



ICAI-GST

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



**Appeals
under GST**

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President's Communication



Dear Professional Colleagues,

The gross GST collection of Rs. 1,29,780 crores for the month of December 2021, which is 13% higher than the GST revenues for the month of December 2020, is in line with the trend in economic recovery. The steps taken by the Government to ease the compliance burden and curb evasion have led to such increased collection. Measures like filing nil return through SMS, enabling Quarterly Return Monthly Payment (QRMP) scheme and auto-population of return have led to increased return filing thereby increasing revenue collections. Further, the Government has also come down hard on errant taxpayers by blocking e-way bills for non-filing of returns, system-based suspension of registration of taxpayers who have failed to file six returns in a row and blocking of credit for return defaulters.

The GST Council at its 45th meeting made many significant recommendations like charging of interest on "ineligible ITC availed and utilized" and not on "ineligible ITC availed" and allowing transfer of unutilized balance in CGST and IGST cash ledger between distinct persons which have provided much needed relief to the taxpayers. The Council also considered the issue of bringing specified petroleum products within the ambit of GST and decided that it is not appropriate to do so at this stage.

The Institute of Chartered Accountants of India (ICAI), through its GST & Indirect Taxes Committee, has been proactively supporting the Government by

providing technical inputs on various issues in GST and has also been playing crucial role in GST knowledge dissemination amongst all the stakeholders through its technical publications, GST Newsletter, live webcasts, e-learning, certificate courses, conferences, webinars, and programmes. Recently, the ICAI has submitted its Pre-Budget Memorandum, 2022 on GST with the Government.

It gives me immense pleasure to inform you that so far, the Committee has successfully organised 29 batches of Virtual Certificate Course on GST. Further, the Committee has organised 32 Virtual CPE meetings and other CPE programmes on relevant topics of GST since February 2021. You can regularly visit the website <https://idtc.icai.org> to keep yourself abreast with the frequent changes in GST law.

I am happy to present to you the 32nd issue of the GST Newsletter and hope that you shall find the same useful. In order to fight this continuing pandemic and reduce its intensity, I request all of you to get yourself vaccinated, focus on building immunity, and follow all COVID related protocols.

Let's stay safe & continue contributing to the society.

With warm regards,

CA. Nihar N Jambusaria
President, ICAI



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APPEAL MECHANISM UNDER THE GST LAW

Introduction

This article focuses on the statutory right of appeal bestowed to the taxpayer as well as to the department in case either of the party disagrees at any stage of litigation with the orders passed by the Adjudication Authority/ Appellate Authority/ Appellate Tribunal/ Court.

Right to appeal is a statutory right where the GST legislation places certain fetters on the exercise of this right (i.e., time limit, pre-deposit condition, procedure for online filing, condonation of delay, etc.). This statutory right of appeal plays a pivotal role for resolution of disputed issues under the GST law.

Relevant aspects related to the appeal procedure under the GST law are provided under Chapter XVIII (Sections 107 to 121) of the Central Good and Service Tax Act, 2017 ('CGST Act') and Chapter XIII (Rules 108 to 116) of the Central Good and Service Tax Rules, 2017 ('CGST Rules').

A. Appeal to Appellate Authority

i. Filing of appeal

Section 107 of the CGST Act read with Rule 108 of the CGST Rules provides for the appeal mechanism before the Appellate Authority under the GST law. This is the first stage of appeal under the GST law.

Section 107(1) of the CGST Act provides that any person who is aggrieved by an adjudicating order can file an appeal before the Appellate Authority within 3 months from the date of communication of the order. This period can be further extended for one month in case any sufficient cause of delay is proved by the Appellant.

Here it is pertinent to note that as per Rule 109A of the CGST Rules, an appeal can only be against the order or decision passed by the Additional or Joint Commissioner or Deputy or Assistant Commissioner or Superintendent.

Accordingly, in the case of an order passed by the Additional or Joint Commissioner, an appeal can be filed before the Commissioner (Appeals). An appeal against an order passed by the Deputy or Assistant Commissioner, or Superintendent can be filed before any officer not below the rank of Joint Commissioner (Appeals).

Here it may be noted that there is no provision for filing of any appeal against an order passed by the Commissioner. Therefore, if any specific order is

passed by the Commissioner under any of the provisions of law (for example order for provisional attachment under Section 83 of the CGST Act) then no appeal can be filed before the Appellate Authority under Section 107 or Appellate Tribunal under Section 112 of the CGST Act. Such orders can only be challenged either by way of filing the objections or by way of filing the writ petition before the High Court.

Key Aspect

An appeal before the Appellate Authority can only be condoned, if there is a sufficient cause for delay, upto a period of 30 days from the expiry of the prescribed statutory time limit for filing an appeal. However, it is pertinent to note that the GST law does not confer any power to the Appellate Authority to condone a delay beyond a period of 30 days from the prescribed period (i.e., 1 month).

ii. Procedure for filing of appeal

Under Rule 108 of the CGST Rules, an appeal can be filed in FORM GST APL-01 either electronically or otherwise along with relevant documents, grounds of appeals, and duly signed verification form. Further, under Rule 108(3) of the CGST Rules, the Appellant is required to submit a certified copy of the adjudicating order against which an appeal is filed within 7 days from the filing of the appeal. Pursuant to the same, a final acknowledgment in FORM GST APL-02 is issued by the Appellate Authority as evidence for the appeal filed. Where the certified copy of the order is submitted within the stipulated time frame of 7 days, the date of filing of appeal shall be taken as the date of issue of provisional acknowledgment.

However, in cases where the Appellant submits the certified copy of an order against which appeal has been filed, after the expiry of 7 days, then the date of filing of appeal shall be the date of submission of the certified copy of the order.

It is pertinent to note that an appeal will be considered as filed only when the final acknowledgment is issued by the Appellate Authority and not when only a provisional acknowledgment is issued. Therefore, submission of a certified copy of the order is crucial for filing of the appeal.

iii. Pre-deposit requirement

Section 107(6) and Section 107(7) of the CGST Act provide for mandatory pre-deposit for filing an appeal before the Appellate Authority. In other words, no

appeal shall be treated as a valid appeal unless the mandatory pre-deposit condition is fulfilled.

In this regard, the following key points emanate with respect to the payment of pre-deposit:

- there is a requirement for deposit of full amount of tax, interest, fine, fee, and penalty as admitted by the Appellant; and
- deposit of 10% of the remaining amount of tax in dispute is required, subject to a maximum of 25 crore rupees (each of CGST and SGST). For all the inter-state transactions, the maximum cap for the pre-deposit amount is Rs. 50 crores before Appellate Authority.

On the payment of pre-deposit amount, the recovery proceedings for the balance amount are deemed to be stayed, i.e., there is no need to obtain a detailed stay order by the appellate authority.

The following proviso to Section 107(6) of CGST Act has been inserted vide the Finance Act 2021:

“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.”

It is pertinent to note that the requirement for pre-deposit prior to this amendment was only to the extent of 10% of tax liability in case of dispute, this has now been amended to 25% of the penalty amount in case of detention and seizure of goods and conveyance during transit.

Key Aspect

No pre-deposit is required if an order does not raise any tax demand (i.e., refund cases) and where only penalty is under dispute.

