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ICAI-GST NEWSLETTER

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

GOODS & SERVICES TAX

The Council

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President's Communication

My Esteemed professional colleagues,

After the implementation of E-way bill system on Inter-state movement of goods from April 1, 2018, the system in case of Intra state movement of goods have now been implemented in all theStates. Smooth generation of more than 1.5 million bills on daily basis is reflection that system has been settled now and functioning properly. GST Council, at itsMeeting held in May 2018 agreed to discussproposal of giving concession of 2% of GST on B2C supplies(Max. Rs. 100) per transaction in case payment is made other than cash,and proposal for imposition of sugar cesse&its issue of levy of GST, etc.

Asimple return design having unidirectional flow of invoices on anytime basis during the month also discussed in last GST Council, which is under preparation.Further, Central Board of Indirect Taxes and Customs (CBIC) has recently notified National Academy of Customs, Indirect Taxes and Narcotics as the authority to conduct the examination for GST Practitioners as specified under rule 83 (3) of the CGST Rules, 2017. ICAI also welcome the steps initiated by CBIC for providing refund to the exporters including the special refund fortnight from 31.05.2018 to 14.06.2018 which has been extended till 16.06.2018.

We at ICAI are much proactive in our role as facilitator and have been continuously undertaking various initiatives in national interest to support the Government as well as the stakeholders for smooth implementation of GST.In this direction, ICAI has recently finalized and submitted Draft GST Audit Report and Statement of Particulars to the Government in Form 9C/9D. Earlier, based on the request received from GSTN suggestions on annual return Form 9/9A/9B were provided.

Also, ICAI has launcheda new publication namely "E-Handbook on GST Amendments" and revised its flagship publication namely "Background Material on GST Acts and Rules- May 2018" (6th Edition)to bring it in line with the topical changes. Both the publications are available at the website of the Committee www.idtc.icai.organd hard copy of the same can be ordered at https://icai-cds.org/

With a view to update our members and stakeholders with the latest development in GST, more than 4173 workshops, seminars or conferences on GST have been organised by ICAI since 2017 which have been attended and benefited 3.9 lakh participants. Also, 67batches of Certificate Courseon GST have been organised across the country.

It's the time to take new responsibilities in the dynamic environment of GST Law, especially in the first year of GST Audit once the forms be notified by the Government.

With Best Wishes,

CA. Naveen N. D. Gupta
President, ICAI

GST UPDATES

GST revenue collection for May 2018

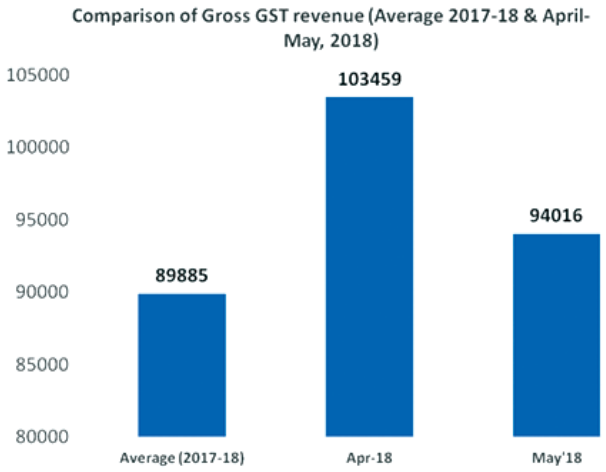
Rs. 94,016 Crore of total gross GST revenue collected in May2018 Gross revenue collection in May is much higher than the monthly average of GST collection in the last financial year

The total gross GST revenue collected in the month of May 2018 is Rs. 94,016 crore of which CGST is Rs. 15,866 crore, SGST is Rs. 21,691 crore, IGST is Rs. 49,120 crore (including Rs. 24,447 crore collected on imports) and Cess is Rs. 7,339 crore (including Rs.854 crore collected on imports). The total number of GSTR 3B Returns filed for the month of April up to 31st May, 2018 is 62.47 lakh.

The total revenue earned by Central Government and the State Governments after settlement in the month of May, 2018 is Rs.28, 797 crore for CGST and Rs.34, 020 crore for the SGST.

Though current month's revenue collection is less compared to last month's revenue, still the gross revenue collection in the month of May (Rs. 94,016 crore) is much higher than the monthly average of GST collection in the last Financial Year (Rs. 89,885 crore). The April revenue figure was higher because of year end effect.

On 29.05.2018, Rs. 6696 crore has been released to the states as GST compensation for the month of March, 2018. Therefore, the total GST compensation released to the states for the FY 2017-18 (Jul, 2017 to Mar, 2018) has been Rs. 47844 crore.



(PIB Release ID: 179687 dated 1st June, 2018)

Extension in the due date for filing of FORM GSTR-6 for the months from July, 2017 till June, 2018.

The Central Government, vide Notification No. 25/2018 – Central Tax dated 31st May, 2018 superseding Notification No. 19/2018-Central Tax, dated the 28th March, 2018, extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under section 39(4) of the said CGST Act read with rule 65 of the CGST Rules, 2017, for the months of July, 2017 to June, 2018, till the 31st day of July, 2018

[Notification No. 25/2018 – Central Tax dated 31st May, 2018]

Roll out of e-Way Bill system for intra-State movement of goods in Chhattisgarh, Goa, Jammu & Kashmir, Mizoram, Odisha, Punjab, Tamil Nadu and West Bengal

As per the decision of the GST Council, e-Way Bill system for inter-State movement of goods has been rolled out from 01st April, 2018. As on 30th May, 2018, e-Way Bill system for intra-State movement of goods has been rolled out in the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Rajasthan, Sikkim, Telangana, Tripura, Uttarakhand and Uttar Pradesh along with the Union Territories of Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep and Puducherry. E-Way Bills are getting generated successfully and till 30th May, 2018 more than six crore and thirty lakh e-Way Bills have been successfully generated which includes more than two crore e-Way Bills for intra-State movement of goods.

It is informed that e-Way Bill system for intra-State movement of goods would be implemented in the following States:-

S. No.	State	Date of Implementation
1	Chhattisgarh, Goa, Jammu & Kashmir, Mizoram, Odisha & Punjab	01st June, 2018
2	Tamil Nadu	02nd June, 2018
3	West Bengal	03rd June, 2018

It may be mentioned that e-Way Bill system for intra-State movement of goods will be implemented throughout the country latest by 03rd June, 2018. It has now been two months since the e-Way Bill system was implemented and the same is working smoothly and without any glitches. On an average more than twelve lakh e-Way Bills are being generated every day. Trade and industry may approach their respective tax authority for any guidance in this matter. Further, it is informed that trade should get well versed with respect to the provisions of the e-Way Bill rules in order to avoid any difficulty. The provisions of rule 138D of Central / State GST Rules, 2017 may be referred to for any grievance redressal.

(PIB Release ID: 179665 dated 31st May, 2018)

Special Refund Fortnight from 31.05.2018 to 14.06.2018

Refunds of GST have been a concern for both the Government and Trade for the past several months. Refund claims to the tune of Rs. 14,000 crore (Rs.7,000 crore on the IGST side and Rs. 7,000 crore on account of ITC) are pending with the Government as on date, as against the figure of Rs 20,000 crore projected by FIEO in the press reports. In order to liquidate the pendency, Government is starting a second "Special drive Refund Fortnight" from 31st May 2018 to 14th June 2018. This time the "Special Drive Refund Fortnight" would facilitate all types of Refund claims in which Customs, Central and State GST officers will strive to clear all GST refund applications received on or before 30.04.2018. This will include refunds of IGST paid on exports, refunds of unutilized ITC and all other GST refunds submitted in FORM GST RFD-01A.

The Central Board of Indirect Taxes and Customs (CBIC) is implementing a solution whereby the refunds held in GSTN, in cases where the exporters have mistakenly declared their export supplies as domestic supplies, would now be transmitted to Customs EDI System. A Circular No 12/2018 dated 29-05-2018 has been issued in this regard. On receipt of the records from GSTN, the Customs System would automatically process the refunds for sanction, if no other errors are committed by exporters.

Circular No 45/19/2018-GST has been issued on 30-05-2018 clarifying matters related to refund claims by an Input Service Distributor, composition dealer, exports of services and supplies made to SEZ. The circular also clarifies issues related to requirement of LUT in cases of export of exempted or non-GST goods and scope of restriction imposed under Rule 96(10).

All claimants may note the refund application in FORM GST RFD-01A will not be processed unless a copy of the application, along with all supporting documents, is submitted to the jurisdictional tax office. Mere online submission is not sufficient.

All GST refund claimants are encouraged to approach their jurisdictional tax authority for disposal of any of their refund claims submitted on or before 30.04.2018, which are still pending. In case the jurisdiction (i.e. Centre or State) has not been defined for a particular claimant, he/she can approach either of the jurisdictional tax authorities.

All IGST refund claimants may register on ICEGATE website, if not already done, to check their refund status. Customs field formations have been directed to gear up for anticipated response of the exporters by diverting additional manpower and infrastructural resources. Exporters are requested to come forward and avail of the opportunity to get the refunds sanctioned during this special drive.

(PIB Release ID: 179632 dated 30th May, 2018)

Clarifications on refund related issues

The Central Government vide Circular no. 45/19/2018-GST dated 30th May, 2018 with a view to ensure uniformity in the implementation of the provisions of the law across the field formations has clarified certain Refund related issues which are as follows:

1. **Claim for refund filed by an Input Service Distributor, composition taxpayer or a non-resident taxable person:**

   It is clarified that in case of a claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer; and the claim for refund of balance in the electronic cash and/or credit ledger by a non-resident taxable person, the filing of the details in FORM GSTR-1 and the return in FORM GSTR-3B is not mandatory. Instead, the return in FORM GSTR-4 filed by a composition taxpayer, the details in FORM GSTR-6 filed by an ISD and the return in FORM GSTR-5 filed by a non-resident taxable person shall be sufficient for claiming the said refund.

2. **Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit:**

   It is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2018, such exporters shall be allowed to file the refund application in FORM GST RFD-01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.

3. **Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess:**

   - It is clarified that a registered person making zero rated supply under bond or LUT may claim refund of unutilized credit including that of compensation cess paid.
   - Such registered persons may also make zero-rated supply on payment of integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.
   - For example: Cess is levied on coal, which is an input for the manufacture of aluminum products, whereas cess is not levied on aluminum products. Therefore in this case if aluminum is exported under bond or LUT than he may claim refund of unutilized credit including that of compensation cess paid However if exporter has exported on payment of integrated tax than he cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act which seems to be discriminatory.

   Comment: It is an interesting that unlike Cen vat Credit Rules, GST appears to permit credit of cess paid on inputs though the corresponding output is not liable to cess. Cellular Operators Association of India decision of Delhi HC (2018-TIOL-310-HC-DEL- ST) refers.

