit likely to be considered for the Petitioner.

Thus, Non-filing of Form GST TRAN – 1 due to technical issues may not be a reason to disallow the transitional credit that an assessee would be entitled for.

7. M/s Continental India Private Limited And Another (Petitioner) vs Union of India Thru Secy. And 3 Others, (Respondent) 2018 (1) TMI 1245 –: Allahabad High Court dated 24 January 2018

The Petitioner-Assessee was not able to furnish the Form GST TRAN – 01 since, the electronic system of the Respondent-Department was not responding. Accordingly, the Petitioner-Assessee preferred this writ of mandamus seeking to issue directions to extend the time limit for filing Form GST TRAN – 01.

It was disputed that whether the transitional credit be denied to the Petitioner-Assessee who was not able to furnish Form GST TRAN – 01 due to the issues relating to electronic system of the Respondent-Department.

It was held that the department should re-open the portal or entertain the application manually as the department cannot deny the transitional credit when the registered

taxable person was unable to file the Form GST TRAN – 01 due to technical issues.

8. Salasar Synthetics, M.D. Overseas Ltd. (Petitioner) vs Union of India & Another (Respondent) 2017 (6) GSTL 396 (Del)

The Petitioner challenged the applicability of CGST rule 44A wherein it is specified that the countervailing duty paid under Section 3(1) of the Customs Tariff Act, 1975 paid on the import of gold dore bars which was eligible as transitional credit shall be reversed to the extent of five-sixth even though such dore bars are held in stock or contained in semi-finished goods or finished goods lying in stock as on 01.07.2017. It is discriminatory and unreasonable in as much as restrictions as specified therein which would result in imposition of a higher burden of tax when compared to other similar domestic goods.

The Petitioner further pleaded before the Hon'ble High Court to grant interim relief as the credit of CVD already availed and utilized for payment of tax on finished goods would be electronically reversed and there may arise a situation to deposit the cash which would be severely prejudicial to the interest of the Petitioner.

Thus, the Hon'ble High Court considering the submissions of the Petitioners contentions granted the interim relief in favour of the Petitioner and directed the Respondent not to initiate coercive steps to recover the credit already availed.

9. M/s Raj Iron & Building Materials (Petitioner) Vs. Union Of India Thru' Its Secy. & 3 Others (Respondent) 2018 (1) TMI 949 - Allahabad High Court

The Petitioner-Assessee did not comply with the condition of generating an e-way bill for the movement of goods on account of inter-State inward supplies. However, an e-way bill was generated and furnished before the authority after seizure of the goods with some delay but before the seizure order was issued. Subsequently, a seizure order was issued to the Petitioner-Assessee on the grounds that the e-way bill was not found accompanying the goods at the time of movement.

The Petitioner-Assessee has preferred the writ petition against the seizure order levying penalty on the grounds that the e-way bill was furnished before concluding the orders and the movement of goods was not with an intent to evade payment of taxes.

The Hon'ble High Court allowed the writ petition and set-aside the seizure order as non-sustainable referring to the provisions relating to e-way bill. It was observed that the trade was facing certain difficulties to download the e-way bill and instances where e-way bill is applicable was not clear.

10. M/s. Bhima Enterprises (Petitioner) Vs. The Assistant State Tax Officer, Neyyattinkara and 3 others (Respondent) 2018 (1) TMI 1149 - Kerala High Court

The Petitioner-Assessee was challenging the detention notices issued in relation to four consignments being shipped on account of inter-State supplies on the grounds that Petitioner-Assessee is not moving the goods under the cover of the documents specified under the CGST / SGST Act, 2017 read with IGST Act, 2017.

In as much as the detention of the first three consignments are concerned, it is not valid and justified on the part of the Respondent-Department to detain the goods when the goods were being moved under the cover of an invoice. However, in case of the fourth consignment, the movement was under the cover of delivery challan and not an invoice although the movement was on account of inter-State supplies.

The Hon'ble High Court held that the detention of goods in case of fourth consignment is justified. Accordingly, the directions were issued to complete the adjudication proceedings within a period of one week from the date of furnishing the copy of the judgment.

11. Nirmal Constructions (Petitioner) vs The State of Madhya Pradesh (Respondent) [2017 (12) TMI 514 – MP High Court

The Petitioner-Assessee was one of the participants for a tender invited by the Respondent-Government and was awarded such tender pending letter of acceptance. The Respondent-Government issued a communication to the Petitioner-Assessee on 18.08.2017 for cancellation of the tender on the grounds that the GST has been made applicable with effect from 1.7.2017 and it is decided that for the future contracts, tenders should be invited by excluding the amount of GST.