However, an order passed under Section 129(3) for levying tax and penalty in case of detention and seizure of goods and conveyance during transit then the pre-deposit would be 25% of the penalty amount.

iv. Time limit for disposal of an appeal

Under the law, the Appellate Authority is required to decide the appeal within 1 year from the date of filing of an appeal. However, the prescribed time limit under the statute is a directory and not mandatory. Therefore, the Appellate Authority is expected to dispose of the appeal within 1 year from the date of filing of an appeal. This period of 1 year does not include the period of stay granted by any Court or Tribunal on the issuance of order to be passed by the Appellate Authority, if any.

The Appellate Authority has only been empowered to either confirm, modify or annul the order passed by the

Adjudicating Authority and cannot remand the matter to the Adjudicating Authority.

B. Appeal to Appellate Tribunal

The second stage of appeal under the GST law is an appeal before the Appellate Tribunal. However, the Appellate Tribunal has not been constituted yet by the Central Board of Indirect Taxes and Customs ('CBIC'). It is imperative to note that the Apex Court has recently directed the Central Government to constitute such Appellate Tribunal as mandated under the CGST Act in order to avoid hardship caused to litigants and to curb a huge backlog of cases¹.

Key points provided under the GST law with respect to the Appellate Tribunal are as under:

- ✓ Two-tier structure for the Appellate Tribunal i.e., National or Regional Benches and State or Area Benches.
- ✓ Only the matters pertaining to the issue related to place of supply would come within the jurisdiction of the National Bench/ Regional Bench of the Appellate Tribunal. All the other issues would be dealt by the State/ Area Benches of the Appellate Tribunal.

Key Aspect

Even if one of the issues in the order to be appealed deals with place of supply, the jurisdiction of National Bench of the Appellate Tribunal would be attracted and not the jurisdiction of State Benches of the Appellate Tribunal.

i. Filing of an appeal

An appeal to the Appellate Tribunal can be made by any person who is aggrieved by the decision or order passed by the Appellate Authority within 3 months from the date of communication of order. This period of 3 months can further be extended by the Appellate Tribunal for a further period of up to 3 months if sufficient cause for delay is proven by the Appellant.

Due to the non-constitution of the Appellate Tribunal till date, it is not practically possible for the Appellant to file an appeal within the prescribed statutory time limit. Accordingly, vide Circular No. 132/2/2020 - GST dated 18.03.2020, CBIC provided a clarification with respect to the time limit for filing an appeal to the Appellate Tribunal due to the non-constitution of Appellate Tribunal. As per the clarification, any appeal to the Appellate Tribunal can be made within 3 months (6 months in case of Departmental appeal) from the date of communication of order or date on which the President or the State President, as the case may be,

¹Amit Sahni v. Union of India and Another vide the Order of the Hon'ble Apex Court dated 6 September 2021

of the Appellate Tribunal enters office, whichever is later.

Therefore, as per the clarification provided by CBIC, the Appellant has an option to file appeal before the Appellate Tribunal within 3 months from the date on which the Appellate Tribunal would be constituted despite the expiry of 3 months from the date of communication of order.

Key Aspects

- In the absence of the formation of the Appellate Tribunal, the taxpayer has left with no other option but to approach the High Court by way of filing the writ petition against the order passed by the Appellate Authority in case any immediate relief is sought.
- An appeal before the Appellate Tribunal can only be condoned, if there is a sufficient cause for delay, upto a period of 3 months from the expiry of the prescribed statutory time limit for filing an appeal. However, it is pertinent to note that the GST law does not confer any power to the Appellate Tribunal to condone a delay beyond a period of 3 months from the prescribed period (i.e., 3 months).
- Further, in case of an appeal before the Appellate Tribunal, the memorandum of cross-objection can be filed by the party against whom appeal is filed within 45 days of the receipt of notice. However, this delay can be condoned, if there is sufficient cause of delay, for a further period of 45 days from the prescribed period i.e., 45 days.

ii. Procedure for filing of an appeal

The procedure for filing an appeal before the Appellate Tribunal is similar to that of the appeal filed before the Appellate Authority. Under Rule 110(4) of the CGST Rules, a certified copy of the Order-in-Appeal (i.e., order passed by the Appellate Authority) needs to be filed within 7 days from the date of filing of appeal. Accordingly, date of issuance of the provisional acknowledgment would be considered as the date of filing of appeal. If the certified copy of the Order-in-Appeal is filed after the stipulated 7 days, then the date of submission of the certified copy of the order would be considered as the date of filing of an appeal.

At the time of filing an appeal before the Appellate Tribunal, the Appellant shall be required to deposit fees amounting Rs. 1,000 for every Rs. 1,00,000 of tax or input tax credit (ITC) involved or the difference in tax or ITC involved or the amount of fine, fee or penalty

determined in the order appealed against for filing of appeal or restoration of appeal. However, the above-mentioned fee shall not exceed Rs. 25,000 each in case of CGST and SGST and Rs. 50,000 in case of IGST.

Subsequent, to the filing of an appeal by the Appellant, any party against whom an appeal has been filed can file the Memorandum of cross objection within 45 days from receipt of notice of filing of such appeal. This period of 45 days can be further extended to a further period of 45 days if there is sufficient cause of delay. Cross objection is generally filed to contest any issue for which the aggrieved party did not file an appeal initially. Thus, cross-objection is in a way a second opportunity for the contesting party to litigate an issue and the same can be submitted if the other party submits an appeal.

It is to be noted that the Appellate Tribunal has the discretionary power to refuse to admit an appeal in cases where the amount of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by the Order in Appeal, does not exceed Rs. 50,000. This discretionary power of the Appellate Tribunal can only be exercised if the amount determined under Order-in-Appeal is not more than Rs. 50,000.

iii. Requirement of pre-deposit

For filing an appeal before the Appellate Tribunal, the mandatory requirement of pre-deposit is:

- requirement of depositing full amount of tax, interest, fine, fee and penalty as admitted by the Appellant; and
- deposit of 20% of the remaining amount of tax in dispute subject to a maximum of 50 crore rupees (each of CGST and SGST). For all the inter-state transactions, the maximum cap for the pre-deposit amounts is Rs. 100 crores before the Appellate Tribunal.

All other provisions are similar to that of the Appellate Authority.

iv. Time limit for disposal of appeal

On filing of an appeal by the Appellant, the Appellate Tribunal is expected to decide the appeal within 1 year from the date of filing of an appeal.

The Appellate Tribunal has been empowered to either confirm, modify or annul the order passed by the Adjudicating Authority. Unlike the Appellate Authority, the Appellate Tribunal is also empowered to remand the case back to the Appellate Authority or Revisional Authority or the original adjudicating authority.

C. Departmental Appeal

GST law specifically provides for the appeal to be filed by the Commissioner himself either on his own motion or upon request from the Commissioner of State tax or the Commissioner of Union territory tax by filing an application against the order passed before the Appellate Authority or the Appellate Tribunal, as the case may be. Such an application filed by the Commissioner is deemed as an appeal filed before the Appellate Authority/ Appellate Tribunal.

The time limit for filing an appeal by the Commissioner before the Appellate Authority and the Appellate Tribunal is 6 months from the date of the communication of the order. However, in case of an appeal to the Appellate Authority, delay can be condoned for a period upto 1 month if sufficient cause for the delay is established.