4. **Whether bond or Letter of Undertaking (LUT) is required in the case of zero rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods:**

   In case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non GST goods shall comply with the requirements prescribed under the earlier law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any. Further, exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

   Comment: Non-GST products appear to be eligible for zero-rated benefit though the same products sold domestically are barred from credit under 17(2) of CGST Act. Given this view taken by the Government, technicalities of conflict between section 16(2) of IGST Act and section 17(2) of CGST Act become academic.

5. **What is the scope of the restriction imposed by rule 96(10) of the CGST Rules, regarding non-availment of the benefit of notification Nos. 48/2017-Central Tax dated the 18.10.2017, 40/2017-Central Tax (Rate) dated 23.10.2017, 41/2017-Integrated Tax (Rate) dated 23.10.2017, 78/2017-Customs dated 13.10.2017 or 79/2017-Customs dated 13.10.2017:**

The said restriction is not applicable to an exporter who has procured goods from suppliers who have not availed the benefits of the specified notifications for making their outward supplies. Further, the said restriction is also not applicable to an exporter who has procured goods from suppliers who have, in turn, received goods from registered persons availing the benefits of these notifications since the exporter did not directly procure these goods without payment of tax or at reduced rate of tax. There might be a scenario where a manufacturer might have imported capital goods by availing the benefit of Notification No. 78/2017-Customs dated 13.10.2017 or 79/2017-Customs dated 13.10.2017. Thereafter, goods manufactured from such capital goods may be supplied to an exporter. It is hereby clarified that this restriction does not apply to such inward supplies of an exporter.

[Circular no. 45/19/2018-GST dated 30th May, 2018]

NACIN as the authority for conducting the examination for GST Practitioners under rule 83 (3) of the CGST Rules, 2017

Sub rule (3) of Rule 83 provides that no person enrolled as Goods and Services Tax practitioner shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Government.

Therefore, in exercise of such power the Central Government vide Notification No. 24 /2018 – Central Tax dated 28th May, 2018 has notified the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, as the authority to conduct the examination.

[Notification No. 24 /2018 – Central Tax dated 28th May, 2018]

No change in the GST law and taxation relating to farmers since July, 2017; Support Services to agriculture, forestry, fishing or animal husbandry are exempt from GST; Agriculturists are also exempted from taking GST Registration.

It has been reported in certain section of the Press release that certain changes have been made in GST law relating to farmers, which will come into force with effect from 1st June, 2018 according to which farmers would be required to take registration and pay GST of 18% when they lease out their land.

This news is factually incorrect and misleading. There has been No Change in the GST law and taxation relating to farmers since July, 2017, when GST was implemented. Support services to agriculture, forestry, fishing or animal husbandry are exempt from GST. Such exempted support services include renting or leasing of vacant land with or without a structure incidental to its use. Thus, renting or leasing of land by farmers for agriculture, forestry, fishing or animal husbandry on batai (share cropping) or otherwise is also exempt from GST.

Further, agriculturists are also exempted from taking GST registration. Agriculturist has been defined to mean an individual or an HUF who undertakes cultivation of land-

- by own labour
- by the labour of family
- by servants or wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.

[Release ID: 179589 dated 28th May, 2018)]

Recipient is liable to pay tax under Reverse Charge on purchase of Priority Sector Lending Certificate

The Central Government vide Notification No. 11/2018-Central Tax (Rate) dated 28th May, 2018 has amended the Notification No.4/2017-Central Tax (Rate), dated the 28th June, 2017 by inserting S. no. 7 which has provided that on supply of Priority Sector Lending Certificate by a registered supplier tax shall be payable by the recipient of such supply who is a registered under GST.

Priority Sector Lending is an important role given by the Reserve Bank of India (RBI) to the banks for providing a specified portion of the bank lending to few specific sectors like agriculture and allied activities, micro and small enterprises, poor people for housing, students for education and other low income groups

and weaker sections.. This is essentially meant for an all-round development of the economy as opposed to focusing only on the financial sector.

[Notification No. 11/2018-Central Tax (Rate) dated 28th May, 2018]

Applicability of Integrated Goods and Services Tax (integrated tax) on goods supplied while being deposited in a customs bonded warehouse

The Central Government vide Circular No. 3/1/2018-IGST dated 25th May, 2018 re-examined the Circular No. 46/2017-Customs dated 24th November, 2017 and clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption

Section 7(2) of the IGST Act, 2017 provides that the supply of goods imported into the territory of India, till they cross the customs frontiers of India, is treated as a supply of goods in the course of inter-State trade or commerce. Further, the proviso to section 5(1) of the IGST Act provides that the integrated tax on goods imported into India would be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975. Thus, in case of supply of the warehoused goods, the point of levy would be the point at which the duty is collected under section 12 of the Customs Act, 1962 which is at the time of clearance of such goods under section 68 of the Customs Act.

A sub-section (8A) has been inserted in section 3 of the CTA vide section 102 of the Finance Act, 2018,with effect from 31st March, 2018,so as to provide that the valuation for the purpose of levy of integrated tax on warehoused imported goods at the time of clearance for home consumption would be either the transaction value or the value as per sub-section (8) of section 3 of the CTA (i.e. valuation done at the time of filing the into-bond bill of entry), whichever is higher.

It is therefore clarified that the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

This Circular would be applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse, on or after the 1st of April, 2018.

[Circular No. 3/1/2018-IGST dated 25th May, 2018]

Two Group of Ministers Constituted to consider the issues relating to "Incentivizing digital payments in the GST regime" & "Imposition of Cess on Sugar under GST".

Subsequent to the decisions taken in the 27th GST Council meeting, two Group of Ministers (GoMs) have been constituted.

The first GoM shall consider the issues relating to "Incentivizing digital payments in the GST regime". Shri Sushil Kumar Modi, Deputy Chief Minister, Bihar is convenor and other members of this GoM are Shri Nitinbhai Patel, Dy. Chief Minister, Gujarat; Capt. Abhimanyu, Excise & Taxation Minister, Haryana; Dr. Amit Mitra, Finance Minister, West Bengal and Shri Manpreet Singh Badal, Finance Minister, Punjab.

The Second GoM shall consider issues relating to "Imposition of Cess on Sugar under GST". Shri Himanta Biswa Sarma, Finance Minister of Assam is convenor and other members of this GoM are Shri Rajesh Agrawal, Finance Minister, Uttar Pradesh; Shri Sudhir Mungatiwar, Finance Minister, Maharashtra; Shri D. Jayakumar, Minister for Fisheries and Personnel & Administrative Reforms, Tamil Nadu and Dr. T.M. Thomas Isaac, Finance Minister, Kerala.

Both the GoMs shall submit their reports within a period of 15 days.

Comment: Mixing incentives into taxation system is the very bane of the erstwhile tax regime that GST sought to eliminate. And now this move seems to revisit old practices. It will be interesting to see the nature of this incentive that will be implemented and its effects on tax rate inversion and other issues. Cess has a limited life (of 5 years) under the Compensation Act. Long-term strategy to impose cess will attract cascading effects in the overall GST framework. This would also be watched attentively by trade as a new avenue is being opened up that can easily be extended to other sectors by successive Governments.

(PIB Release ID: 179138 dated 4th May, 2018)

27th GST council meeting discusses change in GST rate for digital transactions and imposition of Sugar Cess

1. **Incentive to promote Digital Transactions:**

    a. Keeping in view the need to move towards a less cash economy, the Council has discussed in detail the proposal of a concession of 2% in GST rate [where the GST rate is 3% or more, 1% each from applicable CGST and SGST rates] on B2C supplies, for which payment is made through cheque or digital mode, subject to a ceiling of Rs. 100 per transaction, so as to incentivise promotion of digital payment.

    b. The council has recommended for setting up of a Group of Ministers from State Governments to look into the proposal and make recommendations, before the next Council meeting, keeping in mind the views expressed in GST Council.

2. **Imposition of Sugar Cess over and above 5% GST and reduction in GST rate on ethanol:**

    a. Keeping in view the record production of sugar in the current sugar season, and consequent depressed sugar prices and build-up of sugarcane arrears, the Council discussed the issue of imposition of sugar cess and reduction in GST rate on ethanol in great detail.

    b. The council has recommended for setting up of a Group of Ministers from State Governments to look into the proposal and make recommendations, within two weeks, keeping in mind the views expressed in GST Council in this regard.

(PIB Release ID: 179138 dated 4th May, 2018)

GST Council approves principles for filing of new return design based on the recommendations of the Group of Ministers on IT simplification

GST Council today in its 27th meeting approved principles for filing of new return design based on the recommendations of the Group of Ministers on IT simplification. The key elements of

the new return design are as follows –

i. **Onemonthly Return:** All taxpayers excluding a few exceptions like composition dealer shall file one monthly return. Return filing dates shall be staggered based on the turnover of the registered person to manage load on the IT system. Composition dealers and dealers having nil transaction shall have facility to file quarterly return.

ii. **Unidirectional Flow of invoices:** There shall be unidirectional flow of invoices uploaded by the seller on anytime basis during the month which would be the valid document to avail input tax credit by the buyer. Buyer would also be able to continuously see the uploaded invoices during the month. There shall not be any need to upload the purchase invoices also. Invoices for B2B transaction shall need to use HSN at four digit level or more to achieve uniformity in the reporting system.

iii. **Simple Return design and easy IT interface:** The B2Bdealers will have to fill invoice-wise details of the outward supply made by them, based on which the system will automatically calculate his tax liability. The input tax credit will be calculated automatically by the system based on invoices uploaded by his sellers. Taxpayer shall be also given user friendly IT interface and offline IT tool to upload the invoices.

iv. **No automatic reversal of credit:** There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

v. **Due process for recovery and reversal:** Recovery of tax or reversal of input tax credit shall be through a due process of issuing notice and order. The process would be online and automated to reduce the human interface.

vi. **Supplier side control:** Unloading of invoices by the seller to pass input tax credit who has defaulted in payment of tax above a threshold amount shall be blocked to control misuse of input tax credit facility. Similar safeguards would be built with regard to newly registered dealers also. Analytical tools would be used to identify such transactions at the earliest and prevent loss of revenue.

vii. **Transition:** There will be a three stage transition to the new system. Stage I shall be the present system of filing of return GSTR 3B and GSTR 1. GSTR 2 and GSTR 3 shall continue to remain suspended. Stage I will continue for a period not exceeding 6 months by which time new return software would be ready. In stage 2, the new return will have facility for invoice-wise data upload and also facility for claiming input tax credit on self-declaration basis, as in case of GSTR 3B now.

During this stage 2, the dealer will be constantly fed with information about gap between credit available to them as per invoices uploaded by their sellers and the provisional credit being claimed by them. After 6 months of this phase 2, the facility of provisional credit will get withdrawn and input tax credit will only be limited to the invoices uploaded by the sellers from whom the dealer has purchased goods.