The Petitioner-Assessee has preferred the writ petition on the grounds that the tender has already been awarded by the Respondent-Government and cancellation of the tender on account of introduction of GST with effect from 01.07.2017, is illegal and arbitrary.

Since the acceptance of the offer is not communicated to the Petitioner-Assessee, it cannot be construed as a concluded contract. In the absence of concluded contract, the Petitioner-Assessee cannot claim right to seek grant of contract only on the basis of the offer submitted by the Petitioner-Assessee at one stage.

Thus, the act of cancellation of a contract on account of introduction of GST by the Government cannot be held as arbitrary or illegal.



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ICAI'S CONTRIBUTION FOR SMOOTH IMPLEMENTATION OF GST AS PARTNER IN NATION BUILDING

1. Suggestions on Annual Return under GST- Form 9, 9A & 9B

The Committee submitted its preliminary suggestions on Annual Return forms i.e. Form 9, 9A & 9B on 07th May, 2018 to the Goods and Services Network (GSTN). Along with the suggestions on the forms 9, 9A & 9B, we have incorporated instructions for the Form 9 which would be similar for Form GSTR 9A and Form GSTR 9B.

2. Consultation meeting on GST Return filing with Group of Ministers (GoM)

The Group of Ministers (GoM) constituted by GST Council hold a consultation meeting with various stakeholders on "Return Filing" under GST on April 17, 2018 at VigyanBhavan, New Delhi. In the meeting two models for allowing credit to the tax payers were discussed and inputs from the all the stakeholder were sought in the meeting.

Two representatives from the ICAI attended the said meeting and provided ICAI view on the same.

3. Simplified User Friendly Model on return filing & enabling of credit

The Committee developed and submitted Simplified User Friendly Model (SUF) on return filing & enabling of credit to the Government on 26th March, 2018 wherein it has been suggested that based on the summary details of invoices uploaded by supplier, credit of input be allowed to the Buyer.

4. Suggestions on GST

The Committee submitted its suggestions on 28th March, 2018 on various issues of GST arising out of recent notifications and circulars issued by the Government.

5. E-Publication on E-way bill - Revision

Considering that E-way bill has been implemented w.e.f. 1st April, 2018, the Committee revised its publication viz. E-Publication on E-way bill. It aptly covers legal provisions analysis, frequently asked questions and most of the procedural and practical aspects of E -way bill under GST.

6. Background Material on Customs and FTP- Revision

The Committee has revised its Background Material for Course on Customs and FTP. The book is designed to provide in depth practical and theoretical knowledge about levy and types of Custom duties, the taxable event, import/export procedure, provisions in respect of warehousing, duty drawback of Customs duty etc.

7. Compliances of Service tax / GST in Banking Sector - Revision

It, inter-alia, contain Questionnaire for Service Tax/GST, which is helpful in checking the compliance of service tax/ GST in Banking Sector.

8. Certificate Course on GST

The Committee has started two new batches of Certificate Course on GST as per the details below:

Sl. No.	City	Commencement Date	Completion Date	No. of participants
1.	Bangalore	5th May, 2018	9th June, 2018	38
2.	Delhi	5th May, 2018	3rd June, 2018	67

9. Results of Assessment Test of Certificate Course on GST

The Committee had conducted 2nd Assessment Test of Certificate Course on GST at 36 Centres on 17th March, 2018 in electronic mode. The result of the said test was declared on 5th April, 2018 wherein out of 954 members appeared in the said test, 798 members have been declared as passed.

10. Results of Assessment Test of Certificate Course on UAE VAT

The Committee, with the help of Dubai Branch, had conducted 1st Assessment Test of the Certificate Course on UAE VAT on 23rd March, 2018 at Dubai Branch from 10.00 am to 12.00 noon. The result of the said test was declared on 12th April, 2018 wherein in out of 93 members appeared in the said test, 92 members have been declared as passed.

11. Workshops, Seminars and Conferences

The Committee has organised following 3 Workshops, Seminars and Conferences in the month of April, 2018:

Sl. No.	Date	Programme	Hosted by Branch / Region
1.	20th, 21st, 27th and 28th April, 2018	Workshop on Customs and FTP	Bangalore Branch of SIRC of ICAI
2.	21st April, 2018	Workshop on GST	Jodhpur Branch of CIRC of ICAI
3.	28th April, 2018	Workshop on GST	Bhilai Branch of CIRC of ICAI



Advance GST course at Ahmedabad



Seminar on GST at Ludhiana



Workshop on Customs and FTP on GST at Bangalore



Workshop on GST at Agra



Workshop on GST at Bhilai



Workshop on Litigation Management at Cuttack