Key Aspect

- In the hierarchy of appeals under the GST law, the Appellate Tribunal is the last fact-finding authority for any matter, since subsequent appeal can only be filed if the matter involves question(s) of law.
- Any appeal filed by the department before the Appellate Authority can only be condoned, if there is a sufficient cause for delay, upto a period of 1 month from the expiry of the prescribed statutory time limit for filing an appeal. However, it is pertinent to note that the GST law does not confer any power to the Appellate Authority to condone a delay beyond a period of one month from the prescribed period (i.e., 6 months).

Key Aspect

Order which cannot be challenged in appeal (non-appealable order)

Section 121 of the CGST Act provides the following list of orders against which no appeal can be filed before the Appellate Authority or the Appellate Tribunal.

- Order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer.
- Order pertaining to the seizure or retention of books of account, register and other documents.
- Order sanctioning prosecution under the GST Act.
- Order passed for payment of tax and other amount in installment where application has been filed by the taxable person.

D. Appeal to High Court

High Courts are embedded with dual jurisdictions: appellate jurisdiction and writ jurisdiction.

i. Appellate Jurisdiction

Under the Appellate jurisdiction, High Court entertains an appeal filed against an order, judgment etc. passed by a subordinate court. Under Section 117 of the CGST Act, any person who is aggrieved by the order of the State bench of the Appellate Tribunal can file an appeal before the High Court within 180 days from the date of receipt of the order appealed against. The delay can be further condoned if the High Court is satisfied that there is sufficient cause of delay. Thus, in the matter involving inter-state disputes, no appeal can be filed before the High Court (in such cases, appeal can be filed before the Supreme Court as discussed in detail below).

Any appeal under Section 117 of the CGST Act before the High Court will only be admitted if the case involves one or more “substantial question of law”. If the appeal involves substantial question of law, the High Court needs to formulate the questions and decide the questions so formulated.

Key Aspect

- In the hierarchy of appeals under the GST law, the Appellate Tribunal is the last fact-finding authority for any matter, since subsequent appeal can only be filed if the matter involves question(s) of law.
- An appeal before the High Court can be condoned for the further period as per the discretion of the court, if there is a sufficient cause for delay in filing an appeal within the prescribed period i.e., 180 days.

ii. Writ Jurisdiction

The writ jurisdiction of the High Court can be invoked under Article 226 and Article 227 of the Constitution of India for enforcement of fundamental rights or other legal rights/ remedies.

In the context of GST law, the writ jurisdiction of the High Court can be invoked in the following cases:

- (a) Cases where there is any breach of fundamental or constitutional rights or when the legality of a provision/ rule/ circular/ notification etc., are challenged.
- (b) Writ can be filed before the High Court for seeking judicial review of the order passed by lower court or authority. For example, in case when a tax authority has passed a non-speaking order or an order in contrary to the statutory provisions, then

writ petition be filed before the High Court for reviewing the order, instead of filing an appeal.

- (c) Writ petition can be filed before the High Court wherein the lower authority fails to perform the duties specified under the law. For example, in cases where the lower authority does not grant the refund and unnecessarily delay in disposal of the refund application, a writ petition can be filed before the High Court requesting to direct the authorities to grant the refund.

E. Appeal to Supreme Court

Under the GST law, an appeal before the Hon'ble Supreme Court can be made in the following cases:

- Appeal against an order passed by the National or Regional Bench of the Appellate Tribunal (i.e., where the dispute involves place of supply related issues)
- Appeal against the judgment passed by High Court in appeal under Section 117, which the High Court considers to be a fit one for appeal to Supreme Court on its own motion or on filing application by the party aggrieved by the High Court judgment

Apart from the above appellate remedies, one can also file writ petition under Article 32 of the Constitution of India before the Supreme Court in case of the violation of the fundamental rights.

Key Aspect

In case of an issue pertaining to the place of supply, direct appeal against the National Bench of the Appellate Tribunal would lie before the Hon'ble Supreme Court instead of High Court.

Conclusion

For resolution of any dispute under the GST law, it is important that one should review and examine whether to pursue appeal remedy or file a writ petition before the competent court. Given that the GST law is still at a nascent stage, in appropriate cases writ remedy may be more suitable option for resolving a legal issue instead of filing an appeal.

Because of the non-constitution of the Appellate Tribunal by the Central Government, the taxpayers should consider filing of writ petition before High Court if they wish to seek any immediate relief against the order passed by an appellate authority. It is expected that the Central Government would soon kick-start the process of setting up of the Appellate Tribunal in terms of the directions given by the Apex Court.

Contributed by CA. Gajendra Maheshwari

ANNOUNCEMENT

ONLINE ASSESSMENT TEST OF CERTIFICATE COURSE ON GST

The next Assessment Test of Certificate Course on GST has been scheduled online on 16th January 2022 from 11.30 am to 12.30 pm. To appear in the aforesaid Assessment Test, please follow the steps given hereunder:

- Log-in at ICAI Digital Learning Hub by using your SSP portal credentials and click on product "Certificate Course on GST Eligibility Batch" which has already been assigned in dashboard of eligible members and follow the process given in detailed instructions to subscribe to the product. It may be noted that the last date for subscribing to the product is 4th January 2022 (5.30 pm).
- After you subscribe to the product, complete your face registration at "Assessment Certificate Course on GST_Jan_2022" which would be available in your dashboard under "My Products" on any date but not later than 5th January 2022 till 5:30 pm. Face registration can be done by expanding the node "Assessment Certificate Course on GST_Jan_2022", by clicking it and pressing "Launch".
- Complete your face authentication by visiting "Assessment Certificate Course on GST_Jan_2022" which would be available in your dashboard under "My Products" after 24 hours of face registration but not later than 7th January 2022 till 5:30 pm.
- Participate in the Mock Test scheduled on 11th January 2022 for 30 minutes at any time between 2:30 pm to 5:30 pm.
- On 16th January 2022 i.e., on the day of Assessment Test, log-in by 11:00 am to avoid any difficulties.

Please go through the aforesaid instructions carefully to avoid any last-minute issues. In case of any difficulty, you may write to us at gst@icai.in or call at 0120-3045954 or message us on WhatsApp at 9212256643/98182 40634.

Noida

28th Dec, 2021

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

APPRECIATING 'BURDEN OF PROOF' IN GST

Introduction

Taxpayers are generally very anxious about any 'Government letter', especially when it relates to taxation. And taxpayers are perplexed when it comes to any occasion for personal interaction. This anxiety can be allayed only by a first-hand experience when higher authorities bring in the necessary clarity about the operation of law.

Procedure established by law

Even protecting interests of revenue requires that 'procedure' established by law must still be followed. Every proceeding in GST law is clearly provided in specific sections and there is detailed guidance as to the nature and extent of administrative actions to be undertaken in each instance. Every section is assisted by rule(s) of procedure. Every rule is appended with a 'form' that acts as a guide to the administrate and as information to taxpayer.

Legislature has given care and attention to protecting interests of revenue but not without laying down the procedure that balances the ends of justice. Legislature in its wisdom has provided that this law be implemented on 'self-assessment' basis and expressed that in section 59 of Central GST Act. Not even a strong suspicion can authorize its violation.

The statement that "You have not paid GST correctly" is not a fact but an opinion. If tax administration holds this opinion, they cannot proceed to recover the demand unless they follow prescribed steps to question the self-assessment carried out by taxpayer:

- a) Where there are any 'discrepancies' in any 'returns' filed by taxpayer, section 61 authorizes jurisdictional Proper Officer to issue ASMT10;
- b) Where general verification of 'correctness of compliances is to be carried out, section 65 authorizes Proper Officer of Audit Commissionerate of Central Tax or State Audit wing, to issue ADT1 and commence review only of 'registered persons'; and
- c) Where any specific intelligence is gathered, Proper Officer holding INS1 issued by Joint Commissioner (Centre or State) may inspect or search premises and investigate that specific area identified.

