



# ICAI-GST

NEWSLETTER

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

## ICAI Proactively acting in the spirit of Knowledge Partner for GST success

- Comprehensive publications and dedicated newsletter on GST
- E-learning on GST and UAE VAT
- Scores of inputs/suggestions on GST given to Government.
- Organised 70 batches of Certificate Course on GST benefiting thousands of members
- Developed expert pool of over 800 GST faculties across India
- 3800 programmes, live webcasts, video lectures and workshops on GST covering over 3 lakh participants

## Facilitating a New Era of Growth



We have all ushered in a new era of Indian economy making the **Goods and Services Tax** come out with flying colours...such a feat could not have been achieved without your (CAs') vital contribution in not only helping businesses adapt to the new tax regime but also in coming up with innovative ways to simplify the system...

Prime Minister Shri Narendra Modi in his CA Day message on July 1, 2018

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# President's Communication



*My Esteemed professional colleagues,*

GST (Amendment) Acts, 2018 have recently received the President of India's assent on August 29th, 2018 and the changes proposed by these 4 Acts will be applicable only from the date to be notified. However, that will be possible only after enactment of SGST/UTGST Act by the respective State/Union Territory Government. Primarily, these amendments includes changes in the return provisions to enable government to implement new proposed return forms, restriction of reverse charge mechanism under Section 9(4) to specific class of registered person or goods and/or services, increase in threshold limit for goods from Rs. 1 crore to Rs. 1.5 crores, modification in Blocked Credit of ITC provisions, and concept of suspension of registration, etc.

We also welcome the Government's proactive decision to exempt aid and relief materials from Basic Custom Duty and Integrated Tax, which are imported as donation, intended for people affected by the floods. Also, all the registered persons in Kerala, Kodagu (Karnataka); Mahe (Pondicherry) taken care by notifying the extension in the due dates for filing of GST Returns.

We, at ICAI, with the aim to continue our initiatives to support the Government and other stakeholders in GST, has recently submitted 19 suggestions on draft proposed return formats under GST to the Government.

In addition to above, ICAI has come out with "E-Handbook on Classification under GST". This handbook inter-alia cover many issues involved in classification exercise including general rules and principles of classification. Moreover, existing publication "Bare Law on GST" which contain bird's eye view of GST Law in addition to GST Acts and Rules has also been updated to bring it in line with the extant law. These publications are available in soft copy at [www.idtc.icai.org](http://www.idtc.icai.org).

Continuing its knowledge dissemination drive, more than 5250 workshops, seminars/conferences on GST have been organised by ICAI since 2017 with an aim to update our members and stakeholders with the current developments in GST. The same was attended by and benefited to almost 440 thousand participants. Further, 69 batches of Certificate Course on GST have been organised across the country and 5 more batches have been scheduled.

ICAI takes pride in playing the desired role of partner-in-nation- building and taking various initiatives towards the implementation of GST in India.

**CA. Naveen N. D. Gupta**  
President, ICAI



# GST UPDATES

## Central Goods and Services tax (Tenth Amendment) Rules, 2018- Form GSTR-9C notified

The Central Government vide Notification No. 49 /2018 –CT dated 13th September, 2018 has notified “Part A- FORM GSTR-9C - Reconciliation Statement and Part B-Certificate” to be certified by the Chartered Accountants, which is applicable in case of taxable person whose aggregate turnover during a financial year exceeds Rs. 2 crore. It is required to be submitted on or before 31st Dec, 2018.

### TD/TCS provisions effective from 1st October, 2018

The Central Government vide Notification No. 50 /2018 –CT dated 13th September, 2018 has notified 1st October, 2018, as the date on which the provisions of section 51 (Tax deducted at source) will be effective with respect to a department of central/ state Government, local authority, governmental agencies and notified persons as specified below:

- a) an authority or a board or any other body, -
  - (i) set up by an Act of Parliament or a State Legislature; or
  - (ii) established by any Government, with fifty-one per cent or more participation by way of equity or control, to carry out any function;
- b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- c) Public sector undertakings.

Therefore, w.e.f 1st Oct, 2018, above notified persons are required to deduct TDS @1% each in case of intra state and 2% in case of interstate supply for total value of supply exceeding Rs. 2.5 Lacs under a contract and the amount so collected shall be paid to the Government by the deductor within 10 days after the end of the month in which such deduction is made.

[Notification No. 50 /2018 –CT dated 13th September, 2018]

Also, the Central Government vide Notification No.51/2018 – CT dated 13th September, 2018 has notified 1st October, 2018, as the date on which the provisions of section 52 (Tax collected at source) will be effective, which is applicable in case of e-commerce operator for supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Therefore, w.e.f 1st Oct, 2018, such e-commerce operators are required to deduct TCS at such rate not exceeding 1% as may be notified by the Government of net value of taxable supply and the amount so collected shall be paid to the Government by the operator within 10 days after the end of the month in which such collection is made.

[Notification No.51/2018 –CT dated 13th September, 2018]

## Central Goods and Services tax (Ninth Amendment) Rules, 2018

The Central Government vide Notification No. 48 /2018 –CT

dated 10th September, 2018 has notified following rules further to amend the Central Goods and Service Tax Rules, 2017.

Particulars	Revised provision
Insertion in Rule : 117 Tax or duty credit carried forward under any existing law or on goods held in Stock on the appointed day.	New sub- rule (1A) has been inserted in Rule 117 to provide that Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension. Remarks: With the insertion of this sub-rule the Commissioner on the recommendations of the Council may extend the date of submission of FORM GST TRAN-1 by a further period not beyond 31st March, 2019.
	New proviso has been inserted in sub-rule (4), in clause (b), in sub-clause (iii) of Rule 117 to provide that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with newly inserted sub-rule (1A) may submit the statement in FORM GST TRAN-2 by 30th April, 2019. Remarks: With the insertion of this proviso persons filing Form GST TRAN-1 upto 31st March, 2019 may submit the statement in FORM GST TRAN-2 by 30th April, 2019.

[Notification No. 48 /2018 –CT dated 10th September, 2018]

## Return Filing

The Central Government vide Notification No. 43/2018 – Central Tax; Notification No. 44/2018 – Central Tax dated 10th September, 2018 has provided the time limits within which the taxpayers shall furnish the Forms as specified in Column (2) of the table below:

Sl. No (1)	Form (2)	For the Month/ Quarter (3)	Last date for filing of return in FORM GSTR1 (4)
1.	GSTR 1 by the taxpayers with annual aggregate turnover of more than Rs. 1.5 crore	For each of the month from July, 2017 to September, 2018	31st October, 2018
		For each of the months from October, 2018 to March, 2019	11th day of the month succeeding such month.

2.	GSTR 1 by the taxpayers with annual aggregate turnover upto 1.5 crore	For each of the quarter from July, 2017 to September, 2018	31st October, 2018
		October-December, 2018	31st January, 2019
		January - March, 2018	30th April, 2019
However, GSTR-1 for the quarter from July, 2018 to September, 2018 by the registered persons in Kerala, Kodagu (Karnataka); Mahe (Pondicherry) shall be furnished electronically through the common portal, on or before the 15th day of November, 2018			

[Notification No. 43/2018 – Central Tax, Notification No. 44/2018 – Central Tax dated 10th September, 2018]

Further, the Central Government vide Notification no. 45/2018-CT, Notification no. 46/2018-CT dated 10th September, 2018 has provided that the return in FORM GSTR-1/GSTR-3B to be filed for the period from July, 2017 to November, 2018 by the taxpayers who have obtained GSTIN through special procedure prescribed vide Notification no. 31/2018-CT dated 6th August, 2018 for persons having provisional ID to get register w.e.f 1st July, 2017 shall be furnished electronically through the common portal on or before the 31st December, 2018.

[Notification no. 45/2018-CT, Notification no. 46/2018-CT dated 10th September, 2018]

### E-way bill in case of storing of goods in godown of transporter

The Central Government vide Circular No. 61/35/2018-GST dated 4th September, 2018 has clarified various issues faced by transporters providing warehousing facilities due to which they need to get themselves registered and maintain detailed records.

In this regard an alternative method to escape from above obligations has been provided where transporter's godown can be declared as an additional place of business by the recipient taxpayer. On declaring transporter's godown as the additional place of business, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer additional place of business). Hence, e-way bill validity in such cases will not be required to be extended.

Further, the obligation of the transporter to maintain accounts and records shall continue as a warehouse keeper. Furthermore, as per rule 56 (7) of the CGST Rules, books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's additional place of business) by the recipient taxpayer may be maintained by him at his principal place of business. It may be noted that the facility of declaring additional place of business by the recipient taxpayer is in no way putting any additional compliance requirement on the transporters.

[Circular No. 61/35/2018-GST dated 4th September, 2018]

### Processing of refund applications filed by Canteen Stores Department (CSD)

The Central Government vide Circular No. 60/34/2018-GST dated 4th September, 2018 has provided a manner and procedure for filing and processing of refund claims by CSD which is explained as below:

**Invoice-based refund:** It is clarified that the instant refund to be granted to the CSD is not for the accumulated input tax credit but refund based on the invoices of the inward supplies of goods received by them.