Content of the return and implementation: Return shall be simplified also by reducing the content/information required to be filled in the return. The details of the design of the return form, business process and legal changes would be worked out by the law committee based on these principles. Government is keen to introduce the simplified return design at the earliest to reduce the compliance burden on the trade in keeping with the philosophy of ease of doing business.

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(PIB Release ID: 179138 dated 4th May, 2018)

Clarification on taxability of "tenancy rights "under GST

Doubts have been raised as to whether tenancy premium shall attract GST when stamp duty and registration charges is levied on the said premium. Further, in case of transfer of tenancy rights, a part of the consideration which accrues to the outgoing tenant is liable to GST or not.

In this regard Central Government vide Circular no. 44/18/2018-CGST dated 2nd May, 2018 has provided that merely because a transaction or a supply of tenancy rights involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from the payment of GST on tenancy premium.

Further, it has been clarified that transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt [Sl. No.12 of notification no. 12/2017-Central tax (rate)].

Comment: Remarkable circular for it not only addresses the taxability of tenancy premium, it lays down that there is no mutual exclusivity between GST and Stamp duty. In other words, GST and Stamp duty can co-exist in a single transaction where GST is leviable on the supply aspect and Stamp duty on the instrument executed. Another aspect is that the circular extends the applicability of exemption of 'residential dwelling' to 'tenancy premium relating to residential dwelling'. This stretching of the analogy appears to give ground for examining possible non-taxability of an inferior transaction if the superior is exempt. For eg. Sale of land is not liable to GST but forfeiture premium for termination of agreement to sell land appears to get some support from this extended exemption in this circular. Caution is advised while applying this extension of the exemption appearing in the circular.

[Circular No. 44/18/2018-CGST dated 2nd May, 2018]

CUSTOM UPDATES

Sanctioning of pending IGST refund claims

It has been observed that the exporters have inadvertently mis-declared IGST paid on export supplies as IGST paid on interstate domestic outward supplies while filing GSTR-3B. The exporters have also in certain cases short paid IGST vis-à-vis their liability declared in GSTR1. As a result of these mismatches in the amount of IGST paid on export goods between GSTR-1 and GSTR-3B, the transmission of records from GSTN to Customs EDI system has not happened and consequently IGST refunds could not be processed.

Therefore, In order to overcome the problem the Central Government vide Circular No. 12/2018 dated 29th May, 2018 has proposed an interim solution subject to undertakings/ submission of CA certificates by the exporters and post refund audit scrutiny which is as under:

A. Cases where there is no short payment:

- The Customs policy wing shall send a list of exporters whose cumulative IGST amount paid against exports and interstate domestic outward supplies for the period July' 2017 to March' 2018 mentioned in GSTR-3B is greater than or equal to the cumulative IGST amount indicated in GSTR-1 for the same period to THE GSTN .
- Thereafter, exporters whose refunds are processed/ sanctioned would be required to submit a certificate from Chartered Accountant before 31st October, 2018 to the Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018.
- A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/ State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.
- Non-submission of CA certificate shall affect the future IGST refunds of the exporter.

B. Cases where there is short payment:

- In cases where there is a short payment of IGST i.e. cumulative IGST amount paid against exports and interstate domestic outward supplies together, for the period of July' 2017 to March' 2018 mentioned in GSTR-3B is less than the cumulative IGST amount indicated in GSTR-1 for the same period, the Customs policy wing would send the list of such exporters to the GSTN and all the Chief Commissioner of Customs.
- The exporters would have to make the payment of IGST equal to the short payment in GSTR 3B of subsequent months so as to ensure that the total IGST refund being claimed in the Shipping Bill/GSTR-1(Table 6A) is paid. The proof of payment shall be submitted to Assistant/ Deputy Commissioner of Customs in charge of port from where the exports were made.
- Where the aggregate IGST refund amount for the said period is upto Rs. 10 lacs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST payment to the concerned Customs office at the port of export. However, where the aggregate IGST refund amount for the said period is more than Rs. 10 lacs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST to the concerned Customs office at the port of export along with a certificate from chartered Account that the shortfall amount has been liquidated.
- The exporters whose refunds are processed/ sanctioned as above would be required to submit another certificate from Chartered Accountant before 31st October, 2018 to the same Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018. A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/ State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.
- Non-submission of CA certificate shall affect the future IGST refunds of the exporter.

Post refund audit

The exporters would be subjected to a post refund audit under the GST law. The inclusion of IGST refund aspects in Audit Plan of those units may be ensured by DG (Audit). In case, departmental Audit detects excess refunds to the exporters under this procedure, the details of such detections may be communicated to the concerned GST formations for appropriate action.

Thereafter, DG (GST) shall send the list of exporters to jurisdictional GST officers (both Centre / State) informing that these exporters have taken benefit of the procedure prescribed in this circular. The jurisdictional GST formations shall also verify the payment particulars at their end.

This circular deal only with the cases where the records have not been transmitted by GSTN to Customs EDI system. Once the records are transmitted by GSTN to Customs System based upon the above mentioned procedure, the usual procedure adopted in case of sanction of IGST refunds would have to be followed.

[Circular No. 12/2018 dated 29th May, 2018]

Customs Audit Regulations, 2018

The Central Government vide Notification No. 45/2018-Customs (N.T) dated 24th May, 2018 has provided following regulations for the conduct of Customs Audit:

1. **Auditee to preserve and make available relevant documents:**

   The auditee shall preserve and on request by the proper officer make available in a timely manner, for the purposes of audit, true and correct information, records including electronic records, documents or accounts maintained in compliance of the provisions of the Act, rule or regulations, made thereunder or any other law for the time being in force, maintained for a minimum period of 5 years in relation to imported goods or export goods or dutiable goods.

   Further, auditee shall render assistance to the proper officer in the discharge of their official duty and shall in no case refuse the proper officer in discharge of their official duty.

2. **Selection for Audit:**

   The selection of auditee or the selection of import declarations or export declarations, as the case may be, for the purposes of audit shall primarily be based on risk evaluation through appropriate selectivity criteria.

3. **Manner of conducting Audit:**

   i. The proper officer may conduct audit either in his office or in certain cases at the premises of the auditee.

   ii. The proper officer may, where considered necessary, request the auditee to furnish documents, information or record including electronic record, as may be relevant to audit.

   iii. The proper officer shall give not less than 15 days advance notice to the auditee to conduct audit at the premises of the auditee.

   iv. The proper officer may where considered necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample, if available with him.

   v. The proper officer shall inform the auditee of the objections, if any, before preparing the audit report to provide him an opportunity to offer clarifications with supporting documents.

   vi. Where the auditee is in agreement with the audit findings, he may make voluntary payments of duty, interest or other sums due, if any, in part or in full and the proper officer shall record the same in the audit report.

   vii. Where proper officer has asked the auditee to furnish information, document, record or sample for the purposes of audit, it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.

   viii. The proper officer shall complete audit in cases where it is conducted at the premises of the auditee within thirty days from the date of starting the audit.

   Provided that the jurisdictional commissioner of customs may extend the period of completion of audit from thirty days to sixty days , by an order in writing.

4. **Assistance of professionals:**

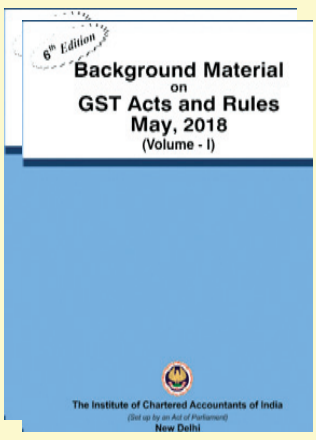
   If the proper officer, having regard to the nature and complexity of the audit, is of the opinion that the audit has to be done with the assistance of a professional like Chartered Accountant, Cost Accountant, an expert in the field of computer sciences or information technology etc, may do so, with the previous approval of the Commissioner/ Commissioner of Customs.

5. **Penalty :**

   Any auditee, who contravenes any provision of these regulations or abets such contravention or fails to comply any provision of these regulations with which it was his duty to comply, shall be liable to a penalty which may extend to Rs. 50,000

[Notification No. 45/2018-Customs (N.T) dated 24th May, 2018]

PUBLICATION



Volume 1 & 2

The Indirect Taxes Committee of ICAI keeps the members updated with the changes through its updated/revised publications which members may subscribe. The Committee has recently revised the publication:

Background Material on GST Acts and Rules-May 2018 (Revised Edition)

Background Material on GST Acts and Rules- May 2018 Edition (Two Volumes: Vol-1: Act & its analysis along with Rules, Vol-02: Notifications, Circulars & Orders) contains in-depth clause by clause analysis of the GST Acts and Rules made thereunder along with the corresponding FAQ's, MCQ's, Flowcharts and Illustrations etc. to make the reading and understanding easier.

Ordering Information

The Publication can be purchased directly from the sales counter at the ICAI's Regional Offices / Branches or at the Head Office. Member may also download it from the website of Indirect Taxes Committee http://idtc.icai.org/publications.php . To order online, requisition may be made at https://icai-cds.org/

AUTOMOBILE SECTOR – LATEST IMPLICATIONS OF GST

Automobile Sector or the Automobile Industry (auto sector / auto industry in short) is one of the largest, growing and dynamic sectors in the Indian economy. To emphasise its significance in the Indian economy, during 2015-16 for which data is available, the auto sector accounted for 7.1% of country's GDP and provided employment (direct and indirect) to 29 Million people. Most major global automobile manufacturers now have their manufacturing facilities in India. The auto sector, including the vehicle manufacturing activity, is spread over a number of States in India making it a very crucial contributor to exchequer in almost all the States.

The auto sector comprises of Automobile Manufacturers (OEMs) who manufacture Motor Vehicles, Auto Ancillaries supplying components to the OEMs, the Dealers of OEMs and providers of associated services for vehicles.This article intends to focus on the GST implications from the OEM perspective. The Automobile manufacturing broadly has for segments – passenger cars including utility vehicles, commercial vehicles – for goods & passenger application, three wheelers (again for goods & passenger application) and two wheelers. Just to give an idea about the numbers, the Gross Turnover of the Automobile Manufacturers in India during FY 2015-16 in terms of US Dollars was 63,866 Million which increased to 67,724 Million in FY 2016-17. While the data on Gross Turnover for FY 2017-18 is not available, during FY 2017-18, the industry produced 29.07 Million vehicles, higher than any of the earlier years. This makes it one of the largest players in the world in each of the segments. The auto sector also has strong presence in exports and 4.04 Million vehicles were exported from India in 2017-18. In terms of number of vehicles, two wheelers are by far the most popular form of vehicles sold in India, accounting for 81% of Domestic Sales and 80% of the vehicles produced in FY2017-18. (Source siamindia.com Statistics)

Auto sector's operations are somewhat complex from tax angle. Under the pre-GST provisions, the sector on the whole had complicated tax structure in terms of multiple taxes with diverse provisions, multiplicity of classifications & rates, cascading effects, issues on set off of taxes suffered at earlier stage, valuation issues etc., besides being subjected to fairly high rate of taxation, generally varying somewhere between 28% and 56% of price. The sector has always welcome and supported the concept of value added taxation around which GST is built, despite challenges in implementing such a major change, in anticipation of having simple & rational tax structure under GST and also rational rates of taxation on its products. On review of actual year one working under GST, the impacts thereof on OEMs are seen as both positive and negative, though the extent of such impact would vary between the segments referred to above depending on their existing business processes and tax structure & issues. The GST implications from OEM perspective and expectations from GST, both positive and negative, and some of the pending issues that need attention aredealt with below under different headings / areas of possible impact and in doing so, the changes brought about through the subsequent Notifications have also been considered.