Tax administrators, especially in State department, are accustomed to using 'reassessment' powers and they tend to conduct a 'roving enquiry'. That is, investigation is initiated under section 67 but the nature of verification is like audit under section 65 of Central GST Act. Section 160(2) of Central GST Act prohibits taxpayer from questioning validity or legality of any proceedings that are not within the boundaries of that section of the law, in case taxpayer fails to bring up this question at the earliest opportunity.

Rule of Law

Modern society basically requires that 'law' must be published and made known to be 'enforced'. We have a Constitution and every authority operates under the Constitution. And

even tax laws must be according to the Constitution, to be legitimate.

Legislature makes law. Government does not make law. Government only administers laws made by Legislature. Courts see to it that administration is according to the law laid down by Legislature. This is called 'Rule of Law' principle and our society follows this principle.

No one is permitted to go beyond the boundaries of law laid down by Legislature and even when there is any leakage of revenue, administration must follow the procedure laid down within the law.

Burden of Proof

Where any person states something, that person is responsible to prove it. Statement made even by a high-ranking Officer does not become truth unless there is proof. And this proof must be brought by the person making the statement. This is called 'burden to prove' the statement.

For example, whether a certain person exists can be proved by producing such person before a Court. But that person's date of birth cannot be proved in the same way, it requires something else that shows the truth concerning date of birth.

Section 155 of Central GST Act states that burden on taxpayer is limited to prove "eligibility" to input tax credit. This means, not only as a rule of evidence but even by implication from this section, burden to prove 'taxability of any transaction' is on Revenue. And even burden to prove classification, time of supply, place of supply, valuation and all other aspects that are necessary to demand tax is on Revenue.

Tendency to be in fear and trepidation makes taxpayer give up these safeguards in law. Taxpayers tend to accept 'burden to prove innocence'. Supreme Court has held in Chuharmal's decision in AIR 1988 SC 1384 that provisions of Evidence Act are essentially Common Law principles to ensure delivery of justice and for this reason are applicable in taxation matters too.

Therefore, one who DOES NOT have the burden to prove, must not bring any evidence on record, whether due to fear or enthusiasm. Taxpayer must stay silent and let Revenue prove the wrong and with the doctrine of acquiescence in section 160(2) of Central GST, taxpayer must question use of unauthorized power by tax administration.

Few pointers on law of evidence

About the current state of the general laws, literature, science or even any aspect of a contract law principle can be 'taken notice of' by a Court (as well as tax administration) due to section 56 of Evidence Act. In relation to GST, even if show cause notice does not contain any mention that 'other income' appearing in P&L is arising out of 'taxable supply' made by taxpayer, Court can take 'judicial notice' of some contractual relations that is the source of this income received.

Section 58 states that anything is not disputed does not require to be proved. Therefore, taxpayers must not fail to question statements that are actually 'opinions or conclusions' which are contained in notices as if they are 'facts or admissions'. Section 101 places the burden to prove, on the person who makes any statement. Where taxpayer omits to dispute any statement made (in the notice) and proceeds with replying to it, then the responsibility to explain fully shifts onto taxpayer as per section 102.

Matters which are in the special knowledge of taxpayer, must be proved by taxpayer and not left to Revenue to prove it, is provided in section 106. For example, information contained in accounts and records or in electronic records, they are within the special knowledge of taxpayer must be proved by taxpayer only.

All actions by tax authorities carried out in their official capacity are presumed to be bona fide as in section 114 illustration (e). In relation to GST, enquiries on routine matters such as (i) 2A < 3B (ii) 1 ≠ 3B (ii) RCM for 2017-21 remaining unpaid (iii) unpaid interest on belated 3B (iv) RCM on inward supplies from unregistered persons up to 13th Oct 2017 and (v) tax liability of earlier months discharged out of credits availed in later months, that are be questioned by Revenue cannot be said to be illegal.

Matters to be brought out by Revenue in any Notice

From these learnings, following is a list of matters that Revenue is required to both allege and substantiate in any notice before attempting to fasten any liability to tax in GST:

- Description of (alleged) transaction;
- Coverage (of transaction) within definition of 'supply';

- Object of supply – whether goods or services – and its basis;
- Transaction falling outside exclusions from supply;
- HSN code under applicable tariff notification;
- HSN falling outside available exemption notification;
- Time of supply, per facts of transaction;
- Place of supply, per facts relating to Parties involved;
- Taxable value, where "price is the 'sole consideration' for supply";
- Imputed value, where price is NOT the sole consideration;
- Applicability of 'cum-tax' treatment of demand.

It is interesting that above list does not contain the issue relating to 'allowability' of input tax credit. In earlier tax regime, where any demand for tax was made, credit that could have been claimed must now be allowed and demand made only for 'net tax'. It was held in many decisions as early as 77 ELT 511 and later even addressed in Circular 962/5/2012-CX dated 28th Mar 2021. In GST, however, taxpayer is the one responsible to claim input tax credit through GSTR-3B and credit claimed for a given 'tax period'. And is also responsible to utilize such credit to settle liability (in any demand).

Conclusion

Taxpayers must be careful not to give up their rights, remedies and safeguards in the law and expose themselves to the risk of becoming responsible to prove their innocence due to over enthusiasm. Any questions about the validity of any notice or proceeding or even the failure to satisfy the burden to prove, must be raised at the earliest opportunity. Notices in GST are expected to be many, but taxpayers must look for which ones are based on someone's opinion and those which based on facts.

Contributed by CA. A Jatin Christopher

PUBLICATIONS OF THE COMMITTEE

- Handbook on Refunds under GST
- Practical FAQs on Input Tax Credit
- Practical FAQs under GST
- Handbook on Returns and Payments under GST
- Handbook on Finalisation of Accounts with GST Perspective
- Handbook on Liability to Pay in Certain Cases under GST
- Handbook on TCS under GST
- Handbook on Accounts and Records under GST
- Handbook on Show Cause Notice - Approach and Reply under GST
- Handbook on Input Service Distributor under GST
- Handbook on Composition Scheme under GST

- Handbook on Foreign Trade Policy-Incentives, Schemes & Related FAQ
- BGM on GST
- Compliances of GST in Banking Sector
- Handbook on TDS provision under GST
- Handbook on Interest, Late Fee and Penalties under GST
- Handbook on Advance Ruling under GST
- Handbook on Reverse Charge under GST
- Handbook on Casual Taxable Person under GST
- Handbook on Invoicing under GST
- Handbook on Annual Return under GST
- Handbook on Job Work under GST
- Handbook on Registration under GST
- Handbook on E-way Bill under GST

GST UPDATES

1. Clarifications regarding GST rates, classification & exemptions

Based on the recommendations of the GST Council made at its 45th meeting held on 17th September, 2021 at Lucknow, CBIC has issued clarifications regarding GST rates & classification of certain goods as well as clarifications regarding applicable GST rates & exemptions in respect of certain services vide Circular No. 163/19/2021-GST dated 06.10.2021 and Circular No. 164/20/2021-GST dated 06.10.2021 respectively.