1. Manual filing of claims on a quarterly basis: the CSD are required to apply for refund on a quarterly basis the CSD shall apply for refund by filing an application in FORM GST RFD-10A manually to the jurisdictional tax office which shall be accompanied with prescribed documents
2. Processing and sanction of the refund claim: Upon receipt of the complete application in FORM GST RFD-10A, an acknowledgement shall be issued manually within 15 days of the receipt of the application in FORM GST RFD-02 by the proper officer. In case of any deficiencies in the requisite documentary evidences the same shall be communicated to the CSD by issuing a deficiency memo manually in FORM GST RFD-03.  
The proper officer may scrutinize:
  - The details contained in FORM RFD-10A, FORM GSTR-3B and FORM GSTR-2A.
  - The proper officer should ensure that the amount of refund sanctioned is 50 % of the taxes paid on the supplies received by CSD.
3. Sanctioning of Refund: The proper officer shall issue the refund sanction/rejection order manually in FORM GST RFD-06 along with the payment advice manually in FORM GST RFD-05 for each tax head separately.

Further, It is clarified that the CSD will apply for refund with the jurisdictional Central tax/State tax authority to whom the CSD has been assigned. However, the payment of the sanctioned refund amount in relation to central tax / integrated tax shall be made by the Central tax authority while payment of the sanctioned refund amount in relation to State Tax / Union Territory Tax shall be made by the State tax/Union Territory tax authority.

[Circular No. 60/34/2018-GST dated 4th September, 2018]

### Clarification on Refund related issues

The Central Government vide Circular No. 59/33/2018-GST dated 4th September, 2018 has clarified various refund related issues which are explained below:

**Submission of invoices for processing of claims of refund:** In view of the difficulties being faced by the claimants in providing invoices for processing of refund claims, it has been decided that the refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed. In some situations, the proper officer may call for the hard copies of invoices (not mentioned

in GSTR-2A due to some reason) if he deems it necessary for the examination of the claim for refund. However, It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in FORM GSTR-2A of the relevant period submitted by the claimant.

The claimant shall also submit the details of the invoices on the basis of which input tax credit had been availed during the relevant period for which the refund is being claimed in Annexure-A manually along with the application for refund claim in FORM GST RFD-01A .

**System validations in calculating refund amount:** Currently the common portal is supposed to calculate the refund amount following a prescribed procedure. However, the prescribed procedure is not presently available on the common portal. Therefore, till the time such facility is made available on the common portal, the taxpayers are advised to follow the given order for utilizing the ITC and the balance unutilized shall be eligible for refund for all refund applications filed after the date of issue of this Circular.

- a) Integrated tax, to the extent of balance available;
- b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger(i.e., State tax/Union Territory tax, in this case).

However, for applications already filed and pending with the tax authorities, where this order is not adhered to by the claimant, no adverse view may be taken by the tax authorities.

**Re-credit of electronic credit ledger in case of rejection of refund claim:** In case of rejection of claim for refund of unutilized input tax credit on account of ineligibility of the said credit the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the claimant using FORM GST RFD-01B. For recovery of this amount, a demand notice shall have to be simultaneously issued to the claimant. In case the demand is confirmed by an order issued, the said amount shall be added to the electronic liability register of the claimant through FORM GST DRC 07.

Alternatively, the claimant can voluntarily pay this amount, along with interest and penalty, if applicable, before service of the demand notice, and intimate the same to the proper officer in FORM GST DRC-03.

In case of rejection of claim for refund, the rejected amount shall be re-credited to the electronic credit ledger of the claimant using FORM GST RFD-01B only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal against the said rejection or in case he files an appeal, the same is finally decided against the claimant

For example where against a refund claim of Rs.100, only Rs.80 is sanctioned (Rs.15 is rejected on account of ineligible ITC and Rs.5 is rejected on account of any other reason). As described above, Rs.15 would be re-credited with simultaneous issue of notice for recovery of ineligible ITC. Rs.5 would be re-credited (through FORM GST RFD-01B) only after the receipt of an undertaking from the claimant

**Scope of rule 96(10) of the CGST Rules:** it is clarified that the restriction for claiming refund of IGST paid on exports of goods or services applies only to those purchasers/importers who are directly purchasing/importing supplies on which the benefit of reduced tax incidence or no tax incidence under specified notifications has been availed.

**Disbursal of refund amount after sanctioning by the proper officer:** In view of the refusal to disburse the sanctioned amount by a tax authority calling into question the validity of the sanction order on certain grounds, It is clarified that the remedy for correction of an incorrect or erroneous sanction order lies in filing an appeal against such order and not in withholding of the disbursement of the sanctioned amount.

If any discrepancy is noticed by the disbursing authority, the same should be brought to the notice of the counterpart refund sanctioning authority, the concerned counterpart reviewing authority and the nodal officer, but the disbursal of the refund should not be withheld. It is hereby clarified that neither the State nor the Central tax authorities shall refuse to disburse the amount sanctioned by the counterpart tax authority on any grounds whatsoever, except on account of malfeasance or fraud committed by taxable person.

It is further clarified that any adjustment of the amount sanctioned as refund against any outstanding demand against the claimant can be carried out by the refund disbursing authority if not already done by the refund sanctioning authority.

**Status of refund claim after issuance of deficiency memo:** In this regard It is clarified that show-cause-notices are not required to be issued where deficiency memos have been issued. A refund application which is re-submitted after the issuance of a deficiency memo shall have to be treated as a fresh application. No order in FORM GST RFD-04/06 can be issued in respect of an application against which a deficiency memo has been issued and which has not been resubmitted subsequently.

**Treatment of refund applications where the amount claimed is less than rupees one thousand:**

In this regard, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively. The limit would not apply in cases of refund of excess balance in the electronic cash ledger.

*[Circular No. 59/33/2018-GST dated 4th September, 2018]*

**Recovery of arrears of wrongly availed CENVAT credit under the existing Law and inadmissible transitional credit**

The Central Government vide Circular No. 58/32/2018-GST dated 4th September, 2018 has clarified an alternative method of recovery of the arrears of wrongly availed CENVAT credit under the existing Law and inadmissible transitional credit. In this method of recovery, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of FORM GSTR-3B.

#### 4. Eligible ITC

Details	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5
<b>(A) ITC Available (whether in full or part)</b>				
(1) Import of goods				
(2) Import of services				
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(4) Inward supplies from ISD				
(5) All other ITC				
<b>(B) ITC Reversed</b>				
(1) As per rules 42 & 43 of CGST Rules				
(2) Others				

#### 6.1 Payment w/ Tax

Description	Tax payable	Paid through ITC				Tax paid TDS/TCS	Tax/Cess paid in cash	Interest	Late Fee
		Integrated Tax	Central Tax	State/UT Tax	Cess				
1	2	3	4	5	6	7	8	9	10
Integrated Tax									
Central Tax									
State / UT Tax									
Cess									

**Remarks:** Earlier the Circular no. 46/16/2018-GST dated 13th April, 2018 has clarified that the recovery of arrears arising under the existing law shall be made as central tax liability to be paid through the utilization of the amount 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). However, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, alternative method of recovery has been provided.

[Circular No. 58/32/2018-GST dated 4th September, 2018]

#### Scope of Principal-agent relationship in the context of Schedule I of the CGST Act

In exercise of the powers conferred under section 168 (1) of the CGST Act, the Board vide Circular No. 57/31/2018-GST dated 4th September, 2018 has clarified some of the issues regarding principal-agent relationship under GST:-

1. The crucial component for covering a person within the ambit of the term “agent” under the CGST Act is corresponding to the representative character identified in the definition of “agent” under the Indian Contract Act, 1872.
2. One of the important limb of “consideration” is mandatory to consider a transaction as supply. However, para 3 of Schedule I provides that key element of consideration is not required to be present for treating certain activities as supply. One such activity is supply of goods by a principal

to his agent or by an agent to his principal where agent undertakes to supply/receive such goods on behalf of the principal.

Looking at the convergence point between the character of the agent under both the CGST Act and the Indian Contract Act, 1872, the following scenarios are discussed:

Not an agent	
Scenario 1	Scenario 2
Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Schedule I.	Mr. XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s XYZ for the supply of goods in terms of Schedule I.

An agent	
Scenario 3	Scenario 4
Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I.  A similar situation can exist in case of supply of goods as well where the C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.	Mr. A sells agricultural produce by utilizing the services of Mr B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.  In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Schedule I.

In scenario 1 and scenario 2, Mr. B shall not be liable to obtain registration in terms of clause (vii) of section 24 of the CGST Act. He, however, would be liable for registration if his aggregate turnover of supply of taxable services exceeds the threshold specified in sub-section (1) of section 22 of the CGST Act. In scenario 3, M/s B shall be liable for compulsory registration in

terms of the clause (vii) of section 24 of the CGST Act. In respect of commission agents in Scenario 4, notification No. 12/2017 Central Tax (Rate) dated 24.06.2017 has exempted "services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce" from GST. Thus, the "services" provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to sub-clause (a) of sub-section (1) of section 23 of the CGST Act, if the supply of the agricultural produce, and /or other goods or services supplied by them are not liable to tax or wholly exempt under GST. However, in cases where the supply of agricultural produce is not exempted and liable to tax, such commission agent shall be liable for compulsory registration under sub-section (vii) of section 24 of the CGST Act

[Circular No. 57/31/2018-GST dated 4th September, 2018]

**Remarks:** Making reference to section 182 of Indian Contract Act, 1872 is welcome to understand the scope and limits of agency or intermediary.

