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ICAI-GST NEWSLETTER

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

GST Time : Accounts 2017-18

The Council

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President's Communication

My Esteemed professional colleagues,

Good and Services Tax (GST), the new tax,after one year of implementation, has taken firm root and is altering the economic landscape positively. It is believed that the common man has now understood the Good and Simple Tax and faithfully contributing in implementation of GST. Since its implementation till date, the journey has been arduous but the outcome is remarkable and historic.

The GST Council in its 29th Meeting held on 4th August, 2018 proposes to incentivise digital payments by providing a cashback of 20% of the total GST amount, subject to a maximum of Rs. 100 while making payment through Rupay card and BHIM UPI app. Also, 28th GST Council meeting held on 21st July, 2018 approved GST rates reduction on several goods, principles and formats of the GST returns whereby facility for amendment returns, nil return filing by sending SMS, simplified returns called Sahaj containing B2C supplies only and Sugam will be available, extension of quarterly return upto 5cr turnover taxpayer.

Further, to extent trade facilitation, GST Council decided to open the migration window for taxpayers upto 31st August, 2018, who received provisional IDs but could not complete the migration process.

In continuation to the support to Government,ICAI recently submitted 120 suggestions on various issues of GST, suggestions on proposed amendment in the GST Law(s), are presentation suggesting alternative mechanism for reverse charge in case of B2C Supplies under GST.

In addition to above, ICAI has recently launched revised "Standardized PPT on GST" and an "Addendum to the Background Material on GST Acts and Rules- May, 2018 Edition". Moreover, two more publicationson GST were launched/revised namely "E-Handbook on Classification under GST" and "E-Publication on E-way Bill under GST (3rd Edition)". These publications are available in soft copy at www.idtc.icai.org.

More than 4373 workshops, seminars/conferences on GST have been organised by ICAI since 2017 with an aim to update our members and stakeholders with the current developments in GST. The same was attended by and benefited to 4.2 lakh participants. Further, 68 batches of Certificate Course on GST have been organised across the country.

The website of IDTC www.idtc.icai.org also plays an important role in GST knowledge dissemination as it carries offline webcasts on GST, e-learning, webcast series on UAE VAT, regular GST/ Customs updates, articles, information on upcoming courses, programmes/ seminars, e-publications, E-Newsletter on GST etc., for its registered users.

Let's support to the next level with the ever greater zeal, commitment and integrity.

With Best Wishes,

CA. Naveen N. D. Gupta
President, ICAI

GST UPDATES

Total Rs 54,378 crore of Refunds processed by the Centre and the States till 31st July, 2018 under GST during the Third Refund Fortnight.

As part of the continued focus of the Government of India to liquidate pending GST refunds, the Central Board of Indirect Taxes and Customs (CBIC) has successfully concluded the Third Refund Fortnight from 16th July, 2018 to 31st July, 2018. Till 31st July, 2018, the total GST refunds disposed by the Centre and the States are to the tune of Rs 54,378 Crore.

During this Refund Fortnight, apart from various measures like Special Refund Cells at CBIC offices, Exporter Awareness Campaigns etc., a unique facility was provided by CBIC. It was for the First Time that officers of CBIC reached-out to doorsteps of the exporters for sanctioning of refunds by the way of GST Refund Help Desks. The GST Refund Help Desks were established at 11 locations in the offices of FIEO, EEPC and AEPC for the ease of exporters. These Help Desks were manned by the officers of CBIC who were tasked with assisting the exporters in resolving issues related to refunds. These Help Desks provided an extension of CBIC offices, thus eliminating any need to go to Customs office for submission of documents. During the period, all field formations of CBIC and the States, once again worked very hard to provide all assistance to the exporters to ensure quick disposal of their refund claims.

By the end of 31st July,2018, the total amount of IGST refund claims disposed by CBIC is Rs 29,829 crore taking the disposal rate to 93%. During the third Refund Fortnight, the IGST refunds of amount Rs 3,391 crore have been sanctioned by CBIC.

As on 31st July, 2018, in case of RFD-01A refunds, the amount disposed by the CBIC is Rs 16,074 crore and that by State authorities is Rs 8475 crore, taking total amount of RFD-01A refunds to Rs 24,549 crore.

The remaining GST refunds pending with CBIC will continue to be processed expeditiously. However, the exporters are requested to ensure that the correct procedure of filing returns, giving accurate information in Shipping Bill and submitting RFD01A Application Forms to the jurisdictional formations are followed for quick disbursal of their GST refund claims.