Clarification on rate and classification for certain goods: Some of the significant clarifications made in Circular No. 163/19/2021-GST dated 06.10.2021 are:

- ❖ Exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST @ 5%/12% as specified in the respective rate Schedules.
- ❖ With effect from 1.10.2021, tamarind and other seeds falling under heading 1209, (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST @ 5%.
- ❖ Pure henna powder and henna leaves, having no additives is classifiable under tariff item 1404 90 90 and shall attract GST @ 5%. Further, the GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall also be 5%.
- ❖ Flavored and coated illaichi is a value added product and falls under sub-heading 2106 and thus, attracts GST @ 18%.
- ❖ Exemption available to coconut, fresh or dried, whether or not shelled or peeled is not available to copra and it attracts GST @ 5% irrespective of use.
- ❖ Brewers' spent grain (BSG), dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST @ 5%.

For detailed clarifications on the above aspects and other issues clarified by the CBIC namely, GST rate on pharmaceutical goods falling under heading 3006, applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822, requirement of original/ import essentiality certificate issued by the DGH on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations, GST rates on external batteries sold along with UPS systems/ inverter, specified renewable energy projects, fiber drums, whether corrugated or non-corrugated, please refer Circular No. 163/19/2021-GST dated 6th October, 2021.

Clarification on rate and exemption for certain services: The significant clarifications made in Circular No. 164/20/2021-GST dated 06.10.2021 are:

- ❖ Service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under "restaurant service" and attract GST rate of 5% (without ITC).
 - ❖ Where ice cream parlors sell already manufactured ice-cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice-cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, ice-cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.
 - ❖ Services provided by any institutions/ NGOs under the central scheme of "Scholarships for students with Disabilities" where total expenditure is borne by the Government is exempt under GST under entry no. 72 of Notification No. 12/2017-CT(Rate).
 - ❖ As the satellite launch services supplied by New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), are similar to those supplied by ANTRIX Corporation Ltd, Circular No. 2/1/2017-IGST dated 27.09.2017, issued in respect of ANTRIX Corporation Ltd. is applicable to NSIL as well.
- Circular No. 2/1/2017-IGST has clarified that place of supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.
- ❖ Overloading charges at toll plazas would get the same treatment as given to toll charges.
 - ❖ The expression "giving on hire" in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.

- ❖ 28% rate [entry 34 (iia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry-go-rounds, go-carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club. This clarification will also apply to entries 34(iii) and 34(iia) as they existed prior to their amendment w.e.f 01.10.2021.
- ❖ The expression “food and food products” in Sl. No. 26 [Item 1(i)f] of Notification No. 11/2017-CT (R) excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.
- ❖ Service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e. “licensing services for the right to use minerals including its exploration and evaluation” and the intention has always been to tax this activity / supply at standard rate of 18%.

For detailed clarifications on the above aspects, please refer Circular No. 164 /20 /2021-GST dated 6th October, 2021.

2. Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017

The CBIC has issued Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017. The salient points of the Guidelines are elaborated below:

A. Grounds for disallowing debit of amount from electronic credit ledger

- (i) The Commissioner or an officer authorised by him, not below the rank of Assistant Commissioner, must “form an opinion” for disallowing debit of an amount from electronic credit ledger after proper application of mind considering all the facts of the case including the nature of prima facie fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in rule 86A(1), the amount of input tax credit involved, and whether such disallowance is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.

- (ii) The power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and “careful examination of all the facts of the case” is important to determine case(s) fit for exercising power under rule 86A. The remedy of disallowing debit of amount from electronic credit ledger being, by its very nature extraordinary’ has to be resorted to with utmost circumspection and with maximum care and caution. It contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration of suspicion. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or ineligible input tax credit availed as per the conditions/grounds under sub-rule(l) of rule 86A.

B. Proper authority for the purpose of rule 86A

- (i) The Commissioner / Principal Commissioner may authorize exercise of powers under rule 86A based on the following monetary limits:

Total amount of ineligible fraudulently availed input tax credit	Officer authorized to disallow debit of amount from electronic credit ledger under rule 86A
Upto Rs. 1 crore	Deputy/ Assistant Commissioner
Above Rs. 1 crore but upto Rs. 5 crore	Additional/ Joint Commissioner
Above Rs. 5 crore	Principal Commissioner/ Commissioner

- (ii) The Additional Director General / Principal Additional Director General of DGGI can also exercise the powers assigned to the Commissioner under rule 86A. The monetary limits for authorization for exercise of powers under rule 86A, to the officers of the rank of Assistant Director and above of DGGI by the Additional Director General /Principal Additional Director General may be same as mentioned above for equivalent rank of officers.
- (iii) Where during the course of Audit under section 65 or 66 of CGST Act, 2017, it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in rule 86A(1), the concerned Commissioner/Principal Commissioner of CGST Audit Commissionerate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A.

C. Procedure for disallowance

- (i) The amount of fraudulently availed or ineligible input tax credit availed by the registered person,

as per the grounds mentioned in rule 86(1) shall be prima facie ascertained based on material evidence available or gathered on record. The “reasons to believe” to disallow debit from electronic credit ledger as formed by the Commissioner or any other officer authorized by him shall be duly recorded by the concerned officer in writing on file, before he proceeds to disallow debit of amount from electronic credit ledger of the said person.

- (ii) The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible, as per the conditions / grounds mentioned in rule 86A(1).
- (iii) The action to disallow such debit from electronic credit ledger shall be informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit.

D. Allowing debit of disallowed / restricted credit under rule 86A(2)

- (i) The Commissioner or the authorized officer, either on his own or based on the submissions made by the taxpayer with material evidence, may examine the matter afresh and on being satisfied that the input tax credit, initially considered to be fraudulently availed or ineligible, is no more ineligible or wrongly availed, either partially or fully, may allow the use of the credit so disallowed/ restricted, up to the extent of eligibility, as per powers granted under rule 86A(2).
- (ii) Reasons for allowing the debit of electronic credit ledger, which had been earlier disallowed, shall be duly recorded on file in writing, before allowing such debit of electronic credit ledger.
- (iii) Upon expiry of one year from the date of restriction, the registered person shall be able to debit input tax credit so disallowed, subject to any other action that may be taken against such person.
- (iv) As the restriction on debit of electronic credit ledger under rule 86A(1) is resorted to protect the interests of the revenue and the said action also has bearing on the working capital of the registered person, it should be endeavored that in all such cases’ the investigation and adjudication are completed at the earliest, well within the period of restriction, so that the due liability arising out of the same can be recovered from the said taxable person and the purpose of disallowing debit from electronic credit ledger is achieved.

The complete text of the Guidelines can be accessed at Guidelines for disallowing debit of electronic credit ledger under rule 86A of the CGST Rules, 2017.

3. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

Circular No. 165/21/2021-GST dt. 17.11.2021 has amended Circular No. 156/12/2021-GST dt. 21.06.2021 issued to provide clarifications in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of Notification 14/2020CT dt. 21.03.2020.

S. No. 4 of Circular No. 156/12/2021 clarified that wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act, 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

The wordings of S. No. 4 of Circular No. 156/12/2021 created doubt as to whether the relaxation from the requirement of dynamic QR code on the invoices would be available to such supplier, who receives payments from the recipient located outside India through RBI approved modes of payment, but not in foreign exchange. It has been clarified vide Circular No. 165/21/2021 that the intention of clarification as per S. No. 4 in the said circular was not to deny relaxation in those cases, where the payment is received by the supplier as per any RBI approved mode, other than foreign exchange.