### Waiver of late fees by the following taxpayers

The Central Government vide Notification no. 41/2018 dated 4th September, 2018 has waived the late fee paid due to failure to furnish the Returns required under section 39 or 45 by the due date by the following class of taxpayers:

1. The registered persons whose return in FORM GSTR-3B of the CGST Rules, 2017 for the month of October, 2017, was submitted but not filed on the common portal, after generation of the application reference number
2. The registered persons who have filed the return in FORM GSTR-4 of the CGST Rules, 2017 for the period October to December, 2017 by the due date but late fee was erroneously levied on the common portal
3. The Input Service Distributors who have paid the late fee for filing or submission of the return in FORM GSTR-6 of the CGST Rules, 2017 for any tax period between the 1st day of January, 2018 and the 23rd day of January, 2018.

[Notification no. 41/2018 dated 4th September, 2018]

### Extension of time limit for making declaration in Form GST ITC-04

The Central Government vide Notification No. 40 /2018 –CT dated 4th September, 2018; Notification No. 42 /2018 –CT dated 4th September, 2018 has extended the time limit of filing various declarations upto the date as shown in the table below:

S. no	Form	Purpose	Due date
1.	GST ITC-04	Form for declaration in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to June, 2018	30th September, 2018



2.	GST ITC-01	Form containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option of availing composition is withdrawn or denied to the effect that he is eligible to avail the input tax credit	3rd October, 2018 (Only for registered persons who have filed the application in Form GST-CMP-04 between the period from 2nd March, 2018 to 31st March, 2018)
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[Notification No. 40 /2018 –CT dated 4th September, 2018;  
Notification No. 42 /2018 –CT dated 4th September, 2018]

### Central Goods and Services tax (Eighth Amendment) Rules, 2018

The Central Government vide Notification No. 39 /2018 –CT dated 4th September, 2018 has notified following rules further to amend the Central Goods and Service Tax Rules, 2017.

#### Insertion in Rule : 22 Cancellation of registration

New proviso in sub- rule (4) of Rule 22 has been inserted to provide that where the person instead of replying to the notice served for cancellation of registration for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20

**Remarks:** With the insertion of this proviso proper officer shall drop the proceedings initiated on person paying tax under section 10 who has not furnished returns for 3 consecutive tax periods or any other registered person who has not furnished return for a continuous period of 6 months and pass an order in FORM GST-REG 20 to such person on furnishing all the pending returns and making full payment of the tax dues along with applicable interest and late fee by him.

#### Insertion in Rule : 36 Documentary requirements and conditions for claiming input tax credit

New proviso in sub- rule (2) of Rule 36 has been inserted to provide that if the invoice does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.

**Remarks:** With the insertion of this proviso a relief has been given to registered person by allowing ITC on the basis of invoice if that invoice contains not all the necessary but following particulars:

- value of goods and tax thereon ,
- description of goods or services
- GSTIN of the supplier and recipient and
- Place of supply in case of inter-State supply.

#### Insertion in Rule 138 A: Information to be furnished prior to

#### commencement of movement of goods and generation of e-way bill.

New proviso in sub- rule (1) of Rule 138A has been inserted to provide that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.

**Remarks:** It would seem that 'any' kind of bill of entry (into-bond, ex-bond, home consumption, rewarehousing and SEZ-cargo) may be carried by the transporter.

#### Substitution in sub-rule 10 of Rule 96

The persons claiming refund of integrated tax paid on exports of goods or services should not have –

(a) received supplies on which the following benefits of the Government of India has been received:

- Notification No. 48/2017-Central Tax, dated the 18th October, 2017: It covers domestic supplies made against advance authorization, supply of capital goods against EPCG authorization, supply of goods to EOU & supply of gold by a bank or PSU against advance authorization.
- Notification No. 40/2017-Central Tax (Rate), dated the 23rd October or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017: This notification covers supplies made to merchant exporter at the rate of 0.1% in case of IGST or 0.05% each in case of CGST & SGST.

Hence in above cases, exporter has to export only under LUT and claim refund of accumulated ITC.

(b) availed the benefit under following notifications:

- Notification No. 78/2017-Customs, dated the 13th October, 2017: This notification provides exemption from Customs Duty & IGST under Customs on goods imported or procured from Public or Private Warehouse or from International Exhibition by Hundred per cent EOU, STP or EHTP units.
- Notification No. 79/2017- Customs, dated the 13th October, 2017: This notification provides exemption from Customs Duty & IGST under Customs on imports under EPCG, Advance Authorization, Advance Authorization for Annual Requirements, Advance Authorization for Deemed Export, Advance Authorization for export of Prohibited Goods and Narrow Woven Fabrics, etc.

**Remarks:** The latest amendment now carves out such cases referred above by way of a separate clause and provides that if the benefit has been availed by an exporter, he cannot export with payment of IGST. Exporter must compulsorily export under LUT and claim refund of the accumulated ITC. Said amendment is applied retrospectively w.e.f. 23rd October, 2017. This would adversely affect claim of transition credit and credit on capital goods to EOUs.

#### Insertion of Forms after Form GSR 8

1. Form GSTR 9 Annual Return
2. Form GSTR 9 A Annual Return (For Composition Taxpayer)

Existing provision	Revised provision
<b>Substitution in Rule: 55</b> Transportation of goods without issue of invoice.	
(5) Where the goods are being transported in a semi knocked down or completely knocked down condition - (a) the supplier shall issue the complete invoice before dispatch of the first consignment; (b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice; (c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and (d) the original copy of the invoice shall be sent along with the last consignment.	Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots -  Remarks: With insertion of these words “or in batches or lots” the manner prescribed for transportation of goods in a semi knocked down or completely knocked down condition shall also apply to the transportation of goods in batches or lots.
<b>Substitution in Sub-rule (4) of Rule 89</b>	
“Adjusted Total turnover” means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding – (a) the value of exempt supplies other than zero-rated supplies and (b) the turnover of supplies in respect of which refund is claimed under sub rules (4A) or (4B) or both, if any, during the relevant period;	“Adjusted Total Turnover” means the sum total of the value of- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and (b) the turnover of zero-rated supply of services determined in terms of clause (D) and non-zero-rated supply of services, excluding- (i ) the value of exempt supplies other than zero-rated supplies; and (ii) The turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period. Remarks: Much needed clarity now comes with this amendment about the cash-accrual basis in numerator and denominator.

[Notification No. 39 /2018 –CT dated 4th September, 2018]

### Clarification regarding removal of restriction of refund of accumulated ITC on fabrics

The Central Government vide circular no. 56/30/2018 dated 24th August, 2018 has clarified certain doubts raised, with reference to changes made vide Notification no. 20/2018-CT (R) dated 20/2018 which has removed the restriction of not allowing refund of ITC accumulated on account of inverted duty structure on fabrics w.e.f 1st August, 2018 and to lapse the accumulated ITC lying unutilized as on 31st July, 2018

Doubts raised and their respective clarifications are explained below:

Doubt	Clarification
Whether this notification seeks to lapse all the input tax credit lying unutilized after payment of tax upto the month of July, 2018	Notification 20/2018 CT(R) provides for lapsing of input tax credit that would have been refundable in terms of section 54 of the Act, for the period prior to the 31st July, 2018, but for the restriction imposed vide notification No. 5/2017-Central Tax (Rate) and that too to the extent of accumulated ITC lying unutilized after making payment of GST upto the month of July, 2018 shall lapse.
Whether unutilized ITC in respect of services and capital goods shall also be disallowed	Proviso (ii) to section 54 (3) provides that in respect of notified goods, the refund of such accumulated input tax credit shall not be allowed. Notification No. 5/2017-Central Tax (Rate) has been issued in terms of this provision. Therefore it is clarified that the restriction of refund of accumulated ITC under notification No. 5/2017-Central Tax (rate) dated 28.06.2017 is applicable only in respect of refund of accumulated ITC on inputs. This notification does not put any restriction in relation to the ITC on input services and capital goods.
Implication to fabrics like cotton and silk where there was no inverted duty structure	It is clarified that the said condition of lapsing of ITC would apply only if input tax credit on inputs has been accumulated on account of inverted duty structure therefore; this notification has no implication to fabrics like cotton and silk where there was no inverted duty structure.
Whether accumulated ITC in respect of exports shall also be made to lapse	It is clarified that the proviso has no applicability to the input tax credit relating to zero rated supplies. Accordingly, accumulated ITC on zero rated supplies shall not lapse.

Manner of calculating the ITC amount accumulated on account of inverted duty structure	It is clarified that for determination of such amount, the formula as prescribed in rule 89 (5) of the CGST rules shall mutatis mutandis apply as it applies for determination of refundable amount for inverted duty structure. Such amount shall be determined for the months from July, 2017 to July 2018
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**The procedure to be followed for lapsing of accumulated input tax credit:** A taxable person, whose input tax credit is liable to be lapsed in terms of said notification, shall calculate the amount of such accumulated ITC which is liable to be lapsed, shall, upon self-assessment, be furnished by such person in his GSTR 3B return for the month of August, 2018. The amount shall be furnished in column 4B (2) of the return [ITC amount to be reversed for any reason (others)]. Verification of accumulated ITC amount so lapsed may be done at the time of filing of first refund (on account of inverted duty structure on fabrics) by such person. Therefore, a detailed calculation sheet in respect of accumulated ITC lapsed shall be prepared by the taxable person and furnished at the time of filing of first refund claim on account of inverted duty structure.