1. Tax on the end customer:

(a) Subsuming number of taxes into two taxes – CGST & SGST, with uniformity of legal provisions across States, common tax base for both taxes avoiding cascading of tax on tax, as well as doing away with valuation methods like Rule 10A and MRP based valuation for spare parts, are major positives. On the negative side, State level Vehicle Tax/ Road Tax is not subsumed in GST despite strong recommendation from auto industry and will continue to be extra cost to the end customer. Moreover, this tax would remain in State domain and States may be tempted to hike the same for revenue considerations.

(b) The multiplicities of classifications and the possibility of consequent disputes is reduced. However, due to cess levy & flexibility available to the Government in fixation of its rates, multiple rates still prevail which need to be restricted to minimum, ideally to two rates (other than concessional rates specifically provided).

(c) Under the earlier tax regime, Central Excise Duty and CST were not payable on transportation cost of vehicles directly sold from OEM factory to dealer, which was a common distribution practice for cars and two wheelers. Due to concept of composite supply, post GST, such transportation cost (which is a sizable amount) suffers tax at same rate as applicable for the vehicle. Similarly, under GST, the final price to the customer is subjected to full tax incidence against Central Excise Duty which was not applicable on trading margins. These two changes have the effect of broadening the tax base.

(d) High rate of tax on Passenger Cars, other than those which merit classification as small car, has been one of the grievances of the auto sector. In the tax rates initially notified under GST, taking cognizance of this, the rate of tax on high end Passenger Cars and Utility Vehicles was significantly lower compared to existing rates and some benefit was also offered in rate of tax on mid-size cars compared to earlier rates. However, by Notification No. 5/2017 – Compensation Cess (Rate) dated 11.09.2017, the Cess on these Cars was

increased, substantially nullifying the above benefit. A table showing combined rate of revised tax under GST vis-à-vis pre-GST rate on major categories of vehicles is attached as Annexure A. The GST rates would apply on a wider base value, as mentioned in (c) above. It will be seen that the change in rates is marginal if we consider the increase in base value.Thus, the issue of higher rates of tax on cars remains mostly unaddressed.

(e) The concessional rate of tax for Hybrid Cars(other than those meeting small car criteria) in earlier tax regime has been withdrawn in GST and they are subjected to tax @43%, which is a major set- back to the upcoming segment.

(f) As regards post sale repairs and servicing, there is ambiguity on its tax treatment due to composite supply concept. Government needs to confirm its acceptance on the current industry practice of treating spare parts / material used as supply of goods and labour as supply of service rather than treating the activity as composite supply which would be very subjective and dispute prone.

(g) Though this is not auto sector specific, limiting the value and rate of tax applicable on supplies of old and used vehicles is a welcome step as the same would restrict the double tax incidence on same goods (Reference Notification No. 8/2018 – Central Tax (Rate), Notification No.9/2018 – Integrated Tax (Rate) and Notification No. 1/2018 – Compensation Cess (Rate), all dated 25.01.2018).

2. Impact on cost of production and distribution:

(a) Major positive is reduction in costs (though some of these benefits have to be passed on to customers in terms of anti-profiteering provisions), mainly on account of the following:

1. Saving of 2% CST on inter - state procurement.
2. Saving on VAT surrender where sales to customers in other states are routed through depots – mainly commercial vehicles - as well as on transfers of semi-finished goods to other factories in different states – 4% or even more of corresponding purchases within State.
3. Saving in octroi / LBT/ Entry Taxes without credit on procurement.
4. Input Tax Credit on outward transportation – net benefit for commercial vehicles sold through depots.
5. Vendor price reductions for corresponding benefits in supply chain.
6. Wider Input Tax Credit availability e.g. warranty parts, services related to trading activities, items like furniture earlier out of credit chain.
7. Saving in cost of non-abatement of Central Excise Duty on post sale incentives.
8. Realignment of distribution chain e.g. number of depots restricted as depot in a State can now cater to customers in neighbouring states without extra tax implication.
9. Benefits in transportation cost due to reduction in transportation time with abolition of check posts.

(b) Further potential of saving in course of time due to tax neutrality such as through rationalization of procurement decisions on job work, level of assemblies & outsourcing, selection of vendors with location no bar, realignment of production processes even where units are in different States, eventual rationalization at vendor end as well – as all these decisions can be made purely based on operating efficiency alone.

(c) While the scope of Input Tax Credit is widened, a major negative is considerably increased compliance effort with credit matching concept and reconciliation issues. Moreover, the issue of concern is that while matching of credit with the tax actually paid is being insisted, since no formal mechanism has yet been provided by the Government for matching and confirmation of credit, the credit availed remains provisional. This issue may continue for some more time till GSTN return processes are revamped. With huge amounts at stake and with large vendor base, the auto sector is really apprehensive of this situation as even if few vendors are eventually found errant, cost implications can be very high. Keeping in view the difficulties, the Government really needs to relook at its stand on this matching obligation on recipient at least for the initial period of one to one and half years or so till the GSTN processes on return matching are revamped and stabilized.

(d) Another major negative is that in the absence of transactions at concessional rate like C Form or F Form transactions as permitted under the pre-GST laws, the requirement for working capital on inventory at all stages – in factory, at depots, in transit, at dealerships has gone up with blocking more funds in taxes. Credit accumulation issues at depot locations is another problem.

(e) In auto sector, it has been common practice for OEMs to provide dies, mould etc. as well as part of the material required by vendor (who procures rest of the material on his own account and as such does not qualify to be job worker) for supply of components to the OEM. There is ambiguity on how such items should be valued while they are sent to the vendor as well as while the vendor supplies the components and different practices are being followed with provisions interpreted differently. Since huge values and large number of transactions are involved, to avoid litigations

at later date, Government needs to come out with an amendment / Notification clarifying that the value of such supplies should be reckoned as NIL, keeping in consideration the principle of value added taxation and the fact that these are only intermediary transactions and the value of such dies, moulds etc. and material is already considered in vehicle pricing and eventually subjected to tax.

(f) The issue of place of supply in case of tooling cost recovery where component supplier and the customer are in different state is also a bone of contention. Section 10 (1) (c) of IGST Act provides that where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient. Hence, if the supplier of component develops tool in a state and the customer is located in another State, it is required to charge CGST: SGST which would not be available as credits to the customer located in different state resulting in increased cost.

(g) In case of international tooling transaction also, the cost is recovered from the foreign customer but in the absence of movement of tool from India to outside India, it fails to satisfy the condition of export of goods. The supplier has to charge GST resulting in increased cost and affecting international competitiveness of Indian automobile sector.

(h) The Input Tax Credit on supplies procured to provide fringe benefits to employees in terms of employment agreement/ conditions, is generally disallowed in GST also as under the earlier tax regime. While there is no justification for the disallowance itself in the system of value added taxation, the peculiar valuation provisions also require tax to be paid on such fringe benefits on their open market value. This is creating ambiguity and different practices are being followed. Even the Government responses are somewhat conflicting. Since auto sector employs large number of employees and it has been a trade practice of providing them with several fringe benefits, it is concerned about the issue. It is quite likely that the Government will not deviate from its policy of not allowing Input Tax Credit on supplies meant for providing benefits to employees. But to avoid ambiguities in this area, Government needs to notify that the value of any supplies to employees in terms of employment agreement / conditions will be taken as Nil as no Input tax Credit is allowed on the corresponding supplies used for the same.

(i) In order to receive supplies from vendors in other states just in time as per production requirements, one of the practices followed is vendor despatching the same little ahead of delivery schedules and the supplies being held at transporter warehouse at OEM location and supplied as per OEM requirement. With E way bill procedures, there is apprehension that under such arrangement view may be taken that these are local supplies requiring vendor to take registration at transporter warehouses, treat supplies as internal transfers, take credit and pay tax as local supplies on actual supply to OEM from the warehouse. This will complicate the existing practice.

(j) Variation in the price of components is a common practice in the industry. The effect of such price variation has to be given by issuance of credit note/ debit note. In view of the requirement to mention the reference of original invoice on the credit note/debit note, the component supplier is required to issue

3. Impact on the State Incentives / Subsidies and on Area based Central Excise exemption:

(a) The State Governments have either not come out with policy on how they would deal with the issue in changed tax structure under GST or have restricted the quantum of benefit to SGST, thereby denying benefit on inter State supplies. This is a major negative implication for companies who made major investments in specific states keeping in mind a particular level of incentive / subsidy they would get. State Governments need to address this issue and protect the quantum of incentives.

(b) Number of OEMs and their ancillary vendors were attracted to Uttarakhand, mainly in view of the Central Excise Duty exemption scheme. While some of them have completed the period of exemption benefit before introduction of GST, some were / are still within benefit period. The exemption which in effect entailed benefit equal to 100% of Excise Duty on value addition stands withdrawn with introduction of GST. The compensation provided by the Central Government in lieu thereof in the form of budgetary support broadly works out to amount equal to sum total of 58% of CGST paid through debit in cash ledger and 29% of IGST paid through debit in cash ledger (in both cases after utilization of Input Tax Credit of Central Tax and Integrated Tax) – again a negative impact for auto sector.

4. Compliance effort:

(a) The auto sector has revamped its internal tax function in line with requirements under the GST regime and put in extensive efforts in setting up new internal processes, new accounting and IT system to comply with GST requirement after study of GST law and in particular some new concepts therein. Extensive effort has also been put up in re-working of product pricing and cost implications at vendor end as well as on training – both internal as well as for vendors and dealers.

(b) Easier compliances in some matters like uniform legal

provisions across states, lesser classification issues, no forms collection, no GAQ computation on stock transfers, no Section 4A / Rule 10A valuation, no issue of pre-determined sale etc. reduce the compliance effort.