S. No. 4 of Circular No. 156/12/2021 has been substituted vide Circular No. 165/21/2021 to clarify that dynamic QR code is not required on the invoice issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act, 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees, wherever permitted by the RBI. This is so because such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

Circular No. 165/21/2021-GST dt. 17.11.2021

4. Clarification on certain refund related issues

Following clarifications have been issued in regard to refund:

- (i) The time period within which an application for refund can be made shall not be applicable in cases of refund of excess balance in e-cash ledger.

- (ii) Furnishing of certification/ declaration under rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in e-cash ledger as unjust enrichment clause is not applicable in such case.
- (iii) The amount deducted / collected as TDS/TCS under the provisions of section 51/52 of the CGST Act, as the case may be, and credited to e-cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilize such TDS/TCS amount only for the purpose of discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act, 2017 and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act, 2017.
- (iv) Clause (b) of Explanation (2) under section 54 of the CGST Act, 2017 is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports irrespective of the fact whether the refund claim is filed by the supplier or by the recipient. Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

Circular No. 166/22/2021-GST dt. 17.11.2021

5. Amendments in relation to services notified under section 9(5) of the CGST Act, 2017, the tax on which is payable by the electronic commerce operator

Notification No. 17/2017-CT (R) dt. 28.06.2017, issued under section 9(5) of the CGST Act, 2017, enlists services, the tax on which is required to be paid by the electronic commerce operator. The said notification has been amended as under:

- (i) Hitherto, services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle were included in clause (i) of the notification. The said clause (i) has been amended

to the effect that services by way of transportation of passengers by an omnibus or any other motor vehicle have also been included therein.

- (ii) A new clause (iii) has been inserted in the notification to include supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises, within the list of services, the tax on which is payable by the electronic commerce operator. Here, specified premises would mean premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7,500 per unit per day or equivalent.

Parallel amendments have been made in Notification No. 14/2017-IT (R) dt. 28.06.2017 issued under section 5(5) of the IGST Act, 2017. All the above amendments shall be effective from January 1, 2022.

Notification No. 17/2021-CT (R) dt. 18.11.2021 & Notification No. 17/2021-IT (R) dt. 18.11.2021

6. Amendments in relation to rate of tax applicable on services

Notification No. 11/2017-CT(R) dt. 28.06.2017 which prescribes the rate of CGST for services has been amended as under:

- (i) Composite supply of works contract services provided for certain specific purposes to Central Government, State Government, Union territory, a local authority, a governmental authority or a government entity is liable to CGST @ 6% (effective rate 12%) or 2.5% (effective rate 5%), as the case may be. With effect from January 1, 2022, such services when provided to a governmental authority or a government entity shall be charged to CGST @ 9% (effective rate 18%). Thus, the lower rate of tax viz., 12%/5% shall be applicable only when such services are provided to Central Government, State Government, Union territory or a local authority.
- (ii) With effect from January 1, 2022, job work services of dyeing or printing of textile and textile products shall not be liable to CGST @ 2.5% (effective rate 5%). The same shall be liable to CGST @ 6% (effective rate 12% when undertaken for registered principal) or 9% (effective rate 18%) when undertaken for un-registered principal.

Parallel amendments have been made in rate Notification No. 8/2017-IT (R) dt. 28.06.2017 issued under the IGST Act, 2017. All the above amendments shall be effective from January 1, 2022.

Notification No. 15/2021-CT (R) dt. 18.11.2021 & Notification No. 15/2021-IT (R) dt. 18.11.2021

7. Amendments in relation to exemption available on services

Notification No 12/2017-CT(R) dt. 28.06.2017 providing exemption for services has been amended as under:

- (i) Exemption available on supply of pure services (excluding works contract service or other composite supplies involving supply of any goods) and composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution to a Governmental Authority or a Government Entity, has been withdrawn.
- (ii) The exemption on services of transport of passengers, with or without accompanied belongings,
 - a. by non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire, or
 - b. stage carriage other than air conditioned stage carriage;
 shall not be available if such services are supplied through an electronic commerce operator, and are notified under sub-section (5) of section 9 of the CGST Act, 2017.
- (iii) The exemption on service of transportation of passengers, with or without accompanied belongings, by metered cabs or auto-rickshaws (including e-rickshaws) shall not be available if such services are supplied through an electronic commerce operator, and are notified under sub-section (5) of section 9 of the CGST Act, 2017.

Parallel amendments have been made in exemption Notification No. 9/2017-IT (R) dt. 28.06.2017 issued under the IGST Act, 2017. All the above amendments shall be effective from January 1, 2022.

Notification No. 16/2021-CT (R) dt. 18.11.2021 & Notification No. 16/2021-IT (R) dt. 18.11.2021

8. Correction of inverted duty structure in textiles and footwear sector

The GST Council at its 45th meeting had made a recommendation for making GST rate changes to correct inverted duty structure in footwear and textiles sector. To give effect to the said recommendation, Notification No. 1/2017-CT(R) dt. 28.06.2017

prescribing CGST rates for goods has been amended to provide a uniform CGST rate of 6% (effective rate 12%) on manmade fibre, manmade fibre yarn, manmade fibre fabrics and apparel. At present, CGST rates on manmade fibre, manmade fabric yarn and manmade fabric are 9%, 6% and 2.5% respectively.

For footwear, a uniform CGST rate of 6% (effective rate 12%) has been notified and the price differential has been done away with. At present, CGST @ 2.5% (effective rate 5%) is applicable on footwear up to Rs 1,000.

Parallel amendments have been made in rate Notification No. 1/2017-IT (R) dt. 28.06.2017 issued under the IGST Act, 2017. All the above amendments shall be effective from January 1, 2022.

Notification No. 14/2021-CT(R) dt. 18.11.2021 & Notification No. 14/2021-IT(R) dt. 18.11.2021

9. Amendments made vide Notification No. 35/2021 – Central Tax dt. 24.09.2021 to be effective from 1st January 2022

The following amendments made vide Notification No. 35/2021 – Central Tax dt. 24.09.2021 shall be applicable from January 1, 2022:

- (i) Newly inserted rule 10B of the CGST Rules, 2017 making Aadhaar authentication mandatory for registered persons for filing application for revocation of cancellation of registration and refund application.
- (ii) Amendments made in rule 23 (revocation of cancellation of registration), rule 89 (application for refund of tax, interest, penalty, fees or any other amount) and rule 96 (refund of integrated tax paid on goods or services exported out of India) consequent to the insertion of rule 10B making Aadhaar authentication under rule 10B mandatory.

Notification No. 38/2021 – Central Tax dt. 21.12.2021

10. Amendments made vide the Finance Act, 2021 to be effective from 1st January 2022

The Central Government vide Notification No. 39/2021-Central Tax dated 21st December 2021 has appointed 1st day of January, 2022, as the date on which the provisions of sections 108, 109, 113, 114, 115, 116, 117, 118, 119, 120, 121 and 122 of the Finance Act, 2021 shall come into force.