[Circular no. 56/30/2018 dated 24th August, 2018]

### **Due date filing of GSTR 3B/GSTR 1 for the month of July and August, 2018 extended for registered persons in Kerala, Kodagu (Karnataka); Mahe (Pondicherry)**

The Central Government vide Notification No. 36 /2018 – Central Tax dated 24th August, 2018 and Notification No. 37 /2018 – Central Tax dated 24th August has notified that the return in FORM GSTR-3B/ GSTR 1 for the month of July, 2018 and August, 2018 for the registered persons in Kerala, Kodagu (Karnataka); Mahe (Pondicherry) is required to furnish electronically through the common portal, on or before the 6th October, 2018 & 10th October, 2018 respectively.

However, Notification No. 38 /2018 – Central Tax dated 24th August, 2018 has notified that the persons who are required to file quarterly Return in the form GSTR 1 for the quarter from July, 2018 to September, 2018 shall furnish the return electronically through the common portal on or before 15th October, 2018

[Notification No. 36 /2018 – Central Tax dated 24th August, 2018; Notification No. 37 /2018 – Central Tax dated 24th August, 2018; Notification No. 38 /2018 – Central Tax dated 24th August, 2018]

### **Return Filing**

The Central Government vide Notification No. 32/2018 – Central Tax; Notification No. 33/2018 – Central Tax dated 10th August, 2018 has provided the time limits within which the taxpayers shall furnish the Forms as specified in Column (2) of the table below:

Sl. No (1)	Form (2)	For the Month/ Quarter (3)	Last date for filing of return in FORM GSTR1 (4)
1.	GSTR 1 by the taxpayers with annual aggregate turnover of more than Rs. 1.5 crore	For each of the months from July, 2018 to March, 2019	11th day of the month succeeding such month.
2.	GSTR 1 by the taxpayers with annual aggregate turnover upto 1.5 crore	July - September, 2018	31st October, 2018
		October- December, 2018	31st January, 2019
		January - March, 2019	30th April, 2019

[Notification No. 32/2018 – Central Tax; Notification No. 33/2018 – Central Tax dated 10th August, 2018]

### **The present system of filing of GSTR 3B is extended upto March, 2019**

The Central Government vide Notification No. 34 /2018 – Central Tax dated 10th August, 2018 has notified that the present system of filing of GSTR 3B will continue till March, 2019.

Therefore, the return in FORM GSTR-3B for each of the months from July, 2018 to March, 2019 shall be furnished electronically through the common portal, on or before the 20th of the month succeeding such month.

Comment: Hence, the Simplified Returns available in public domain is unlikely to be introduced during the current financial year. Verification of compliance with conditions of section 16(2) continues to be offline for all taxable persons.

[Notification No. 34 /2018 – Central Tax dated 10th August, 2018]

### **Classification of fertilizers supplied for use in the manufacture of other fertilizers at 5% GST rate**

Fertilizers falling under heading 3102, 3103, 3104 and 3105, other than those which are clearly not to be used as fertilizers, attract 5% GST. However, fertilizers which are clearly not to be used as fertilizer attract 18% GST. The phrase “other than clearly to be used as fertilizers” would not cover such fertilizers that are used for making complex fertilizers for use as soil or crop fertilizers.

Therefore, The Central Government vide Circular No. 54/28/2018-GST dated, 9th August, 2018 has clarified that the fertilizers supplied for direct use as fertilizers, or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract 5% IGST.

[Circular No. 54/28/2018-GST dated, 9th August, 2018]

## Provisionally migrated persons may now apply for GSTIN

Central Government vide Notification No.31/2018-Central Tax dated 6th August, 2018 has provided that the persons who did not file the complete FORM GST REG26 of the Central Goods and Services Tax Rules, 2017 but received only a Provisional Identification Number (PID) till the 31st December, 2017 may now apply for Goods and Services Tax Identification Number (GSTIN).

The special procedure to be followed for registration of such taxpayers is as detailed below:-

1. The details specified below should be furnished by such taxpayers to the jurisdictional nodal officer on or before the 31st August, 2018.
  - a) Provisional ID
  - b) Registration Number under the earlier law (Taxpayer Identification Number (TIN)/Central Excise/Service Tax Registration number)
  - c) Date on which token was shared for the first time
  - d) Whether activated part A of the aforesaid FORM GST REG-26
  - e) Contact details of the taxpayer
  - f) Email id
  - g) Mobile
  - h) Reason for not migrating in the system
  - i) Jurisdiction of Officer who is sending the request
2. On receipt of an e-mail from the Goods and Services Tax Network (GSTN), such taxpayers should apply for registration by logging onto <https://www.gst.gov.in/> in the "Services" tab and filling up the application in FORM GST REG-01 of the Central Goods and Services Tax Rules, 2017.
3. After due approval of the application by the proper officer, such taxpayers will receive an email from GSTN mentioning the Application Reference Number (ARN), a new GSTIN and a new access token.
4. Upon receipt, such taxpayers are required to furnish the following details to GSTN by email, on or before the 30th September, 2018, to [migration@gstn.org.in](mailto:migration@gstn.org.in):-
  - (a) New GSTIN;
  - (b) Access Token for new GSTIN;
  - (c) ARN of new application;
  - (d) Old GSTIN (PID).
5. Upon receipt of the above information from such taxpayers, GSTN shall complete the process of mapping the new GSTIN to the old GSTIN and inform such taxpayers.
6. Such taxpayers are required to log onto the common portal [www.gstn.gov.in](http://www.gstn.gov.in) using the old GSTIN as "First Time Login" for generation of the Registration Certificate.  
Such taxpayers shall be deemed to have been registered with effect from the 1st July, 2017.

**Comment:** Please take note that this deeming fiction allows

claim of eligible credits from that date. Identification of such credits and adjustment with outstanding liabilities may be allowed 'one-time' opportunity only.

[Notification No.31/2018-Central Tax dated 6th August, 2018]

## Exemption from tax on procurements made from unregistered person U/s 9(4) of CGST Act, 2018 till September 30, 2019

The Central Government vide Notification No. 22/2018 – Central Tax (Rate) dated 6th August, 2018 has amended Notification No. 12/2018– Central Tax (Rate) dated 29th June, 2018 to further extend the exemption from tax under reverse charge mechanism u/s 9(4) of CGST Act, 2017 on procuring taxable goods/services from unregistered suppliers till September 30, 2019. Earlier this exemption was upto 30th September, 2018 only.

**Comment:** With the introduction of CGST Amendment Bill, 2018 and the changes in section 9(4), this long-term extension of the exemption appears to require some reconciliation when the 'classes' actually get notified under the amended law.

[Notification No. 22/2018 – Central Tax (Rate) dated 6th August, 2018]

## CUSTOMS

Standard operating procedures for discharge of bonds executed by nominated agencies/ banks.

The Central Government vide Circular No. 25/2018 dated 8th August, 2018 has provided standard operating procedure to be followed for the expeditious discharge of bonds for the purpose of export of gold jewelry. In order to reduce such bond pendencies certain time periods have been defined in table below:

Particulars	Time period
Acknowledgement by Assistant/Deputy Commissioner	Acknowledgement by Assistant/Deputy Commissioner
Nominated agencies would electronically provide the deficient/ additional documents	Within 7 days of the receipt of the deficiency memo
Discharge of bond by Assistant and Deputy Commissioner	Within 7 days of the confirmation of Export

[Circular No. 25/2018 dated 8th August, 2018]



# THE TAXABLE EVENT IN GST – “SUPPLY”

Taxable event is that event, happening of which attracts liability to tax. Taxable event is a very important event in any law as the levy and collection of tax is based on the happening of the taxable event. Although, the taxable event happens to be at a particular point of time, the levy and collection of such tax may be postponed for administrative convenience, to a later date.

The Article 366 (12A) of the Constitutional (101st Amendment) Act, 2016 defines “Goods and Services Tax” as any tax on supply of goods, or services or both, except for taxes on the supply of the alcoholic liquor for human consumption.

The taxable event in GST is supply of goods or services or both. Therefore, supply will hold the greatest significance and shall be an important event in determining the taxability of all transaction whether commercial or otherwise under the GST regime.

The term, “supply” has been inclusively defined in the Act. Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Supply also includes: import of services for a consideration whether or not in course of furtherance of business, the activities specified in schedule I (without consideration) and the activities as referred in schedule II. Though these terms are not defined in the Act, dictionary meaning of the same are elaborated below:

Sale	Transferring the property in goods from one to another, upon valuable consideration.
Transfer	Any transfer of goods or right in goods or of undivided share in goods without transfer of title thereof.
Barter	To exchange one commodity for another without use of money.
Exchange	To swap, to part with, give or transfer for an equivalent with the use of money.
Licence	Permission granted by competent authority to exercise certain privileges without such authorization the activity would have constituted as an illegal act.
Rental	Periodical payment for the use of another property.
Lease	Contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to various conditions, in exchange for something of value, but still remain ownership.
Disposal	To pass or into the control of someone else; to alienate, bestow, or part with.