(c) However, the experience is that the overall compliance effort has increased due to requirement of matching input tax credit to tax payment by vendor as well as due to requirement of paying full tax and availing credit at corresponding location on all internal transfers of goods or services and need to strengthen the tax function at locations like depots, branches etc. to take care of this aspect. Compliance of anti-profiteering provisions is another new area for compliance.

(d) In auto sector, it is common practice to collect payments against supplies in advance and considering the operating complications, compliance of requirement to treat point of receipt of advance as time of supply involved lot of efforts. Vide Notification No. 66/ 2017 – Central Tax dated 15.11.2017 the said requirement with regard to advances received has been dispensed with for goods which is a positive development for auto sector.

(e) On the procurement side, the retrospective price amendments are frequent. The practice during the pre-GST period was to issue combined debit / credit note for the same i.e. one document covering number of earlier supplies. Requirement of one debit note / credit note per corresponding original invoice results in sizable increase in administrative effort in accounting for such transactions.

(f) Number of companies in auto sector had taken registration under LTU and Centralized Service Tax Registration mainly to facilitate centralized administration. Absence of such arrangements has led to completely decentralized tax administration at registrations in respective States, under different authorities, Central or State, with possibility of different views being taken by the authorities on the same issues. This is a matter of concern for auto sector as most companies have registrations in several States.

Overall Conclusion:

After almost one year of working, the implications of GST on auto sector have been both positive and negative (leaving aside the teething problems), as discussed earlier. Besides, as stated earlier, they vary from segment to segment and even within sub-segments. A comparison of performance of Auto Industry during FY 2017-18 in terms of numbers vis-a-vis FY2016-17 is given in Table attached as Annexure B. While it shows good overall growth in numbers under the selected criteria, one has to understand that such changes are reflection of a number of more important factors such as economic conditions, changes in market conditions, differences in conditions & specific issues in years being compared and taxation is just one of the factors having bearing. Besides the comparison is in numbers and the overall respectable growth number is reached through relatively better performance in two wheeler and three wheeler segments. However, based on these figures, within limitations of what has been mentioned of such comparisons,one can conclude that the overall impact of GST on auto sector in it's very first year has not been negative and the sector despite the initial issues has migrated to the new tax system with the extensive efforts put in for the same. There have been negative implications and areas of concerns on which auto sector has been representing to the Government and positive response thereon will help growth of the sector and strengthen its position and contribution to the economy.

Contributed by ICAI IDT Study Group (Pune)

Annexure 'A'

POST GST CHANGE IN PERCENTAGE OF TAX APPLICABLE ON MAJOR CATEGORIES OF MOTOR VEHICLES

Sr. No.	Type of Vehicle	HSN Code	Pre GST duties & taxes			Post GST	Post GST
			Central Excise incl. Cesses	VAT & CST* (Approx.)	Total	(CGST + SGST incl. cesses)	difference in tax % $$
			%	%	%	%	%
1	Passenger Cars including UVs:	8703					
(a)	Small Car - Petrol		14.63	18.07	32.70	29	-3.70
	length < 4000mm engine cc < 1200						

(b)	Small Car - Diesel		16.13	18.31	34.44	31	-3.44
	length < 4000mm engine cc < 1500						
(c)	Mid - segment car		29.13	20.37	49.50	45	-4.50
	length > 4000mm engine cc < 1500						
(d)	Large Car		32.13	20.83	52.96	48	-4.96
	length > 4000mm engine cc > 1500						
(e)	Sports Utility Vehicle/ Utility vehicle		35.13	21.30	56.43	50	-6.43
	length > 4000mm engine cc > 1500						
	ground clearance > 170 mm						
(f)	Hybrid Car		13.63	17.91	31.54	43	11.46
	mid segment and large						
(g)	Electric Car		7.13	8.70	15.83	12	-3.83
2	Fully Built Commercial Vehicles	8704 &					
(a)	(Goods truck, bus > 13 persons) Diesel	8702	12.63	15.20	27.83	28	0.17
(b)	Tractors - Automobile	8701	12.63	15.20	27.83	28	0.17
	(Road Application)						
(c)	Special Purpose vehicles	8705	12.63	15.20	27.83	28	0.17
3	Chassis - diesel - for Goods truck	8706	13.13	15.27	28.40	28	-0.40
	-for bus > 13 persons		14.13	15.40	29.53	28	-1.53
4	Two Wheelers - Petrol	8711					
	Motor cycles - engine capacity > 350 cc		13.63	17.91	31.54	31	-0.54
	Other Motor cycles, scooters, mopeds		13.63	17.91	31.54	28	-3.54
5	Three wheelers (other than electric)	8703 &	12.63	17.75	30.38	28	-2.38
		8704					

* Varied from state to state & also depended on distribution model. Some local taxes also applied.

$$ Dealer margin was not subjected to Central Excise Duty and CST. Similarly, in case of cars and 2/3 wheelers, generally sold directly from OEM factory to dealer, the transportation charges were not subjected to Central Excise Duty. These two elements are also subjected to GST which will reduce / nullify the apparent benefit in rate of tax.

Annexure 'B'

Performance of Automobile Industry during FY 2017-18 vis-à-vis FY 2016-17 - Number of vehicles

Category	Production Trends			Domestic Sales Trends			Export Trends		
	2016-17	2017-18	Change %	2016-17	2017-18	Change %	2016-17	2017-18	Change %
Passenger Vehicles	3,801,670	4,010,373	(+) 5.49	3,047,582	3,287,965	(+) 7.89	758,727	747,287	(-) 1.51
Commercial Vehicles	810,253	894,551	(+) 10.40	714,082	856,453	(+) 19.94	108,271	96,867	(-) 10.53
Three Wheelers	783,721	1,021,911	(+) 30.39	511,879	635,698	(+) 24.19	271,894	381,002	(+) 40.12
Two Wheelers	1,99,33,739	2,31,47,057	(+) 16.12	1,75,89,738	2,01,92,672	(+) 14.80	2,340,277	2,815,016	(+) 20.29
Grand Total	2,53,29,383	2,90,73,892	(+) 14.78	2,18,62,128	2,49,72,788	(+) 14.23	3,479,169	4,040,172	(+) 16.12

Source : siamindia.com Statistics - Performance of Auto Industry during 2017-18

GST ON TRADING OF TRANSFERABLE DEVELOPMENT RIGHTS (TDR'S)

I. Introduction

a. State Governments across India have evolved a method of compensating the loss for acquisition of land / building for developmental purposes. Till recently, the State would pay monetary compensations to the land owner on compulsory acquisition of land / building. This methodology envisaged huge cash outflows in the hands of the State, apart from leading to prolonged litigations on the ground that the landowner has not been compensated market values. In order to arrest this trend, States have come out with a concept of issue of "Transferable Development Rights (i.e., TDR)" to the property owner.Based on the intensity of development, the city in a State is normally divided into:

   i. Intensively developed (A-zone);
   ii. Moderately developed (B-zone); and
   iii. Sparsely developed (C-zone);
   iv. Others (D-zone).

b. The transfer of Development Rights shall be from intensely developed zone to other zones and not vice versa.It is pertinent to understand and analyse the meaning of TDR and the relevant provisions of the law which are as follows:

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

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

e. The main purpose of the entire process is to acquire the required amount of land in a hassle free manner. The DRC is like a scrip, which once received,will allow the land owner an additional built up area in return of the area for which he has relinquished his rights. It also enables him to either develop the given area by himself or transfer/ trade in the market wherein the holder of DRC can sell the same to local builder or any other person for a consideration. DRC issued to land owners, if transferable, is known as Transferable Development Rights (TDR).

II. Taxability of TDR's in a GST Regime

1. The moot question that arises is whether the transfer of TDR amounts to supply and whether the same shall be liable to GST. To answer this question, we need to analyse the provisions of the GST law as under:

2. As per Section9 of the Central Goods and Service Tax Act, 2017 (CGST Act), Central GST shall be levied on all intra-state supply of goods or services or both. Section 2(52) of the CGST Act defines the term 'goods' as "every kind of moveable property other than…..". Further, 'service' as defined under Section 2(102) of the CGST Act covers "anything other than goods,……".

3. As such, it becomes necessary to understand the meaning of the expression "movable property". In as much as the tax enactments do not define the said expression, one has to adopt the definition in the respective State's General Clauses Act. But these definitions in the General Clauses Act too, are not very helpful. All that they say is that movable property means property of every kind except immovable property.

4. It would be appropriate to notice the definition of "property" in clause (11) of section 2 of the Sale of Good Act, 1930. It reads: " 'property' means the general property in goods, and not merely a special property". It is noteworthy that both these definitions seek to spread the net as wide as possible. While the definition of "goods" includes every kind of movable property within its ambit, the definition of "property" says that it includes not merely special property, but general property in goods as well.

5. In the above backdrop, the relevant question that arises here is that if service covers anything other than goods, then does this mean that immovable property is service and hence liable for GST and - if yes, whether TDR's can be considered as an immovable property.

6. The term 'immovable property' has not been defined under GST law. The General Clauses Act, 1987 defines "immovable property" as to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.Section 2(6) of the Registration Act, 1908 defines "immovable property" to include land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

7. In order to further understand the meaning of the term 'benefits to arise out of land', The interpretations of the Hon'ble Supreme Court on the various judicial rulings must be read as under:

   a. Lake is an immovable property and therefore the petitioner's right to enter in that estate, which he does not own and take away fish from the lake is a 'Profit a Prendre' and in India it is regarded as a benefit to arise out of the land and hence it is immovable property. - Anand Behera v. State of Orissa (1955) 2 SCR 919.

   b. Felling, cutting and removing bamboos from forest for the manufacture of paper is a benefit to arise out of land and hence it would be an interest in immovable property. - State of Orissa v. Titagarh Paper Mills Company Limited AIR 1985 SC 1293. Right to enter upon land and cut trees is a benefit arising out of land - Shantabai V. State

of Bombay AIR 1958 SC 532.

c. Congregation of buyers and sellers is enough to constitute a bazaar and the right to hold a bazaar is an interest in the land - Bibi Sayeeda v. State of Bihar (1996) 9 SCC 516. Further, Hon'ble Mumbai High Court in a case of Chhada Housing Development Corporation v. Bibijan Shaikh Farid reported in 2007(3) Mah. L.J.P. 402 lay down that "the expression TDR, is transfer of development rights, which enables the FSI to be used on any other plot of land generated from some other plot and can be used in terms of DC Regulations in force. It is the benefit arising out of land and is immovable property.

On an understanding of the law laid down by various Courts, of the term 'immovable property, it can be safely stated that TDR's are the benefits arising out of the land and the same is an immovable property.However, it may be noted that all immovable properties are not liable for GST, as supply of service under GST Law.

8. It would be interesting to note that Schedule III to the CGST Act contains a negative list, enlisting activities which shall neither be treated as supply of goods nor supply of services.