[PIB Release ID: 181374 dated 1st August, 2018]

Applicability of GST on ambulance services provided to government by private service providers

Services provided by Government and PSPs by way of transportation of patients in an ambulance is exempt from GST vide Sl. No. 74 of Notification no. 12/2017 –CT dated 28th June, 2017.

In case a service provided by PSP to patients on behalf of government than it involves two legs of activities, one by Government for the public and second by PSP for the Government. In order to clarify the applicability of GST in the second leg of activity, Central Government has issued Circular no. 51/25/2018- GST dated 31st July, 2018 which has clarified that the services provided by private service providers to the State Government by way of transportation of patients on behalf of the State Government against consideration in the form of fee or otherwise charged from the State Government is exempt under :

a) Sl. No. 3 of notification no. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a pure service and not a composite supply involving supply of any goods , and

b) Sl. No. 3A of notification no. 12/2017 – Central Tax (Rate dated 28.06.2017 if it is a 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.

[Circular no. 51/25/2018- GST dated 31st July, 2018]

Extension in time limit for furnishing the return by an ISD

The Central Government vide Notification No. 30/2018 – Central Tax dated 30th July, 2018 has notified that the time limit for furnishing the return by an Input Service Distributor in Form GSTR-6 for the month of July, 2017 to August, 2018 has been extended to 30th September, 2018.

Prior to this notification due date of filing the return by ISD for the months of July, 2017 to June, 2018 was 31st day of July, 2018.

[Notification No. 30/2018 – Central Tax dated 30th July, 2018]

ITC accumulated on supplies received on or after the 1st day of August, 2018 shall be available

Earlier, Notification No.5/2017-Central Tax (Rate) dated 28th June, 2017has notified the goods in respect of which no refund of unutilized input tax credit shall be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods

Now, The Central Governmentvide Notification No. 20/2018-Central Tax (Rate) dated 26th July, 2018; Notification No. 21/2018- Integrated Tax (Rate) dated 26th July, 2018 has amended the above notification to provide that the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of certain notified goods shall be available. However, the accumulated ITC lying unutilized in Credit ledger balance for and upto the month of July, 2018, shall lapse.

[Notification No. 20/2018-Central Tax (Rate) dated 26th July, 2018; Notification No. 21/2018- Integrated Tax (Rate) dated 26th July, 2018]

Services in relation to a function entrusted to a Panchayat by Union territory - neither a supply of goods nor a supply of service

Earlier, The Central Government vide Notification No. 14/2017-Central Tax (Rate) dated 28th June, 2017 has provided that Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution by the Central Government or State Government or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service,

Now, vide Notification No. 16/2018-Central Tax (Rate) dated 26th July, 2018; Notification No. 17/2018- Integrated Tax (Rate) dated 26th July, 2018 it has been provided that such services even when provided by Union territory shall also be not treated as supply of goods or service.

Also, activity in relation to a function entrusted to a Panchayat even under article 243W of the Constitution shall also be considered for treating it neither as a supply of goods nor a supply of service.

[Notification No. 16/2018-Central Tax (Rate) dated 26th July, 2018;Notification No. 17/2018- Integrated Tax (Rate) dated 26th July, 2018]

Services of direct selling agents (DSA's) to banks and NBFC'S are liable to tax under reverse charge

The Central Government videNotification No. 15/2018- Central Tax (Rate) dated 26th July, 2018; Notification No. 16/2018-Integrated Tax (Rate) dated 26th July, 2018 amended Notification no. 13/2017- Central Tax (Rate) dated 28th June, 2017 and Notification No.10/2017- Integrated Tax (Rate), dated the 28th June, 2017 respectively to provide that tax on the services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company(NBFCs) shall be paid on reverse charge basis by a banking company or a non-banking financial company, located in the taxable territory.

Also, an explanation has been inserted in the said notification which provides the meaning of renting of immovable property as allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property."