The meaning and scope of supply under GST can be understood in terms of following five parameters, which can be adopted to characterize a transaction as supply:



1. Supply of goods or services. Supply of anything other than goods or services does not attract GST
2. Supply should be made for a consideration
3. Supply should be made in the course or furtherance of business
4. Supply should be made by a taxable person
5. Supply should be a taxable supply.

While these five parameters describe the concept of supply, there are a few exceptions to the requirement of supply being made for a consideration, in the course or furtherance of business and made by a taxable person.

## 1. Supply of Goods or Services or Both

Section 2(52) of CGST Act 2017 defines “goods” means 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.

Section 2(102) of CGST Act 2017 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.

Schedule II (read with section 7) to the CGST Act, 2017 lists a few activities which are to be treated as supply of goods or supply of services. For instance, any transfer of title in goods would be a supply of goods, whereas any transfer of right in goods without transfer of title would be considered as services.

The Government may notify the transactions that are to be treated as -

- Supply of goods and not as a supply of services; or
- Supply of services and not as a supply of goods.

Further Schedule III (read with section 7) to the CGST Act, 2017 specifies activities which shall be treated as neither supply of goods nor supply of services or outside the scope of GST. This includes:

- Services by an employee to the employer in the course of or in relation to his employment.
- Services by any court or tribunal (time being in force).
- Services by MPs, MLAs, Panchayats, Municipalities and member of other local authorities.

- The duties performed by any person who had any post in pursuance of the provisions of the constitution in that capacity.
- Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- Sale of land (subject to clause (b) of paragraph 5 of schedule II) and sale of building where the entire consideration has been received after completion certificate is issued or after its first occupation.
- Actionable claims are included in the definition of goods, however, Schedule III provides that actionable claims other than lottery, betting and gambling shall be neither goods nor services.
- The activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services. Accordingly, it has been notified that the Central Government or State Government or any local authority in which they are engaged as public authority, by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution is neither a supply of goods nor a supply of service.

## 2. Supply for Consideration

Section 2(31) of CGST Act 2017 defines “consideration” in relation to the supply of goods or services or both includes—

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

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

However, there are exceptions to the requirement of ‘Consideration’ as a pre-condition for a supply to be called a supply as per GST. As per schedule I to CGST Act, 2017, activities as mentioned below shall be treated as supply even if made without consideration:

- Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- Supply of goods—
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

- (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

- Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

## 3. Supply in the Course or Furtherance of Business

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act.

Section 2(17) of CGST Act 2017 defines “business” includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

No definition or test has been specified to find out whether the activity is in the course or furtherance of business. However, the following business test is normally applied to arrive at a guiding factor about whether it is in the course or furtherance of business or not:

- i. Whether the activity is seriously and earnestly pursued?
- ii. Whether the activity is pursued with reasonable or recognizable continuity?
- iii. Whether the activity is conducted in a regular manner based on sound and recognized business principles?
- iv. Whether the activity is predominantly concerned with the making of taxable supply for consideration/ profit motive?

However, there is one exception to this ‘Course or Furtherance of Business’ rule i.e., import of services for a consideration. Thus, Supply includes import of services for a consideration whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would be considered as supply and consequently, would be liable to tax. Imports of service shall be taxable on reverse charge basis, i.e, in the hands of the recipient of service. The threshold limit clause shall not apply here.

#### 4. Supply by a Taxable Person

Section 2(107) of CGST Act 2017 defines “taxable person” means a person who is registered or liable to be registered under section 22 or section 24.

A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute supply under GST. Even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered but has taken voluntary registration and got himself registered is also a taxable person. However, there is exception to this rule, supply from a non-taxable person to a registered person in case of RCM will attract GST.

Notification no.5/2017- Central Tax dated 19-06-2017, exempts a person who is engaged in making only supplies of taxable goods or services or both on which reverse charge applies, from obtaining registration under GST. Hence, to conclude, a non-taxable person can also make a taxable supply in above scenario (subject to section 9(3) of CGST Act).

It should be noted that GST in India is State-centric. Hence, a person making supplies from different States needs to take separate registration in each State. A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of GST. Hence, a supply between these entities constitutes supply under GST.

#### 5. Taxable Supply

Section 2(108) of CGST Act 2017 defines “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act

For a supply to attract GST, the supply must be taxable supply. Taxable Supply can be either Inter State Supply or Intra State Supply.

##### • Inter State Supply

Inter- State supply of goods means a supply of goods where the location of the supplier and place of supply are in different States or Union territories, then IGST has to be paid. Imports, Supplies from and to SEZs are treated as deemed Inter-State supplies.

##### • Intra State Supply

Intra State supply of goods means supply of goods where the location of the supplier and the place of supply are in the same State or Union territory, then CGST and SGST/UTGST has to be paid.

Various types of supplies which are not liable to tax are :

##### • Exempt supply

Section 2(47) of CGST Act 2017 defines “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

Thus, it can be construed that an Exempted supply includes three types of supply:

- Supply attracting Nil Tax rate
- Wholly Exempt under Section 11 of the CGST Act or section 6 of the IGST act.
- Non-taxable Supply

Example: To list a few – Milk, Fruits, Vegetables, Pure Services provided to Government, Services by way of health care services etc.

##### • Non-taxable supply

Section 2(78) of CGST Act 2017 defines “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act.

Example : Alcoholic liquor for human consumption, Petroleum products etc.

##### • Nil rated supplies

Such Supply of goods or services which attracts nil rate of tax. It is Pertinent to note that, there is not a single good specified in the tariff schedule of GST as Nil rated. However, there is one entry in List of Services.

As per notification no.11/2017 – Central Tax (Rate) dated 28-06-2017, there is only one entry (heading 9972 is also nil entry) notified nil rated (heading 9986).

Example : Services notified nil rated are:

- (i) Support services to agriculture, forestry, fishing, animal husbandry.
- (ii) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
- (iii) Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.

##### • Zero-rated supplies

“zero-rated supply” shall have the meaning assigned to it in section 16 of IGST Act. As per Section 16. (1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

The main point to note is that Input Tax credit is available in case of zero –rated Supply even if the supplies are exempt. It means that if exempt supply made in India, Input Tax Credit not available but same exempt supply exported then Input tax credit available.

**Example:** Consultancy Services by Indian Consulting firm to overseas entity, payment for which is received in foreign currency, Sale of goods from a supplier in India to a person in Germany etc.



# OFFENCES AND PENALTY PROVISIONS UNDER GST

One full year has been passed after implementation of GST. But for effective compliance and implementation of any law, it is necessary to provide for consequences of non-compliance of that Act. Provisions related to penalties and prosecutions under GST Act are covered for deterrence so that deliberate tax evasion can be avoided and due tax revenue can be obtained to compensate the Government from loss due to non-compliance. To be proactive in preventing fraudulent activities and to avoid serious pecuniary liability for non-observance of law, it is necessary to understand such provisions.

## Offences under GST Act:

Provisions related to offences and penalties are covered in Chapter XIX (section 122 to section 138) under CGST Act. Section 132 of the CGST Act provides for certain offences. These offences are liable for penalty and some offences are liable for prosecution.

List of offences specified under CGST Act are as under:

Offences related to	Nature of offence
Registration	<ul style="list-style-type: none"> <li>Failure to register despite being liable to pay tax.</li> <li>Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently.</li> </ul>
Invoice	<ul style="list-style-type: none"> <li>Making a supply without invoice or with false/ incorrect invoice.</li> <li>Issuing an invoice without making supply.</li> <li>Issuing invoice or document using GSTIN of another person.</li> </ul>
Tax payment	<ul style="list-style-type: none"> <li>Not paying tax collected for a period exceeding three months;</li> <li>Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;</li> <li>Non-deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;</li> <li>Non-collection or lower collection of or non-payment of tax collectible at source under section 52.</li> <li>Suppressing turnover leading to tax evasion.</li> </ul>
Input Tax Credit	<ul style="list-style-type: none"> <li>Availing/utilizing input tax credit without actual receipt of goods and/or services;</li> <li>Availing/distributing of input tax credit in contravention of provisions of the Act.</li> </ul>

Refund	<ul style="list-style-type: none"> <li>Fraudulently obtaining any refund.</li> </ul>
Accounts and documents	<ul style="list-style-type: none"> <li>Furnishing false information or falsification of financial records or furnishing of fake accounts/ documents with intent to evade payment of tax.</li> <li>Failure to maintain accounts/documents in the manner specified in the Act or failure to retain accounts/documents for the period specified in the Act.</li> <li>Failure to furnish information/documents required by an officer in terms of the Act/ Rules or furnishing false information/ documents during the course of any proceeding.</li> <li>Transporting goods without prescribed documents.</li> </ul>
Other matters	<ul style="list-style-type: none"> <li>Obstructing or preventing any official in discharge of his duty;</li> <li>Supplying/transporting/storing any goods liable to confiscation.</li> <li>Tampering/destroying any material evidence.</li> <li>Disposing of /tampering with goods detained/ seized/attached under the Act.</li> </ul>

## Cognizable and non-bailable offences:

Offences under GST are further classified into cognizable and non-bailable offences as well as non-cognizable and bailable offences. General meaning of these terms are as under:

- Cognizable offences:** A case in which specially empowered officer has the authority to arrest without warrant
- Non-cognizable offences:** A case in which specially empowered officer has no authority to arrest without warrant.
- Bailable offences:** Offences for which bail can be granted.
- Non-bailable Offences:** Offences for which accused does not have right to be released on bail, but the bail can be granted at the discretion of court.