✓ Paragraph 5 of Schedule III covers 'sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building'.

✓ Paragraph 6 covers Actionable claims, other than lottery, betting and gambling.

i. At this juncture, it shall be important to understand whether the grant of development right and subsequent transfer of interest in land by land owner amounts to sale of land or not?It may be noted that the expressions 'land' or 'sale of land' has not been defined under the GST Law.

a. Let us first analyse the word 'sale'. As per Section 54 of Transfer of Property Act, 1882, ''sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Hon'ble Bombay High Court in the case of Provident investment Co. Ltd vs Commissioner of income tax – AIR 1954 Bom 95 observed that a sale or transfer presupposes the existence of the property which is sold or transferred. It presupposes the transfer from one person to another of the right in the property.

b. Hon'ble Guwahati High Court in the case of Nagen Hazarika vs Manorama Sharma – AIR 2007 Gau 62 held that the expression 'title' is a broad expression in law which cannot always be understood as akin to ownership. It conveys different forms of a right to a property which can include right to possess such property.

c. As per Aiyar's Law Dictionary, the expression 'title' in the general proposition means that, when equities are equal that he has the legal title will be preferred, includes in its broadest sense all rights capable of being enjoyed and secured under the law. One holding a legal title of lands is certainly included but rights amounting to less than the full legal title are equally included with it. Title to land is the evidence of his right or the extent of his interest.

d. The apex Court in the case of Sunil Siddhartha Bhai v. CIT – AIR 1986 SC 368 observed that in its general sense, the expression 'transfer of property' connotes passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only, out of all may be a reduction of the exclusive interest in the totality of rights of the original property is a larger interest than a share in that property. To the extent to which exclusive interest is reduced to a shared interest it would seem that there is transfer of interest.

e. In Syndicate Bank vs Estate Officer – AIR 2007 SC 3169, the Supreme Court held that a jurisprudential title to a property may not be title of an owner. A title which is subordinate to an owner and which need not be created by reason of a registered deed of conveyance may at times create title. The title which is created in a person may be a limited one, although conferment of full title may be governed upon fulfilment of certain conditions. Whether all such conditions have been fulfilled or not would essentially be a question of fact in each case.

ii. On an understanding of the above judgements, we can infer that the word 'sale' denotes transfer of title which is irrevocable and permanent. Hence 'sale of land' denotes 'transfer of title in land'.

✓ Now coming to the meaning of the term 'land', it is pertinent to note that the term 'land' has also not been defined in the GST law. Therefore, the question arises as to whether 'land'means only full title in land or even other interest in land? For this, we need to rely on definition of land under other laws.

✓ As per Section 3(a) of Land Acquisition Act, 1894, the expression 'land' includesbenefits that arise out of land and things attached to earth or permanently fastened to anything attached to the earth.

✓ As per Section 3(4) of Bombay Land Revenue Code, 1879'land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and also shares in or charges on the revenue or rent of village or other defined portions of territory.

✓ In the case of Safiya Bee vs Mohd. Vajahath Hussain – (2011) 2 SCC 94, theApex court held that 'land' includes rights in or over land, benefits to arise out of land. The Apex court in the case of Pradeep Oil Corporation vs Municipal Corporation of Delhi – (2011) 5 SCC 270 observed that land includes benefits to arise out of land.

✓ Land development right is a right to carry out development or to develop the land or building or both - Girnar Traders vs State of Maharashtra – (2011) 3 SCC 1). It is thus a benefit out of land included within the word 'land'.One can also refer for similar observation in S.N. Chandrasekhar vs State of Karnataka – (2006) 3SCC 208 as well as Dena Bank vs B.B.P.Parekh& Co. – (2000) 5 SCC 694.

On an understanding of the law laid down in the above judgements,one can infer that the word 'land' not just includes full title in land but also rights which gives benefits associated with it. Hence, the expression 'sale of land' connotes 'transfer (irrevocably and permanently) of title in land including rights in the form of benefits arising from it'.Since, TDR's are in the nature of a benefit arising out of land, the same could be squarely covered under paragraph 5 of schedule III of the CGST, Act and hence it can be argued that TDRs can neither be regarded as supply of goods nor supply of services or both.

Similarly, in terms of paragraph 6 of the III Schedule to the CGST Act, 2017 actionable claims (other than lottery, betting and gambling) are neither goods nor services. As such, if an argument is taken that TDRs can be construed as an actionable claim, it would fail the test of taxability since actionable claims other than lottery, betting and gambling are not liable to tax under the GST Laws.

iii. We need to analyse whether grant of land development right is covered under Entry No. 2(a) of Schedule II of CGST Act or not? Schedule II to CGST Act deems certain specified transactions as supply of goods or services. Entry No. 2(a) deems any lease, tenancy, easement, license to occupy land as supply of service.

- ✓ Section 105 of Transfer of Property Act, 1882 defines lease as a transfer of a right to enjoy immovable property made for a certain time, express or implied, or in perpetuity, in consideration of price paid or promised, or money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms'.
- ✓ A license is defined in Section 52 of Indian Easements Act, 1882 as a right to do or continue to do, in or upon the immovable property of the grantor, something which would in the absence of such right be unlawful, and such right does not amount to an easement or an interest in the property.
- ✓ In Hill & Redman's law of landlord and tenant (Seventeenth Edition, Vol. 1) detailed discussion laying down the determinative tests have been laid down. One of the test isto see "if the effect of the instrument is to give the holder the exclusively right of occupation of the land, though subject to certain reservations, or to a restriction of the purposes for which it may be used, it is prima facie a lease; and if the contract is merely for the use of the property in a certain way and on certain terms, while it remains in the possession and under the control of the owner, it is a license."
- ✓ Transfer of land development rights is not a lease transaction because it is a right to develop a land. Lease is a right to enjoy the immovable property. Moreover, the transfer of land development right is permanent and irrevocable right on the land subject to agreed terms and conditions. It grants right to the developer to also sell the said rights. Lease is always for a specified duration and at the end of the same, the possession vests with the owner. Lessee has no right to sell the property.
- ✓ Further, license is a permission to use the land without the right to exclusive possession. Since TDR's involve permanent and irrevocable transfer of land, it cannot be regarded as grant of license.

It can be argued that TDRs are benefits arising out of land and transfer of TDR gives the recipient an irrevocable and permanent development rights on such land. Therefore, transfer of development rights would get covered under the expression 'sale of land' appearing in Entry No. 5 of schedule III of the CGST Act, and hence, shall neither be treated as neither supply of goods nor as supply of services.

iv. TDR is nothing but a 'document showing title' wherein the holder of TDR can construct the additional built up area in lieu of the area relinquished or surrendered by the owner of the land. It is comparable to a 'Share Certificate' which shows only a title of a share holder who holds the equity in a Company. Further, the expression "immovable property" is defined under the General Clauses Act, to "include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth". On a careful reading of the definition of 'immovable property', it is possible for one to argue and contend that TDR is nothing but a benefit which has arisen out of a portion of land that has been relinquished and therefore, the same can be construed as a right relatable to an immovable property. This view can also be supported by the fact that if one needs to buy TDR, then the same must be registered with the sub-registrar as applicable to an immovable property.

v. It therefore becomes clear that a right arising from an immovable property cannot be equated to 'movable property' or 'goods'. Assuming but not admitting that it were goods, the question of requirement of registration of the said TDR with the sub-registrar for the purpose of payment of stamp duty would not arise. It must also be borne in mind that the said TDR is also commonly understood by the trade and industry as one relatable to an immovable property. So construed, it becomes clear that the said TDR is a 'document showing title' with respect to an immovable property. Therefore, TDR cannot be viewed as 'goods' for the purpose of GST laws. However, as a matter of abundant caution it is stated that there are no settled precedents on this issue. In the event of a possible litigation it is widely believed that one has a strong case on merits to argue that TDR is right relatable to a immovable property and as such cannot be considered as goods.

Conclusion:

Thus,from the above discussion, it can be understood that consideration received towards trading of TDRs received in the form of Development Rights Certificate shall not be liable to GST. However, it is important to note that there are no direct and favorable judicial precedents available under the GST law till now and,therefore,considering the fact of the judgment rendered by the Advance Ruling Authority, New Delhi it may involve another round of litigation.

To the contrary, CBEC conferred by section 148 vide Notification No. 4/2018 – Central Tax (Rate) dated 25.01.2018 has notified that a registered persons who supplies development rights to a developer, builder, construction company etc. against consideration, wholly or partly, in the form of construction service of complex, building or civil structure shall be regarded as a class of person in whose case the liability to pay central tax on supply of the said services shall arise and accordingly and the tax shall be paid at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter). However, it is important to note that the above notification does not, and cannot create a charge on something that is not taxable within the purview of the charging section of the Act and the constitutional segregation of law making powers which as per above discussion is not liable for GST.

However, since GST is a new law and its interpretations are still developing.Until settled principles emerge by way of judicial precedents and more clarity is arrived at on the above discussed issues one may decide to:

a. Either take a conservative approach by paying GST on TDR's; or
b. Pay GST under protest and make an application seeking refund (subject to the principle of unjust enrichment); or
c. Seek an Advance Ruling in all States, and if such a ruling goes in favour of revenue, then move the Appellate Authorities / Courts for redressal of such grievance.

It appears that this vexed issue will settle only with the intervention of Courts or the Government.

Contributed by ICAI IDT Study Group (Pune)

GST CASE LAW UPDATE

1. Annapurna International vs. State of U.P. & 5 Others [2017 (11) TMI 1021 –Allahabad High Court

The Petitioner-Assessee preferred this petition before the Honourable High Court that the registration of the Petitioner-Assessee is depicted as cancelled on the GST portal without having received the order of cancellation and without providing an opportunity of being heard.

The Honourable High Court directed the Counsel representing the Respondent-Department to seek instructions whether the Petitioner-Assessee's registration has been cancelled. If yes, then it was also directed to the furnish the details of the Authority and the reasons for cancellation.

The GST law provides for the procedure to be followed for cancellation of registration. It is specified that, before cancellation of the registration an opportunity of being heard should be provided and thereafter, an order cancelling the registration should be issued to the assessee.

2. M/s Indus Towers Limited vs. The Assistant State Tax Officer 018 (1) TMI 1313- Kerala High Court

The Respondent-Department detained the goods moved under the cover of delivery challan on the grounds that the document Form KER – 1 was not being accompanied during the movement from the warehouse to the location of the various Towers where such goods were meant to be used. On receipt of the notice subsequent to detention, the Petitioner-Assessee had uploaded the details and furnished the Form KER – 1. The proper officer rejected the declaration furnished after the detention of goods and directed the Petitioner-Assessee to remit the applicable taxes and penalty to seek release of goods.