[Notification No. 15/2018- Central Tax (Rate) dated 26th July, 2018;Notification No. 16/2018- Integrated Tax (Rate) dated 26th July, 2018]

Amendment in the Notification No. 12/2017

The Central Government vide Notification no. 14/2018- Central Tax (Rate) dated 26th July, 2018; Notification No. 15/2018-Integrated Tax (Rate) dated 26th July, 2018 has amended Notification no. 12/2017 Central Tax dated 28th June, 2017 and Notification No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017 respectively. Following insertions / amendments have been made in the notification:

1. **Omission in serial no. 4:** The words"Central Government, State Government, Union territory, local authority or" shall be omitted. Therefore, Service provided only by governmental authority in relation to any function entrusted to a municipality under article 243 W of the Constitution shall continue to be exempt from tax.
2. **Omission in serial no. 5:** The words"Central Government, State Government, Union territory, local authority or" shall be omitted. Therefore, Service provided only by governmental authority in relation to any function entrusted to a Panchayat under article 243G of the Constitution shall continue to be exempt from tax.
3. **Substitution in serial no. 14:** For the words "declared tariff", the words "value of supply" shall be substituted. Therefore service of hotels etc. will be exempt only if the value of supply is below Rs. 1000 earlier declared tariff of a unit of accommodation was considered for this purpose.
4. **Substitution in serial no. 19A:** For the figures "2018", the figures "2019" shall be substituted. Therefore exemption of tax on services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India has been extended upto 30th September, 2019.
5. **Substitution in serial no. 19B :** For the figures "2018", the figures "2019" shall be substituted. Therefore exemption of tax on Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India has been extended upto 30th September, 2019.
6. **Insertion in Serial no. 36 A:** After figures "36", the word and figures "or 40" shall be inserted. Therefore, Services by way of reinsurance of the insurance scheme for which total premium is paid by the Central Government, State Government, Union territory shall also be exempt from tax.

Further, following Serial no's has been inserted to provide exemption from tax leviable on various services as explained below:

1. **Serial no. 9D:** It provides exemption from tax leviable on services by an old age home run by Central Government, State Government or by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) to its residents (aged 60 years or more) against consideration upto Rs. 25000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.
2. **Serial no. 10A :** It provides exemption from tax leviable on services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use.
3. **Serial no. 24 A:** It provides exemption from tax leviable on services by way of warehousing of minor forest produce.
4. **Serial no. 31 A:** It provides exemption from tax leviable on services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948).

5. **Serial no. 31 B:** It provides exemption from tax leviable on services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee.
6. **Serial no. 34 A:** It provides exemption from tax leviable on Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings(PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the financial institutions.
7. **Serial no.47A:** It provides exemption from tax leviable on Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.
8. **Serial no.55A :** It provides exemption from tax leviable on Services by way of artificial insemination of livestock (other than horses).
9. **Serial no. 65 B:** It provides exemption from tax leviable on services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders.
10. **Serial no. 77A:** It provides exemption from tax leviable on Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,

(i) Activities relating to the welfare of industrial or agricultural labour or farmers; or

(ii) Promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees (Rs 1000/-) per member per year.

Insertion of Clause (iv) in the Explanation: For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.

[Notification no. 14/2018- Central Tax (Rate) dated 26thJuly, 2018, Notification No. 15/2018- Integrated Tax (Rate) dated 26th July, 2018]

Substitution in description of service and tax rates

Central Government videNotification No.13/2018-Central Tax (Rate) dated 26th July, 2018 and Notification No. 14/2018-Integrated Tax (Rate) dated 26th July, 2018has substituted the rates and description of the service specified inNotification No.11/2017 -Central Tax (Rate) dated the 28th June, 2017and Notification No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017respectively by the following description of service:

S No. (1)	Description of service (2)	CGST and UTGST/SGST in % (3)	IGST in % (4)	Remarks
7	(i) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of Rs. 7500 and above per unit per day or equivalent Explanation 1:- This item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply, provided that such supply is not event based or occasional. Explanation 2:- This item excludes the supplies covered under item 7 (v). Explanation 3:- "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.	2.5 2.5	5 5	The contents of the Circular No. 28/02/2018 dated 8th January, 2018 as amended wide Corrigendum dated 18th January, 2018 have been incorporated in Sl. No. 7(i)