The amendments made vide the aforesaid sections of the Finance Act, 2021 in the relevant sections of the CGST Act, 2017 have been tabulated below for ready reference:

Section of the Finance Act, 2020	Relevant section of the CGST Act, 2017	Amendment
Section 108	Amendment of section 7 (Scope of supply)	A new clause (aa) in sub-section (1) of section 7 of the CGST Act has been inserted, retrospectively with effect from the 1 st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
Section 109	Amendment of section 16 (Eligibility and conditions for taking input tax credit)	A new clause (aa) to sub-section (2) of the section 16 of the CGST Act has been inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.
Section 113	Amendment of section 74 (Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful mis-statement or suppression of facts)	Section 74 of the CGST Act has been amended so as make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.
Section 114	Amendment of section 75 (General provisions relating to determination of tax)	An explanation has been inserted in sub-section (12) of section 75 of the CGST Act to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.
Section 115	Amendment of section 83 (Provisional attachment to protect revenue in certain cases)	Section 83 of the CGST Act has been amended so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.
Section 116	Amendment of section 107 (Appeals to Appellate Authority)	A proviso to sub-section (6) of section 107 of the CGST Act has been inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of penalty has been paid by the appellant.
Section 117	Amendment of section 129 (Detention, seizure and release of goods and conveyances in transit)	Section 129 of the CGST Act has been amended to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.
Section 118	Amendment of section 130 (Confiscation of goods or conveyances and levy of penalty)	Section 130 of the CGST Act has been amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.
Section 119	Amendment of section 151 (Power to collect statistics)	Section 151 of the CGST Act has been substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.
Section 120	Amendment of section 152 (Bar on disclosure of information)	Section 152 of the CGST Act has been amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.
Section 121	Amendment of section 168 (Power to issue instructions or directions)	Section 168 of the CGST Act has been amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.
Section 122	Amendment of Schedule II (Activities or transactions to be treated as supply of goods or supply of services)	Consequent to the amendment in section 7 of the CGST Act, paragraph 7 of Schedule II to the CGST Act has been omitted retrospectively, with effect from the 1 st July, 2017.

11. Clarification on applicability of GST on service supplied by restaurants through e-commerce operators

The CBIC has issued Circular No. 167 / 23 /2021 - GST dt. 17th Dec, 2021 to clarify following issues regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO).

- (i) With effect from 01.01.2022, an electronic commerce operator (ECO) shall be liable to pay GST on 'restaurant services' provided through it as 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017. Thus, the ECO shall no longer be required to collect TCS on restaurant services and file GSTR-8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
- (ii) As ECOs are already registered in accordance with rule 8 (in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
- (iii) ECOs will be liable to pay GST on any restaurant service supplied through them including by any unregistered person.
- (iv) The aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurants through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall include such services in his aggregate turnover.
- (v) Supplies of restaurant service made through ECOs shall not be considered as inward supplies of ECOs since ECOs are not the recipient of restaurant service supplied through them. Accordingly, since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge) in GSTR-3B.
- (vi) ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard

remains unchanged even after ECO is made liable to pay tax on restaurant service on which input tax credit is not admissible. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act.

- (vii) It may be noted that on restaurant service, ECO shall pay the entire GST liability in cash i.e., input tax credit cannot be utilised for payment of GST on restaurant service supplied through ECO.
- (viii) In respect of supplies not notified under section 9(5) but supplied through ECO, the liability to pay GST continues to be on the supplier. Therefore, ECO shall continue to pay TCS on such supplies.
- (ix) Where a restaurant provides 'restaurant service' as well as other goods and services through an ECO under the same order, it is advisable that the ECO raises separate bill on restaurant service.
- (x) The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by the ECO.
- (xi) Reporting Requirements:
 - a) The ECO, on services notified under section 9(5) of the CGST Act, 2017, including on restaurant service, may continue to pay GST by furnishing the details in Form GSTR 3B, reporting them as outward taxable supplies for the time being.
 - b) ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of Form GSTR-1, as the case may be, for accounting purpose.
 - c) Registered persons supplying restaurant services through ECOs under section 9(5) shall report such supplies of restaurant services made through ECOs in Table 8 of Form GSTR-1 and Table 3.1(c) of Form GSTR-3B, for the time being.

Circular No. 167 / 23 /2021 - GST dt. 17th Dec, 2021

12. Due date for furnishing Form GSTR-9 and 9C for FY 2020-21 extended to 28th February 2022

A new sub-rule (1A) has been inserted in Rule 80 (Annual Return) to provide that the annual return in GSTR-9 for the financial year 2020-2021 can be furnished on or before 28.02.2022. Also, sub-rule (3A) has been inserted to provide that self-certified reconciliation statement in Form GSTR-9C can be furnished along with the said annual return on or before 28.02.2022.

Notification No. 40/2021 – Central Tax dt. 29.12.2021

GST KNOWLEDGE DISSEMINATION BY ICAI

1. Pre-Budget Memorandum – 2022 – GST

The Committee has submitted Pre-Budget Memorandum, 2022 containing suggestions on issues in substantive as well as procedural GST law for the consideration of the Government while formulating the tax proposals for the year 2022-23.

2. Suggestions to Consultation Committee of GSTN

Third Meeting of Consultation Committee of GSTN was held on 27th August, 2021. The main agenda of the meeting was to recognise the important issues and take feedback/suggestions primarily on the significant changes in GSTR-1, GSTR-2A, GSTR-2B and GSTR-3B returns & integration, recent changes in registration & refund, new functionalities & tools required and changes in available functionalities for further improvement.

The Committee submitted its suggestions to the Consultation Committee of GSTN and also few suggestions were explained in the meeting by the nominee of the Institute.

3. Representation regarding determination of time limit in the scenarios given in Circular No. 162/18/2021-GST 162/ dated 25th September, 2021

The Government issued Circular No. 162/18/2021-GST 162/ on 25th September, 2021 to clarify certain aspects in relation to refund of tax specified in section 77(1) of the CGST Act, 2017 and section 19(1) of the IGST Act, 2017.

The Circular explains, with the help of some examples, as to how the time period of two years for filing the refund claim under section 77(1) of the CGST Act or section 19(1) of the IGST Act should be determined. However, in the said examples, both the starting and the ending day have been included for calculating the period of two years for filing the application for refund. Accordingly, a representation has been submitted to the Government on 7th Oct, 2021 for excluding the starting day for calculating the period of two years for filing the refund application.

4. Publication – Handbook on Refunds under GST

The Committee has revised its publication titled “Handbook on Refunds under GST” with the changes made by the Government in GST law through notifications, circulars etc. issued up to 15th August, 2021. The Handbook explains the concepts / procedures relating to refund in simple language. The revised Handbook is aimed at updating the knowledge base of members on various aspects of refund.

5. E-learning on Goods and Services Tax

The Committee launched E-learning on GST at Digital Learning Hub covering various important aspects

of GST. This facility is available to all members free of cost facilitating them in learning anytime & from anywhere.

6. Certificate Course on GST

It is the flagship course of the GST & Indirect Taxes of ICAI. Currently, the course is being organised virtually through the Digital Learning Hub (DLH) of ICAI to ensure safety and well-being of our members in view of the COVID-19 outbreak. The course aims to build the capacities of the members in the area of GST and equip them to take up new opportunities in the field of GST. This course runs for 12 days with sessions in both mornings and evening to avoid disruption in daily working of the members. The Committee has organised 8 batches of the Course since February, 2021 benefiting approx. 1200 members.