Following offences are cognizable and non-bailable offences under GST, if amount of tax evaded, amount of input tax credit availed or amount of refund taken is more than Rs.5 Crore:

- Supply of goods or services or both without issuance of bill;
- Issuance of bill or invoice without supply of goods or services.
- Avail wrong input tax credit on bills without supply;
- Tax collected but not deposited to the Government.

All other offences are non-cognizable and bailable.

Moreover, as per section 69 of the CGST Act, where the Commissioner has reason to believe that a person has committed offence specified in clause (a) to (d) of section 132(1) which is punishable under clause (i) or (ii) of sub-section (1) or (2) of section 132, he may authorize any officer of central tax to arrest such person.

### Penalty provisions under GST:

Penalty proceedings are quasi criminal proceedings. They are based on prevalence of probability. Section 122 of the CGST Act specifies penalty provisions for offences committed under GST. Sub-section (1) of section 122 provides that any taxable person who has committed any of the offences mentioned in section 122 shall be liable to a penalty that shall be higher of:

- (1) Amount equivalent to tax evaded, fraudulently obtained as refund, availed as credit or not deducted or collected or short deducted or short collected; or
- (2) Amount of Rs.10000/-.

### Reduction and waiver of penalty in some cases:

As per section 73 of the CGST Act, where any tax has not paid, short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized for any reason other than reason of fraud or willful misstatement or suppression of facts to evade tax and a notice has been issued to such person, if the person has paid tax, interest and penalty within specified time from issuance of show cause notice, no penalty shall be payable. Similarly, section 74 of the CGST Act provides for reduction of penalty in case of fraud or willful misstatement. Details of these provisions are as under:

Date of payment of dues along with interest under section 50	Amount of penalty applicable	
	In case of fraud, willful misstatement etc.	In other cases
Before issuance of show cause notice	15% of tax	Nil
Within 30 days from issuance of show cause notice	25% of tax	Nil, except where self assessment tax or tax collected and not paid within 30 days from due date (rule 73(11))
Within 30 days from communication of order	50% of tax	Nil
After 30 days	Higher of Rs.10000/- or 100% of tax due (Sec. 122(2)(b))	Higher of Rs.10000/- or 10% of tax due. (Sec. 122(2)(a) and sec. 74(a))

### General disciplines related to penalty:

Section 126 of the CGST Act specifies for general disciplines to be followed while imposing penalty. Such disciplines are as under:

- (1) No penalty to be imposed without issuance of Show Cause Notice and proper hearing in the matter, opportunity of being heard to the person proceeded against to rebut allegations leveled against him.
- (2) The penalty is dependent upon totality of facts and circumstances of the case.
- (3) The penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged.
- (4) The nature of the breach is to be specified clearly in the order imposing the penalty.
- (5) The provision of the law under which the penalty has been imposed is to be specified.

Moreover, no substantial penalty is to be imposed for any minor breach (where amount of tax involved is less than Rs.5000/-) of tax regulation or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Further, as prescribed under section 126(5), where a person voluntarily discloses the circumstances of breach of the tax law, regulation or procedural requirements to an officer prior to discovery of the breach, the proper officer may consider the fact as mitigating factor when qualifying penalty for that person.

The provisions of this section are not applicable in case where penalty is specified as a fixed sum or as a fixed percentage.

### Provisions related to prosecution:

Section 132(1) of the CGST Act contains provisions related to prosecution for certain offences. These provisions are as under:

Amount of tax evaded or input tax credit wrongly availed or utilized or amount of refund wrongly taken	Imprisonment with fine
Exceeds Rs.5 Crore	5 years with fine
Exceeds Rs.2 Crore but does not Exceeds Rs.5 Crore	3 years with fine
Exceeds Rs.1 Crore but does not exceeds Rs.2 Crore	1 year with fine
Falsifies financial records or produces fake accounts or prevents any officer from discharging his duties or destroys any material evidence or document	6 months or with fine or both
Offence committed again	5 years with fine for second and every subsequent offence

### Confiscation or detention of goods:

If any person transports any goods or stores any such goods while in transit without invoice and a declaration, or supplies or stores any goods that he has not recorded in his books of

account, then such goods shall be liable for detention or seizure along with any vehicle on which they are being transported. When owner comes forward, such goods shall be released on payment of applicable tax and 100% penalty or on furnishing 100% security. In case of exempted goods, penalty is 2% of value of goods or Rs.25000/- whichever is less. When assessee does not come forward, levy of penalty shall be 50% of value of such goods and in case of exempted goods levy of penalty shall be 5% of value of such goods.

Section 129 of the CGST Act provides for detention, seizure and release of goods and conveyance in transit, while section 130 provides for confiscation of goods or conveyances and imposition of penalty. Section 130 prescribes that the goods are liable for confiscation, if any person:

- Supplies or receives any goods in contravention of any provisions of the Act
- Does not account for any goods in the manner required under the Act.
- Supplies goods that are liable to tax under the Act without applying for registration.
- Uses any conveyance as a means of transport for carriage of goods in contravention of CGST/SGST Act.
- Contravenes any provisions of the Act/Rules with the intention of evading payment of tax.

In case of confiscation of the goods, option has been given to the owner to pay fine in lieu of confiscation. Such fine shall not exceed market price of confiscated goods and it shall be in addition to tax and other charges payable in respect of such goods.

The confiscated goods shall be released on payment of applicable tax, penalty or fine.

Further, if the vehicle is found to be transporting goods without e-way bill, such vehicle along with goods can be detained or seized and would be released only on payment of appropriate tax and penalty. If the owner comes forward to pay the penalty and tax amount, he must pay 100% of tax payable and if he not comes forward, penalty will be 50% of value of goods.

Here one notable point is that third proviso of notification No. 12/2018 dated 07.03.2018 specifies that “where the goods are transported for a distance of upto fifty kilometers within the State or Union Territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01. “. Hence merely non-mentioning of vehicle no. in part-B of e-way bill in such cases cannot be the ground for seizure of goods. Allahabad High Court in case of VSL Alloys (India) Pvt. Ltd. vs. State of U.P. and another held that where assessee is not supposed to file part-B of e-way bill and where all documents are accompanied by the goods, merely non-mentioning of vehicle no. in part-B of e-way bill cannot be the ground for seizure of goods.

## Necessity of mensrea for penalty and prosecution

Section 135 of the Act specifies that “in any prosecution for an offence under this Act which requires culpable mental state on the part of accused, the court shall presume the existence of such mental state. but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.” Hence mensrea is a necessary ingredient under this Act, the court shall presume its existence and burden of proof to show its absence is on accused. Culpable state of mind includes intention, motive, knowledge of fact and belief in or reason to believe the fact. A fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Mensrea is not essential to attract penalty under this Act. It was classical view that “no mensrea no crime”. There are some court rulings which direct that “absence of mensrea can be taken as defense available for any prosecution under the Act.” But several laws in India and abroad, especially regarding economic crimes and departmental penalties have created several punishments even where the offences have been defined to exclude mensrea.

## Intricacies related to penalty provisions

Where goods are supplied without payment of tax, the penalty cannot be leviable when assessee has immediately paid the tax with interest. In case of M/s. Xerox India Ltd. vs. State of Karnataka, where dealer disputed tax liability on the basis of judgment of apex court, but after receiving clarification from apex court, assessee has immediately paid the tax with interest. The Karnataka High Court held that penalty cannot be leviable merely because it is lawful to do so. Hence penalty is not justifiable in such cases.

Moreover, if the applicant has committed mistake while filing GST registration, penalty cannot be imposed for non-filing of GST return, and non-depositing the tax, if the applicant deposits the tax and files GST return within two weeks of issuance of correct registration certificate. In case of Modern Pipe Industries vs. State of U.P. and Ors., (2017) 84 taxmann.com 254 (Allahabad), it was held that at the time of migration to GST, assessee has by mistake obtained registration as sole proprietor instead of partnership firm. The Allahabad High Court directed the department to issue necessary login id/password in the name of partnership firm within a period of two weeks and the corrected registration certificate within a week after and also directed not to levy penalty if the applicant deposits the tax and files GST return within two weeks of issuance of correct registration certificate.

One notable point is that section 129 does not indicate manner of payment of penalty. as per section 49(1), every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking, RTGS, NEFT, or by using credit or debit cards or any other prescribed mode shall be credited to electronic cash ledger of such person. Hence penalty can also be paid on GST portal maintained by the Government. The Department cannot insist to pay the penalty only in cash or by demand draft. But Input Tax credit cannot be utilized for

payment of penalty.