	(ia) Supply, of goods, being food or any other article for human consumption or any drink, by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, whether in trains or at platforms. Provided that credit of input tax charged on goods and services used in supplying the service has not been taken.			The content of order no. 02/2018-CT dated 31st March, 2018 have been incorporated in Sl. No 7(ia).
	(v) Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.	9	18	
	Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of a unit of accommodation as specified in items : (ii) Above Rs. 1000 but less than Rs. 2500 , (vi)) Above Rs. 2500 but less than Rs. 7500 and (viii) Equal to and above Rs. 7500			
	For the words “declared tariff” wherever they occur, the words “value of supply” shall be substituted; Remarks:Hotel industry has been given major relief by providing that the rate of tax on accommodation service shall be based on transaction value instead of declared tariff.			
9	“(vi) Multimodal transportation of goods. Explanation.- (a) “multimodal transportation” means carriage of goods, by at least two different modes of transport from the place of acceptance of goods to the place of delivery of goods by a multimodal transporter; (b) “mode of transport” means carriage of goods by road, air, rail, inland waterways or sea; (c) “multimodal transporter” means a person who,- (A) enters into a contract under which he undertakes to perform multimodal transportation against freight; and (B) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation and who assumes responsibility for the performance of the said contract.	6	12	There may be certain situations where two different modes of transport from the place of acceptance of goods to the place of delivery of goods by a multimodal transporter are involved. In such cases it becomes difficult to identify the rate of tax applicable on the service provided by the transporter of goods who undertakes to perform multimodal transportation against freight therefore a separate rate of tax has been provided for such contracts.
	(vii) Goods transport services other than (i), (ii), (iii), (iv), (v) and (vi) above.	9	18	
22	(i) Supply consisting only of e-book. Explanation- For the purposes of this notification, “ebooks” means an electronic version of a printed book (falling under tariff item 4901 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)) supplied online which can be read on a computer or a hand held device.	2.5	5	It is a green initiative; GST on supply of e-books has been reduced from 18 to 5%.
	(ii) Telecommunications, broadcasting and information supply services other than (i) above.	9	18	

[Notification No.13/2018-Central Tax (Rate) dated 26th July, 2018; Notification No. 14/2018-Integrated Tax (Rate) dated 26th July, 2018]

GST council approved Simplified GST Return

The GST Council in its 28th meeting held on 21st July, 2018 has approved the new return formats and associated changes in law details of which are as follows:

Return filing process: The return would be simple one, with two main tables. One for reporting outward supplies and one for availing input tax credit based on invoices uploaded by the supplier. Invoices can be uploaded continuously by the seller and can be continuously viewed and locked by the buyer for availing input tax credit. This process would ensure that very large part of the return is automatically filled based on the invoices uploaded by the buyer and the seller. Simply put, the process would be "UPLOAD – LOCK – PAY" for most tax payers. However, frequency of filing return varies based on the turnover as explained below:

<table>
<tr><th>Particulars</th><th>Criteria</th><th colspan="2">Frequency of filing Return</th></tr>
<tr><td>Return filing by Small Tax payers</td><td>Taxpayers having turnover below Rs. 5 Cr</td><td colspan="2">Quarterly filing of returnwith monthly payment facility divided under two categories:-</td></tr>
<tr><td rowspan="4">All taxpayers excluding small taxpayers and a few exceptions like ISD etc.</td><td rowspan="4">Taxpayers having turnover equal to or above Rs. 5 Cr</td><td colspan="2">Monthly filing of Return</td></tr>
<tr><td>Small traders making:</td><td>Return form</td></tr>
<tr><td>only B2C supply</td><td>Sahaj</td></tr>
<tr><td>B2B + B2C supply</td><td>Sugam</td></tr>
</table>

Further, NIL return filers (no purchase and no sale) shall be given facility to file return by sending SMS. Also, the new return design provides facility for amendment of invoice and also other details filed in the return. Amendment shall be carried out by filing of a return called amendment return. Payment would be allowed to be made through the amendment return as it will help save interest liability for the taxpayers.

[Release ID: 180827 dated 21st July, 2018]

Recommendations on opening of migration window for tax payers till 31st August, 2018

The GST Council in its 28th meeting held on 21st July, 2018 has approved proposal to open the migration window for taxpayers, who received provisional IDs but could not complete the migration process.

The taxpayers who filed Part A of FORM GST REG-26, but not Part B of the said FORM are requested to approach the jurisdictional Central Tax/State Tax nodal officers with the necessary details on or before 31st August, 2018. The nodal officer would then forward the details to GSTN for enabling migration of such taxpayers.

It has also been decided to waive the late fee payable for delayed filing of return in such cases. Such taxpayers are required to first file the returns on payment of late fees, and the waiver will be effected by way of reversal of the amount paid as late fees in the cash ledger under the tax head.