The assessee argued that the said goods confiscated / detained were purchased from another State and accordingly IGST were paid during such purchase.He pleads that the declaration in Form KER-1 was not filed due to an inadvertent omission of their employees. However, the details of goods being transported was uploaded and the declaration was generated after receipt of the notice which was duly filed.

Such goods were transported with proper 'delivery challan' the authenticity of which was not questioned. Accordingly, it was contested that the goods should not be detained as per Section 129 of CGST Act and SGST Act.

On the other hand, Revenue argued that the petitioner has contravened the provisions of CGST and SGST Act, 2017 and hence as per Section 129 of the CGST / SGST Act, 2017, the detention of the goods is legal. The goods were being transported without being accompanied by Form KER-1 and the same was filed only after the goods were detained. Therefore, it was contested that the there is a contravention of law at first stage itself. Detention of goods are allowed under Section 129 of CGST / SGST Act, 2017 irrespective of the fact that as to whether they are taxable or non-taxable.

The Honourable High Court considering the submissions made by the Petitioner-Assessee held that Section 129 of the CGST / SGST Act, 2017 talks about detention of goods only when the movement is under suspicion. Moreover, Section 130 of CGST / SGST Act, 2017 provides that confiscation of goods is contemplated under the statutes only when a taxable supply is made against the provisions contained in the statutes and the Rules made there under with an intent to evade payment of tax. Any procedural lapse with GST Rules does not amount to taxable supply and as such, cannot result in detention of goods. However, it may result in imposition of penalty. Accordingly, the order levying tax and penalty were quashed and the Respondent-Department was directed to release the goods forthwith.

It was concluded that the goods during its movement can be detained and confiscated only if the proper officer has reason to believe that such movement is with an intention to evade payment of taxes. Detention of goods on the grounds that the e-way bill is not accompanied without questioning the other documents during the movement would not lawful.

3. M/s Manu International vs. State Of U.P. And 5 Others 2018 (2) TMI 39 - Allahabad High Court

Petitioner Assessee was unable to file the returns under the GST laws and remit the taxes due to issues faced during migration of registration in GST. The Respondent Department issued user id and password which depicted the PAN of the partner instead of the firms PAN.

The Counsel for the Respondent-Department has sought one week's time for obtaining the instructions and to ensure the mistake is rectified and a fresh ID/password with the correct PAN number is issued to the petitioner so that there may not be difficulty in the migration of the registration certificated and consequently, filing of the return for the month of July and August, 2017.

The Honourable High Court directed that no penal actions shall be taken or initiated against the petitioner for non-filing of returns and non-payment of taxes under GST for the month of July 2017 and August 2017 if the petitioner files monthly returns for the said period within two weeks of issuance of correct ID / password or pays the taxes within two weeks of filing of returns.

Thus, the penalty should not be imposed where the assessee is unable to file the returns and pay the taxes for technical issues relating to migration.

4. M/s. Sameer Mat Industries And M/s. Kaleel Mat Industries Versus State of Kerala, The Assistant State Tax Officer, Thiruvananthapuram And Fathima Store2017 (12) TMI 202 - Kerala High Court

The Petitioner-Consignor has transported the goods from Tamil Nadu to Pattambi, Kerala. During the movement, the goods were detained by the Respondent-Officer. On verification of the goods detained, it was found that there was a mis-classification of the goods as per the invoice accompanied with the goods, giving rise to a rate difference of 28% (instead of 18%). The Petitioner-Consignor has preferred the writ petition against the detention notice issued by the Respondent-Officer on the ground that, the said notice which is issued under CGST/SGST Act, 2017 is applicable for intra-state movement of goods only. However, the Petitioner-Consignor has effected an inter-State movement of goods in which case, IGST is applicable on the said goods.

The specific power invoked in issuing the impugned notice is under the CGST/SGST Act, 2017 which is applicable only to the intra-State movement of goods. Therefore, the petitioners shall be permitted to release the goods on the execution of simple bond without sureties as expeditiously as possible. Also held that, the detaining officer shall inform the assessing officer of the consignee who would be entitled to take appropriate proceedings at the time of assessment of the Consignee. Consequently, this writ petition is allowed making it clear that the impugned notice shall be deemed to be one under the IGST Act, 2017 and that the Petitioner-Consignor and the Consignee shall co-operate in the adjudication proceedings under the IGST Act, 2017 by respective assessing officer of the Consignee.

The detaining officer cannot issue notice under CGST / SGST Act in case of inter-State movement of goods. The recovery proceedings due to mis-classification and under valuation of goods can only be taken up by the respective assessing officers and not the detaining officer. Therefore, in such cases the detaining officer shall intimate the respective assessing officer before the release of the goods detained by him. The respective assessing officer shall take up further, the adjudication proceedings in this regard.

5. M/s Ramdev Trading Company And Another Versus State Of U.P. And 3 Others 2017 (12) TMI 341 - Allahabad High Court

The Petitioner-Assessee has effected inter-State sale from Rajasthan to Assam, through Uttar Pradesh. The goods were seized by the Respondent-Department in the State of UP on the grounds that the goods were not accompanied with TDF as prescribed under Rule 138 of the UPGST Rules, 2017 and that on physical verification, the goods were mis-described as per the invoice. Consequently an order under Section 129(3) was issued by the Respondent-Department imposing penalty. However, there were no allegations in the said order against the Petitioner- Consignor that there existed a malafide intention to evade payment of taxes.

The Petitioner-Assessee preferred the appeal on the grounds that absence of TDF is purely technical and not with an intention to evade payment of taxes. Since the goods were being transited through the State of UP, it was contested that the issue relating to mis-description of the goods may be communicated to the relevant authorities of the concerned State/s as it is not under the jurisdiction of the Respondent-Department to issue a notice under the UPGST Act, 2017 for an inter-State movement of goods.

The Honourable High Court of Allahabad held that the Petitioner-Consignor was never alleged in the show cause notice as to why penalty may not be imposed on account of his intention to evade tax. However, in the penalty order, the Respondent-Department has recorded that the petitioner had an intention to evade tax by unloading the goods inside the State of UP. The transport of goods were accompanied by the invoice and other documents to support the fact that the goods were not unloaded in the State of UP. Therefore, the observation made in the penalty order is only an afterthought and cannot be relied upon by the State to justify the imposition of penalty. Therefore, mere absence of TDF without an intention to evade taxes, is purely a technical breach and therefore penalty is not sustainable on the said grounds.

With regard to seizure of goods on account of mis-declaration of goods it is held that the issue or question involves peculiar facts and therefore is being left open to be decided in an appropriate case.

6. Iqra Roadways (India) Thru' Its Prop. & 3 Others Versus State of U.P. & 3 Others 2017 (11) TMI 1032 - Allahabad High Court

The Petitioner-Assessee has effected inter-State purchases from Delhi and the said purchases are accompanied by requisite documents such as tax invoice, Transport document (Bilty) as well as an e-way bill except for two invoices. However, the Respondent-Authorities have detained the goods and the conveyance. After physical verification of the goods, a detention notice was issued subsequently indicating therein the value of the goods and the tax demanded as calculated by the Respondent-Department aggregating Rs. 1,11,564/-. The Petitioner-Assessee aggrieved by the said proceedings, preferred this writ.

The petitioner assessee argued that the goods detained by the Respondent-Department are duly accompanied with requisite documents except for few invoices as the value of invoices were below Rs. 50,000/-. Since the goods purchased were in the course of inter-State trade, the Respondent-Department, being an authority of UPGST Act, 2017 is not authorized to seize the goods as the goods were covered under the provisions of the IGST Act, 2017.

The Respondent department argued that the goods accompanied with documents have already been released by the Respondent-Department. Only the goods not accompanied with valid documents have been seized under the provisions of the UPGST Act, 2017.

The Hon'ble High Court found that the issues on which writ petition was preferred were facts. In the interest of justice the Petitioner-Assessee may prefer an appeal before the First Appellate Authority in which case it was directed to decide the matter within a period of two months. It is further directed that the First Appellate Authority may not insist for deposit of any penalty amount for hearing and admission of the appeal.

It was concluded that the High Court cannot entertain the matter if it involves issues relating to facts. In such case, the appeal may be preferred before the respective appellate authorities.

7. Age Industries (P.) Ltd. Versus Assistant State tax Officer 2018 (1) TMI 1116 - Kerala High Court

The Petitioner-Assessee, has preferred a writ petition before the Honourable High Court against a detention notice issued by the Respondent-Department. The Petitioner-Assessee, a manufacturer of surgical gloves sent one consignment for quality appraisal on job-work basis under the cover of 'delivery challan' as per Rule 55 of the CGST / SGST Act, 2017. The goods transported by the Petitioner-Assessee had been detained by the Respondent-Department on the grounds that the goods are not accompanied by an e-way bill as prescribed under Rule 138 of CGST/SGST Rule, 2017. It was also alleged that the goods were being transported to an unregistered person with an intention to evade payment of taxes.

The Petitioner-Assessee preferred this writ petition on the grounds that, the goods cannot be detained merely on the ground that the movement of goods was not accompanied with an e-way bill as per Rule 138 of the CGST / SGST Rules, 2017. The Petitioner-Assessee also contends that the Respondent-Department cannot suspect tax evasion merely because the goods are transported to an unregistered person.

The Honourable High Court of Kerala held that there is no taxable supply when goods are transported under the cover of 'delivery challan'. So far as the authenticity of delivery challan is not doubted, such goods cannot be detained under Section 129 merely due to infraction of Rule 138 of the CGST/SGST act, 2017.

It was concluded that as long as the authenticity of the delivery challan is not doubted, detention of goods under Section 129 of the CGST/SGST Act, 2017 on account of absence of e-way bill is unsustainable. The defect, if any, in the delivery challan shall be mentioned in the detention notice. The detention of the goods cannot be sustained when the reason for such detention is not mentioned in the detention notice.

8. M/s Jaap Auto Distributors vs. The Assistant Commissioner of Customs [2017 (10) TMI 881 – Madras High Court

The Petitioner-Assessee preferred this petition against the Order-in-Original issued under Section 17(5) of the Customs Tariff Act, 1975 wherein the assessing officer re-classified the goods as liable to tax (IGST) at the rate of 18% instead of 12%. It is due to such reason the Petitioner-Assessee had contested that the assessing officer under the provisions of the Customs law is not proper officer under the provisions of GST law insofar as levy of IGST on import of goods is concerned.

The writ petition was dismissed on the ground that the Writ Court cannot make a fact finding exercise to ascertain, which would be an appropriate entry under which the goods are to be classified. In fact, under the normal course in respect of classification disputes, the High Court cannot entertain an appeal against an order passed by the CESTAT as appeal lies to the Hon'ble Supreme Court in respect of classification issues or matters concerning rate of tax. Accordingly, the writ petition was dismissed leaving it open to the petitioner to file an appeal before the appellate authority.