### Compounding of offence

Commissioner has granted power under GST to compound the offence. Section 138 of the CGST Act specifies that compounding can be done either at the time or before the prosecution on payment of compounding amount. The compounding of offence is allowed only after payment of tax, interest and penalty involved. The lower limit for amount of compounding is Rs.10000/- or 50% of tax whichever is higher and upper limit is Rs.30000/- or 150% of tax whichever is higher. On payment of compounding amount, no further proceedings under the Act to be initiated and criminal proceeds shall stand abated. In following cases, compounding under GST cannot be allowed:

- (1) Second time compounding is not allowed in respect of offences described in clause (a) to (f) and (i) and offence described in clause (g), (j) and (k) of section 132(1).
- (2) Second time compounding is not allowed in respect of other clauses of section 132(1) if value of supply exceeds Rs.1 Crore.
- (3) Compounding is not allowed if impugned offence under GST is also an offence under any other law.
- (4) A person who has convicted under GST Act by court.



## RECENTLY HELD EVENTS UNDER THE AEGIS OF INDIRECT TAXES COMMITTEE



Certificate Course on GST at Delhi



Certificate Course on GST at Kolkata



Seminar on GST at Gurugram



Workshop on GST at Tinsukia

# GST FERMENTING GROUNDS FOR LITIGATION?

## 1. Prologue

India is celebrating the first anniversary of biggest tax reform after Independence i.e. Implementation of GST Act. GST was introduced in India with the main objective of One Tax One Nation, Simplified Tax Structure, lower legal compliances and reduction in litigations, transparency in tax structure and so on. However, the same was introduced by the Government in a haphazard manner, which resulted into the various glitches in its implementation. The so called Gabbar Singh Tax or Good and Simple Tax has found its presence in the life of an ordinary hawker and peddler to a 1000 crores business tycoon. It was expected that in the initial years there would be teething problems as the law will take years to settle or fully implemented. No doubt that the government has shown firm commitment to address various issues and is has been proactive in taking the corrective measures for its healthier implementation. For the better transparency and interpretation government has issued various circulars, notifications, public notices, FAQs etc. and amended the rules several times. Even after the various amendments still GST is yet to attain its ideal form. GST is suffering from various imperfections like multiple tax slabs, complex tax structure, complexity in tax returns and refund of taxes, complex rules and procedures and so on. All these have resulted in the various troubles to the tax payers and Indian economy suffered a great setback.

## 2. Taxes and Litigations – A never ending story:

According to the economic survey 2018, more than two lakh tax cases, including direct and indirect taxes were pending at various appellate legal forums at all levels of judiciary across the country which amounting to nearly 4.7% of the total Indian GDP. This has not only pointed out the quantum of the dispute but has also pointed out the complexities involved in the Indian tax structure. The main reason for the increase in the more litigation is a slow decision by the appellate authorities, which not only increase the volume but quantum also. Delay in decisions leads to issue of tax notices by the tax officers and leave the final decision in the courts mainly when the demand is of recurring nature for all subsequent years till the litigation attains finality or is settled.

The economic survey also pointed out that nearly 65% of the cases were lost by the department and the success ratio of the department is continuously decreasing, which clearly indicate that the officers are not taking the decisions which is contradictory to the department, which creates unnecessary burden on the tax payers, which leads to wastage of time

and money. No doubt that, the way in which the GST law is implemented, and developments are going on, it will aggravate the problem of litigation in the coming days.

## 3. GST fermenting grounds for litigation?

Despite efforts of the government and commitments in the last one year, GST law has witnessed many litigations and disputes from its implementation stage to the introduction of e-way bill system. Problems related to transition issues, non-filing of returns, refunds of taxes, export and import duties and complexities, penalties, e-way bill structures, Advance Rulings and related to many more areas are still under litigations and creating a scope for future dispute and litigations. A few areas where the maximum litigations were filled are transitional input credit of various cheeses imposed prior to the introduction of GST, anti-profiteering, transitional credit, e-way bills etc.

No doubt that the government has put in best efforts to clarify the issues to avoid litigations in the future, but no doubt that clarifications through informal channels like tweets, e-fillers, FAQs, press release etc. are not legally binding on either side i.e. Neither to tax authorities (government) nor to the tax payers. In many cases clarifications issued by the government or tax authorities were not in accordance with the legal provisions and contradictory to law. In various cases, Courts have even not accepted the Budget Speech of the Finance Minister as binding, since the same was not introduced or worded in the final Act which was passed by the parliament. Therefore, in the days to come, the scope of legal disputes and litigations are going to increase as the law will be implanted to its full swing, including audit, periodical and annual returns, full-fledged procedural compliances etc. One such fermenting ground for litigations is the Authority for Advance Ruling (AAR), although the main motto behind this is to reduce litigations but it has often turned out to be on the contrary. In this article we have tried to enumerate the basic procedure for advance rulings under the GST, Challenge and reforms required to reduce the litigations around GST.

## 4. Rules for Advance Ruling, Appeal and Revisions

The concept of the advance rulings is not new under the Goods and Services Tax (GST) law. Advance rulings are aimed to bring clarity in determining the tax liability well in advance for the assessee and plan his transactions accordingly. Further, it aids in avoiding litigations later, which can be costly and time consuming. The main objectives of setting authority for advance ruling are;

- Provide a certainty in assessing the tax liability in advance,

in relation to an activity proposed to be undertaken by the applicant;

- Reduce litigation;
- Pronounce ruling expeditiously in a transparent and economical manner;
- Attract FDI

Advance ruling means a decision provided by the Authority or the Appellate Authority to an applicant on matters or for questions specified in his application, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant

The Provisions relating to Advance ruling are contained in Chapter XVII, Section 95 to 106 of the CGST Act.

Section 95 of the CGST Act defines applicant any person registered or desirous of obtaining registration under this Act, which applies that any person who has obtained registration or is desirous of the taking registration may can apply for Advance ruling.

#### ► **Matters on which Advance Ruling can be sought:**

- Classification of any goods or services or both;
- Applicability of a notification issued under the provisions of this Act;
- Determination of time and value of supply of goods or services or both;
- Admissibility of input tax credit of tax paid or deemed to have been paid;
- Determination of the liability to pay tax on any goods or services or both;
- Whether applicant is required to be registered;
- Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

It is pertinent to note here that, the questions regarding the determination of the place of supply cannot be raised with the AAR or Appellate Authority for Advance Ruling (AAAR) as confirmed in one of the recent Advance ruling order discussed later in this article.

#### ► **Applicability and Scope of AAR:**

Section 96 provides that, the AAR and AAAR shall be constituted under the respective State Goods and Service Tax Act. This signifies that the ruling given by the AAR and AAAR will be applicable only within the jurisdiction of the concerned state or union territory. Since the Advance ruling authorities are State Specific, the questions on determination of the place of supply cannot be raised with the AAR or AAAR.

Section 103 envisages that order of advance ruling shall be binding only on the applicant who had sought it and the

concerned officer or the jurisdictional officer in respect of the applicant.

#### ► **Procedure for obtaining Advance Ruling, Appeal & Revision:**

##### ➤ **Advance Ruling**

Any applicant may apply for an advance ruling electronically in form GST ARA -01, stating the question on which advance ruling is sought along with the relevant documents as may be required. Application should be accompanied by a fee of Rs 5000/-.

Authority on receipt of an application shall send a copy of it to the concerned jurisdictional officer of the applicant and call for all relevant records. Thereafter the authority may verify the application along with the records and pass an order either admitting or rejecting the application.

The application shall not be admitted if the question raised is already pending or decided in any proceedings in the case of an applicant under any of the provisions of CGST Act. The application may be rejected only after an giving an opportunity of being heard to the applicant and by way of a speaking order giving along with the reasons for rejection. Once the application is admitted, the AAR shall pronounce ruling within 90 days of receipt of application.

If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. It shall be deemed that no advance ruling can be given in respect of the question, if the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR.

##### ➤ **Appeal against Advance Rulings:**

An aggrieved applicant or the concerned jurisdictional officer may file an appeal against the advance ruling pronounced to AAAR within 30 days from the date on which the ruling sought to be appealed is communicated. The time period can be extended further by 30 days. The aggrieved applicant shall file an appeal in GST ARA-02 along with a fee of Rs. 10,000/-.

Where the appeal is preferred by the concerned jurisdictional officer the same shall be filed in in Form GST ARA-03 and no fee shall be payable.

The AAAR shall pass the order within 90 days from date of filing of Appeal.

##### ➤ **Revision of Advance Rulings:**

The authority or the Appellate Authority may amend any order passed by it, so as to rectify any error apparent on the face of the record, on its own accord, or is brought to its notice by the concerned jurisdictional officer or the applicant or the appellant within a period of 6 months from

the date of the order.

However, without giving an opportunity of being heard, no rectification that has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made.

Where the AAR or AAAR finds that advance ruling pronounced has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio, and all the provisions of this CGST Act or the rules shall apply to the applicant or the appellant as if such advance ruling had never been made.

It is important to note that, the assessee cannot file an appeal against the AAR or AAAR order in High Court and Supreme Court.