7. Online Assessment Test of Certificate Course on GST

The Committee organised 9th (online) Assessment Test of Certificate Course on GST on 5th September, 2021 from 11:30 AM to 12:30 PM. The result of Online Assessment Test was declared at Digital Learning Hub (DLH) on the day of the Assessment Test itself at 2:00 pm. Also, the soft copy of Certificate was made available on DLH for downloading by the participants.

8. Basic Course on GST for officials of TAFE

The Committee organized an Online Basic Course on GST for the officials of Tractors and Farm Equipment Limited (TAFE) from 15th October to 17th November, 2021. The Course was designed to impart basic knowledge of select concepts of GST. The objective of the Course was to upskill the participants from the non-finance background with the basic concepts and procedures of GST being used in their functional domain so that they can discharge their duties more effectively and efficiently. The participants from the finance background were also able to hone their skill sets relating to GST.

9. Webinar on ‘Customs Authority for Advance Rulings’

The Directorate General of Taxpayer Services, Mumbai Zonal Unit (DGTS, MZU), in partnership with Institute of Chartered Accountants of India, as organized a Webinar on “Customs Authority for Advance Rulings” on 8th December 2021 from 3:00 to 6:00 pm.

10. Other programmes

The Committee also organised various National Conferences, Virtual CPE Meetings, Refresher Course and training programme PSU to update the members and other stakeholders in area of GST.

GST QUIZ

1. **Rule 86A of the CGST Rules, 2017 empowers the authorised officer to block input tax credit in the electronic credit ledger if :**
 - (i) the credit of input tax has been availed without receipt of goods or services
 - (ii) the tax charged on the goods or services has not been paid
 - (iii) the registered person is not in possession of a tax invoice
 - (iv) All of the above
2. **Which of the following statements is correct?**
 - (i) Dynamic QR code is not required on the invoice issued to a recipient located outside India, for supply of services, for which the place of supply is in India and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees, wherever is permitted by the RBI.
 - (ii) Dynamic QR code is not required on the invoice issued to a recipient located outside India, for supply of services, for which the place of supply is in India and the payment is received by the supplier in foreign currency, through RBI approved mediums.
 - (iii) Dynamic QR code is required on the invoice issued to a recipient located outside India, for supply of services, for which the place of supply is in India and the payment is received by the supplier in foreign currency, through RBI approved mediums.
 - (iv) Dynamic QR code is required on the invoice issued to a recipient located outside India, for supply of services, for which the place of supply is in India and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees, wherever permitted by the RBI.
3. **With reference to the position of GST law from 01.10.2021, which of the following statement is correct with respect to filing of Form ITC-04?**
 - (i) Form ITC-04 is to be filed every month by a principal, whose annual aggregate turnover in immediately preceding financial year exceeds Rs. 5 crores.
 - (ii) Form ITC-04 is to be filed once in a quarter by a principal, whose annual aggregate turnover in immediately preceding financial year exceeds Rs. 5 crores.
 - (iii) Form ITC-04 is to be filed once in every six months by a principal, whose annual aggregate turnover in immediately preceding financial year exceeds Rs. 5 crores.
 - (iv) Form ITC-04 is to be filed annually by a principal, whose annual aggregate turnover in immediately preceding financial year exceeds Rs. 5 crores.
4. **A registered person paid CGST and SGST on a transaction on 10.12.2020 which was subsequently held to be an inter-State transaction. The registered person paid the IGST in respect of the said transaction on 11.12.2021. He can file the application for refund till:**
 - (i) the expiry of two years from 10.12.2020
 - (ii) the expiry of two years from 11.12.2021
 - (iii) the expiry of one year from 11.12.2021
 - (iv) Since IGST is paid after one year from 10.12.2020, refund is not eligible
5. **Any person aggrieved by an adjudicating order can file an appeal before the Appellate Authority within:**
 - (i) 3 months from the date of such order
 - (ii) 2 months from the date of communication of such order
 - (iii) 3 months from the date of communication of such order
 - (iv) 2 months from the date of such order
6. **With reference to the position of GST law from 01.10.2021, which of the following statements is not correct?**
 - (i) Services by way of admission to water parks are liable to GST @ 18%.
 - (ii) Services by way of admission to ballet are liable to GST @ 18%.
 - (iii) Services by way of admission to casinos are liable to GST @ 28%.
 - (iv) Services by way of admission to Indian Premiere League are liable to GST @ 18%.
7. **An insurance company 'P' has to process insurance claims of its clients. 'P' approaches 'Q' for arranging insurance claims processing service from other service providers. 'Q' contacts 'R', who is in business of providing such insurance claims processing services, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges from 'P' a commission / service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In this case, which is the intermediary service?**
 - (i) Service provided by 'P' to its clients
 - (ii) Service provided by 'Q' to 'P'
 - (iii) Service provided by 'R' to 'P'
 - (iv) Service provided by 'R' to client of 'P'

8. A trader 'ABC' sells goods to 'XYZ' on 01.02.2021 for Rs. 10,000/- plus GST. On 15th April, 2021, it was agreed that price of the goods should have been Rs. 15,000/- plus GST and accordingly 'ABC' raised a debit note for Rs. 5000/- plus GST. 'ABC' files monthly return [Form GSTR-3B] and intends to file the annual return on the prescribed due date. 'XYZ' can claim input tax credit in respect of the debit note till:

- (i) 11th October, 2021
- (ii) 20th October, 2021
- (iii) 20th October, 2022
- (iv) 11th October, 2022

9. The General Rules of Interpretation of Import Tariff (for determining the classification of goods) comprise ofrules.

- (i) 4
- (ii) 5

- (iii) 6
- (iv) 7

10. Place of supply in case of installation of elevator is the:-

- (i) Location where elevator is installed
- (ii) Location where delivery of elevator is taken
- (iii) Location where the movement of elevator commences
- (v) Location of recipient as mentioned in invoice

The names of the first 5 members who provided all the correct answers of the last Quiz (August, 2021) within 48 hours are as under:-

Name	Membership No.
CA Hiren Pathak	137959
CA Rishabh A Parikh	252711
CA Ameesh Gupta	416641
CA Akshay Verma	443477
CA Eswarappa B E	235297

Please provide reply of the above MCQs in the link given below. The name of the first 5 members who provide all the correct answers within 48 hours of receipt of this Newsletter, would be published in the next edition.

Link to reply: https://docs.google.com/forms/d/e/1FAIpQLSe7QGcZ0k93cKv5N-GEEdGHmqu5kXxglE002aRntZqDWXKucng/viewform?usp=sf_link



GST & INDIRECT TAXES COMMITTEE OF ICAI

A ONE STOP DESTINATION FOR ALL INDIRECT TAXES

website: www.idtc.icai.org



The website of GST and Indirect Taxes Committee of ICAI viz. www.idtc.icai.org provides the users a well-set platform for sharing and gaining knowledge on GST and other indirect taxes and easy accessibility to the committee. The committee works relentlessly towards keeping the members abreast with the latest changes in all the indirect taxes laws vide various mediums like organising programmes, updating publications, sending regular updates, etc.

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- ❖ E-learning on GST
- ❖ Upcoming events
- ❖ Details of Certificate Courses, Programme, Seminars etc. on GST/ Indirect Taxes
- ❖ Links of related important website
- ❖ Connect with GST & Indirect Taxes as a faculty / author of the publication etc.
- ❖ GST Tab on website to Provide consolidated GST information.

Your suggestions on the website are welcome at gst@icai.in

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