It was concluded that the Writ Court cannot entertain the writ petition involving classification of goods issue.

9. Nila Infrastructure Limited & 1 vs. Surat Municipal Corporation & 1 2017 (11) TMI 809 - Gujarat High court

The petitioner preferred this writ petition pursuant to the rejection of application with respect to "Development of Integrated Group Housing Facility" by Surat Municipal Corporation due to non - payment of GST @18% along with the bid fee. The application was rejected even after the applicable GST on the bid fee was remitted after effecting payment towards bid amount.

The Petitioner-Assessee argued itas absolutely illegal and most arbitrary. Since the Respondent-Corporation did not provide the GST registration details, the Petitioner-Assessee appropriately computed the GST liability under reverse charge mechanism and remitted the applicable taxes thereon within the due date provided under the GST laws.Payment of bid / document fee or tender fees cannot be said to be a condition of the tender or the eligibility and therefore, bid cannot be held to be non-responsive for non-payment of tender fee. Non-payment of aforesaid amount in full (with GST @18%) cannot be said to be non-fulfilment / non-compliance of the essential condition relating to the eligibility and / or evaluation of the bid on merits. The Petitioner-Assessee remitted the applicable GST under reverse charge mechanism. Therefore, it was submitted that the Petitioner-Assessee can be said to have complied with relevant terms and conditions of the eligibility criteria.

On the other hand, Revenue argued that the mandatory condition to be eligible for the bid was to deposit document / bid fee along with applicable GST as stipulated in the terms and condition of the tender notice. As the conditions stipulated by the Respondents-Corporation were complied by all the bidders, therefore being rejected on the ground of non-compliance of essential condition of non-deposit of entire bid tender document fee does not give the entry at the initial stage itself.Until all the terms and conditions are satisfied, the petitioner does not get any right to consider its bid.

The Honourable High Court dismissed the writ petition after considering the submissions:-

1. The Petitioner-Assessee is not considered to be the tenderer at all by the Respondent-Corporation on non-deposit of entire amount of bid document fee, which as such was required to be paid as per the terms and conditions of the tender document.
2. Only those parties who paid the EMD and tender fee along with GST electronically and thereafter in the physical format within the stipulated time is required to be considered the tenderers / bidders.
3. The Respondent-Corporation considered the payment of bid / document fee as an essential condition relatable to the eligibility on merits and therefore, non-compliance with the same would render the Petitioner-Assessee as ineligible

It was thus concluded that failure of bid basic conditions shall disqualify the applicant.

10. M/s R.R Agro Industries through Its Prop. Versus State Of U.P. Through Its Secy. And 3 Others [2018 (2) TMI 608-Allahabad High Court] and M/s Seth Prasad Agro Private Limited through Its Director versus State of U.P. And 3 Others [2018 (2) TMI 195 - Allahabad High Court

The Petitioner-Assessee seeks release of goods detained / seized by the Respondent-Department under Section 129 of the CGST / SGST Act, 2017 on the contention that the detention order issued by the Respondent-Department is incorrect insofar as the reference is given to the State GST law provisions when the movement was on account of inter-State supplies.It was also contested that the Respondent-Department has mis-classified the goods as "Ghamella" instead of "Taslas".

Assessee argued that the seized goods are "Taslas" which is agricultural implement and is exempt under GST Act vide Notification dated 29.06.2017 but the Respondents-Department has classified such goods as "Ghamellas" which is taxable under vide Notification dated 25.01.2018 and thus the levy of tax is incorrect.

On the other hand, Revenue argued that in respect of all the matters covered under IGST Act the provision of CGST Act applies mutatis mutandis.Therefore, order passed for seizure of such goods is not illegal.Section 20 of IGST Act specifically provides that reference should be given to the provisions of CGST Act.Therefore, the power of seizure under the IGST Act read with CGST Act is equivalent to seizure as per Section 129 of U.P.GST Act.c. Merely, on the ground that wrong provision has been mentioned in the order, the said order cannot be considered as bad in law.

The Hon'ble High Court held that the said order passed for seizure of goods shall be treated as passed under the provisions of the IGST Act, 2017 read Section 129 of CGST Act, 2017 instead of State GST Act, 2017 (UP). Further, it is directed that the said goods shall be released on furnishing of indemnity bond and security other than cash and bank guarantee of the taxable amount of the seized goods. Insofar as issue relating to mis-classification is concerned, the Hon'ble High Court admitted the case and directed the Counsel appearing on behalf of the Respondent-Department to file counter affidavit within a month. In line with this, it was directed to list the matter for final disposal immediately after the expiry of one month.

It was thus concluded that the detention of goods specifying the provision of Central / State GST laws instead of IGST laws would not render the detention or seizure as unlawful.

FORTH COMING EVENTS UNDER THE AEGIS OF INDIRECT TAXES COMMITTEE

23, 24, 30th June & 1, 7, 8, 14, 15, 21, 22nd July 2018
Place : Noida • CPE Hours : 30 Hours

Title of the Seminar : Certificate Course on GST
Contact Details : Indirect Taxes Committee of ICAI
Ph: (0120) 3045-954
Email: idtc@icai.in

Title of the Seminar : Workshop on GST
Contact Details : Jhansi Branch of CIRC of ICAI
Ph: 0510-2371711
Email: jhansi@icai.org

28th, 29th & 30th June, 2018
Place : Jhansi • CPE Hours : 18 Hours

2nd and 3rd July, 2018
Place : Indore • CPE Hours : 12 Hours

Title of the Seminar : Two Days National Conference on Indirect Taxes
Contact Details : Indore Branch of CIRC of ICAI
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ICAI'S CONTRIBUTION IN GST IMPLEMENTATION AS PARTNER IN NATION BUILDING

1. **Publications on GST**
   In order to facilitate members to have understanding of GST law, The Indirect taxes Committee has launched / revised the following publications:-
   a. E-Handbook on Job work under GST-June, 2018 Revised Edition
   b. Background Material on GST Acts and Rules- May, 2018 Revised Edition
   c. E-Handbook on GST Amendments- May, 2018
   d. Compliances of Service Tax/GST in Banking Sector- April, 2018 Revised Edition
   e. E-publication on E-way bill under GST- April,2018 Revised Edition
   f. FAQs & MCQs on GST- January, 2018 Revised Edition
   g. Background Material on Exempted Services under GST- Jan, 2018
   h. Hand Book on GST for Service Providers- Nov, 2017
   i. Booklet on-Seamless Credit- Oct, 2017
   j. Simplified GST Guide for Manufacturer- Aug, 2017
   k. Study Paper on Taxation of E-Commerce under GST- Aug, 2017
   l. E-Book on How to Get Registered under GST- Jul, 2017
   m. Bare Law on GST Act(s) and Rule(s)- July, 2017
2. **Suggestions and Representation on GST**
   a. **Submission of final Draft GST Audit Report and Statement of Particulars**
      The Institute has recently developed and submitted the GST Audit Report (Form 9C) and statement of particulars (Form 9D) to be furnished along with the report.
   b. **Simplified User-Friendly Model**
      ICAI has developed Simplified User-Friendly Model (SUF) on return filing and enabling of credit to the recipient and submitted the same to the Government
   c. **Suggestions on Annual Return on GST**
      The Committee has submitted its suggestions on "Annual Return under GST" (Form 9/9A/9B) to Goods and Services Tax Network (GSTN) on 4th May, 2018.
   d. **Suggestions on GST:** The Committee submitted 400 suggestions since 2016, out of which135 suggestions have been accepted.
3. **Certificate Course on GST:** Committee has organised 59 batches of the Course across India since 28th April, 2017. Further, 2 batches of the Course have been organised online. The Course has been attended by 5589 members.
4. **E-Learning on GST:** Two series of e-learning hosted on the website of the committee at http://idtc.icai.org/e-learning.html, which were subscribed by 2554.
5. **LIVE Webcasts on GST:** 15 live webcast were organised in 2017-18. Further, a series of live webcasts covering all topics of Certificate Course on GST was organised from 15th December, 2017 to 14th January, 2018.
6. **Programme, Workshops and Conferences:** ICAI organised 4173 programme, workshop, conferences etc. on GST from 1st January, 2017 which have been attended by approx. 3.9 lakh participants.
7. **Indirect Taxes / Legal update**
   With a view to update the members, summary of significant notifications, circulars and other important development in the area of Indirect Taxes are regularly been circulated and further uploaded on the website of the Committee.
   The Committee has recently started sending Legal Update on Indirect Taxes to the members registered on its website. Members can subscribe at http://idtc.icai.org/cc/apps/register-for-updateb
8. **Interactive Programme on GST for trade association:** 25 interactive programme on GST for trade and industry in 2017 as part of its initiatives for partner in nation building.
9. **Faculty Identification and Train the trainer Programme - An effort to develop new faculties:** 547 new faculties identified across India, making total pool of 800 faculties for knowledge dissemination. List of faculties identified is available at http://idtc.icai.org/programme-seminar.php
10. **Standardised PPT on GST**
    The Committee has developed Standardized PPT on GST and hosted on the website with a view to provide guidance to the faculty members and bring uniformity in the session of GST in the programme as well as proving a tool to members to learn GST through PPT.
11. **Support to UAE VAT Implementation**
    With a view to support the members in UAE, the Committee developed Background Material on UAE VAT (2 edition), 5 Articles and Standardized PPT etc. In addition, 10 batches of Certificate Course, a LIVE Webcasts series of 14 lecture, E-learning containing 14 video, 3 series of Identification and Training of new speakers etc. were organised for mass awareness.
12. **ICAI Newsletter on GST**
    With a view to provide updated information and analysis of GST to all stakeholder(s), ICAI has launched its dedicated Newsletter on GST and till date, 16 issues of the same have been issued, last one being issued on 17th May, 2018.
13. **Support extended to Goods and Services Tax Network (GSTN)**
    Based on the request from GSTN, ICAI extended following support:
    a) List of IT Firm collected and provided to GSTN for providing training so that IT Firm may make necessary changes compatible with GST.
    b) Sharing data of ICAI's members for online validation by GSTN.
    c) Nominating 23 members for providing feedback on the software module of GST developed by GSTN.
    d) Nominated 4 senior experts for a Committee to be constituted by GSTN for evaluating and finalising proposal for its GST accounting and billing software.
14. **Committee's immediate future initiatives:** The Committee is working on the following initiatives:
    a. Revision of BGM on UAE VAT
    b. Booklet on classification under GST
    c. Handbook on GST for Trader
    d. Guidance Note on Audit under GST

Certificate Course on GST at Nanded

Certificate Course on GST at Mathura

Certificate Course on GST at Delhi

Workshop on GST at Chittorgarh

Workshop on GST at Noida

Workshop on GST at Udaipur

Advance Course on GST at Nashik

Advance Workshop on GST at Guwahati

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