## 5. Challenges and Reforms:

AAR has been set up in all the states and as much as 111 advance rulings were issued till 5th August 2018, reported in TIOL. Many of them involve some important issues, including the ones like recovery from the employee for canteen services, outdoor catering service provided to factory owner, supply of goods with brand name or otherwise, supplies being composite or mixed, etc. Given the budding stage of GST law, the questions brought before AAR and the rulings, provide some insight into divergent practices, the perspective of the department and interpretation of various provisions of the youngest tax law. Moreover, it is evident through the recent order of Advance rulings that there are various challenges before the government and require various reforms to achieve the desired result of the AAR mechanism.

### ► Contradictory ruling of two states on a similar issue:

In the recent ruling given by the State specific AAR, it is witnessed that the two States have given the contradictory ruling on the similar issues, which creates confusions between the tax payers especially when the taxpayer operates across different States.

In the case of Giriraj Renewables Pvt Ltd, (2018-TIOL-12-AAR-GST) the Karnataka AAR held that a contract for construction of a solar power plant is not a composite supply and hence photovoltaic modules should be taxable at 5% and other items at their respective GST rates, whereas Maharashtra AAR in the case of Fermi Solar Farms Pvt Ltd (2018-TIOL-17-AAR-GST) held it to be a works contract of immovable property and taxable at 18%.

In another case of Sino Resources (2018-TIOL-76-AAR-GST), Andhra Pradesh AAR has not accepted the application on the transitioning clean energy cess stating that the issue is not covered in the scope of AAR. Whereas the Maharashtra AAR in the case of Kansai Nerolac Paints Ltd (2018-TIOL-09-AAR-GST) has held that Krishi Kalyan Cess

credit cannot be transitioned.

The list of such issues where different AAR has framed the different views goes on and creates confusions in the mind of tax payers and snags in tax compliances.

**Suggested Reforms:** National Advance Ruling Authority, which would be a centralized Authority similar to erstwhile tax regime to be constituted.

Section 103 of CGST Act may be amended to provide that, the Advance Ruling pronounced in one State should be binding on other States as well.

### ► An appellate mechanism for filing appeals against AAR rulings

An appellate mechanism for filing appeals against AAR rulings is not yet in place. As there is still no mechanism for filing appeal against AAR, the tax payers have no other option to follow the same because none following the advance ruling will lead to intentional tax evasion, which may lead to heavy penalty.

**Suggested Reforms:** The provisions contained in Section 100 of the CGST Act to be implemented at the earliest and National Appellate Advance Ruling Authority to be constituted.

### ► Multiple authorities for AAR (State wise)

There is a separate AAR in each State as there is a separate GST Act and rules for each State. An assessee cannot squarely apply the advance ruling obtained in one State to his business practice in another State as it is not binding on the other state. This will lead to the delicacy of the work as even the matter is covered by some other state still one has to file the application on the similar issue. Such decisions among AARs of different States opens a Pandora's box for businesses with multi-State presence on what final tax position to take.

**Suggested Reforms :** National Advance Ruling Authority, which would be a centralized Authority similar to erstwhile tax regime to be constituted.

Section 103 of CGST Act may be amended to provide that, the Advance Ruling pronounced in one State should be binding on other States as well.

### ► Ambiguity in Law:

The very purpose of the Advance Ruling is to bring clarity on various tax issues and reduce litigations. Although Advance rulings have been given in cases like Battery sold with inverter is a mixed supply or not, as the usage of the battery varies from purpose to purpose or whether a water bottle

can be classified as a storage container or a water bottle, the ambiguity continues to prevail around these issues. Since the tax rate is different, the assessee's will approach the AAR for further clarity. Since this is an ambiguity in the law, there cannot be any clear guidelines, and everyone will try to interpret the same in their favour, resulting in further litigations.

**Suggested Reforms:** National Advance Ruling Authority, which would be a centralized Authority similar to erstwhile tax regime to be constituted.

Section 103 of CGST Act may be amended to provide that, the Advance Ruling pronounced in one State should be binding on other States as well.

#### ► Composition of the AAR:

The AAR team consists one member each from Central and State government. The members of AAR are of the rank of Joint Commissioner or above. As since they are from the tax department, their decision or ruling is likely to be with the biased mind. This is also evident from the, recently pronounced AAR orders wherein majority of them were in more in favour of the revenue.

**Suggested Reforms:** The team of AAR should include one judicial member or setting up a National AAR with judicial member where centre is to be considered as national level authority.

#### ► Rejection of Application for Advance Rulings:

In few advance ruling orders, it has been decided that the matter is not covered under the AAR or AAR are not authorized to give any rulings on the issue. In the case of M/s Pon Pure Chemical India Pvt. Ltd. (2018-TIOL-52-AAR-GST) Gujarat AAR has rejected the application stating that "As the 'place of supply' is not covered by Section 97 (2) of the Acts, this authority is helpless to answer the questions raised in the application, as it is lacking jurisdiction to decide the issues and Issue of High Sea Sale falls in the domain of Customs and not under the Goods and Services Tax." This will lead the issue being left unresolved and boost the scope for litigation.

**Suggested Reforms:** All issues related to GST should be brought under the ambit of Advance ruling.

#### ► Assessee Specific Advance Rulings:

The Advance rulings are specific to each Assessee and are not binding on other assessee's and/or jurisdictional officers. Where the facts of the case are same, this will lead to duplicacy of rulings and higher quantum of applications

pending with AAR, which would in turn lead to delay in AAR orders.

**Suggested Reforms:** The AAR order to be binding on other Assessee and/or Jurisdictional officers unless otherwise the fact of the case are different.

## 6. Conclusion:

The Advance Ruling System is introduced and implemented to smoothen the dispute resolution process and to reduce the litigations. Moreover, the global experience shows that during the initial year of GST implementation tax litigations have drastically shoot up. Looking at the last one-year experience, it is very unlikely that India will be an exception to this. Many gray areas like backward area incentives, state government incentive schemes, audit and tax assessments, different advance rulings by different states and countries, difference state GST Act and rules mainly on e-ways, etc. will lead to more tax litigations. The government is looking keen to simplify the tax law and make it user-friendly, which not only reduce the litigations but also make it as a part of the ease of doing business policy. In an Interview, Finance Secretary Hasmukh Adhia said that the proposal of setting up centralised AAR is under consideration.

Looking on the recent advance rulings, which are more in favour of the revenue or creating confusions, the majority of the taxpayers are now choosing not to file an advance ruling as it will further create litigations in spite of giving any clarity on the same. Therefore, the way in which the AAR mechanism is functioning, it will over the period remain as the elephant teeth only and would not serve the purpose unless and until the new changes are brought into it. Moreover, the government is under its commitment to reduce the litigation in GST regime.

In short, there have been lots of ebb and flow, and one can dispute that not everything is as sunny and shiny as the lawmakers want us to believe. With a second wave of reforms coming in as an amendment to GST law, it goes without saying as the law evolves itself, it is going to open the Pandora Box of litigations and is going to be the new goose that lays golden eggs for the professionals.



# FORTH COMING EVENTS UNDER THE AEGIS OF INDIRECT TAXES COMMITTEE

**6th October, 2018**

**Place : Ernakulam • CPE Hours : 30 Hours**

**Title of the Event** : Certificate Course on GST  
**Contact Details** : Ernakulam Branch of ICAI  
Phone: 484-2396238/2396258/  
2372953  
Email: ernakulam@icai.org

**Title of the Event** : Certificate Course on GST  
**Contact Details** : WIRC of ICAI  
Phone: 022-33671400 /1500  
Email: wircevents@icai.in

**6th October, 2018**

**Place : Mumbai • CPE Hours : 30 Hours**

**16th November, 2018**

**Place : Kolkata • CPE Hours : 30 Hours**

**Title of the Event** : Certificate Course on GST  
**Contact Details** : EIRC of ICAI  
Phone: 91-33 30211104  
Email: eircevents@icai.in

**Title of the Event** : Residential Refresher Course on GST  
**Contact Details** : Bangalore Branch of SIRC of ICAI  
Phone: (080) 30563513/3500  
Email: blrregistrations@icai.org

**11, 12, and 13th October 2018**

**Place : Bangalore • CPE Hours : 16 Hours**



**INDIRECT TAXES COMMITTEE (IDTC) OF ICAI**  
**A ONE STOP DESTINATION FOR INDIRECT TAXES i.e. IDTC**  
website: [www.idtc.icai.org](http://www.idtc.icai.org)



The Indirect Taxes Committee of ICAI has launched its website viz. [www.idtc.icai.org](http://www.idtc.icai.org) to provide the users a well set platform for sharing and gaining knowledge on indirect taxes and easy accessibility to the Indirect taxes Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in the Indirect tax laws vide various mediums like, organising programmes, updating study materials, sending regular updates etc.

**Main features:**

- \* Regular Indirect Taxes Updates
- \* Knowledge Bank of Indirect Taxes – Articles, Legal Updates etc.
- \* Publication on Excise, Service Tax, VAT, GST etc. - (Available for free download and online ordering)
- \* Recordings of Live Webcasts
- \* E-learning on Service Tax, Excise, Customs, CST
- \* Upcoming events
- \* Details of Certificate Courses, Programme, Seminars etc.
- \* Links of related important website
- \* Connect with Indirect Taxes as a faculty/author of the publication etc.

Your suggestions on the website are also welcome at [idtc@icai.in](mailto:idtc@icai.in)

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