[Release ID: 180826 dated 21st July, 2018]

Recommendations for Amendments to the CGST Act, 2017, IGST Act, 2017, UTGST Act2017, and GST (Compensation to States) Act, 2017 as per Press release issued by Government

The GST Council in its 28th meeting held on 21st July, 2018 has recommended certain amendments. The major recommendations are as detailed below:

1. Upper limit of turnover for opting for composition scheme to be raised from Rs. 1 crore to Rs. 1.5 crore.
2. Composition dealers to be allowed to supply services (other than restaurant services), for upto a value not exceeding 10% of turnover in the preceding financial year, or Rs. 5 lakhs, whichever is higher.
3. Levy of GST on reverse charge mechanism on receipt of supplies from unregistered suppliers, to be applicable to only specified goods in case of certain notified classes of registered persons, on the recommendations of the GST Council.
4. The threshold exemption limit for registration in the States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhandto be increased to Rs. 20 Lakhs from Rs. 10 Lakhs.
5. Taxpayers may opt for multiple registrations within a State/ Union territory in respect of multiple places of business located within the same State/Union territory.
6. Mandatory registration is required for only those e-commerce operators who are required to collect tax at source.
7. Registration to remain temporarily suspended while cancellation of registration is under process, so that the taxpayer is relieved of continued compliance under the law.
8. The following transactions to be treated as no supply (no tax payable) under Schedule III:
   a. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
   b. Supply of warehoused goods to any person before clearance for home consumption; and
   c. Supply of goods in case of high sea sales.

9. Scope of input tax credit is being widened, and it would now be made available in respect of the following:
   a. Most of the activities or transactions specified in Schedule III;
   b. Motor vehicles for transportation of persons having seating capacity of more than thirteen (including driver), vessels and aircraft;
   c. Motor vehicles for transportation of money for or by a banking company or financial institution;
   d. Services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available; and
   e. Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.
10. In case the recipient fails to pay the due amount to the supplier within 180 days from the date of issue of invoice, the input tax credit availed by the recipient will be reversed, but liability to pay interest is being done away with.
11. Registered persons may issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year.
12. Amount of pre-deposit payable for filing of appeal before the Appellate Authority and the Appellate Tribunal to be capped at Rs. 25 Crores and Rs. 50 Crores, respectively.
13. Commissioner to be empowered to extend the time limit for return of inputs and capital sent on job work, upto a period of 1year and 2 years, respectively.
14. Supply of services to qualify as exports, even if payment is received in Indian Rupees, where permitted by the RBI.
15. Place of supply in case of job work of any treatment or process done on goods temporarily imported into India and then exported without putting them to any other use in India, to be outside India.
16. Recovery can be made from distinct persons, even if present in different State/Union territories.
17. The order of cross-utilisation of input tax credit is being rationalised.

[Release ID: 180825 dated 21st July,2018]

Grievance Redressal Officers for processing the complaints/information under e-way Bill System

As per the decision of the GST Council, e-way bill system has been rolled-out in a staggered manner across the country. E-way bills are getting generated successfully and till 17th July, 2018, more than 13.5 Crores e-way bills have been generated which includes 6.5 Crore E way bill for Intra-State movement of goods.

Grievance Redressal Officers have been appointed by both the Central and State Governments under the provisions of e-way bill rules for processing the complaints/information uploaded by taxpayers/transporters regarding detention of their vehicle. List of these Grievance Redressal Officers is available at http://www.cbic.gov.in/resources//htdocs-cbec/gst/GRO%20Officers%20-%20180718.pdf .

Any difficulties or issues being faced by the trade and industry may be brought to the notice of Grievance Redressal Officers in your jurisdiction. Trade is also advised to make themselves conversant with e-way bill rules and be aware of mechanisms available for redressal of all their concerns.

[Release ID :180674 dated 18h July,2018]

CBIC to observe Third Refund Fortnight to clear pending refunds

Refunds of GST have been a concern for the Government and Trade for the past several months. In this regard, the CBIC has observed two special drives cum refund fortnights in the Month of March, 2018 (15th to 31st March, 2018) and June, 2018 (31st May to 16th June, 2018) respectively.In case of IGST refunds for goods exported out of India, the percentage of amount of refund claims disposed by CBIC is already more than 90%.

However, in order to liquidate pendency further, and to handhold/guide the trade for applying for the refund claims in a proper manner, it has been decided to observe another refund fortnight from 16th July, 2018 to 30th July, 2018. Dedicated refund cells and helpdesks would be provided for exporters to get their refund claims processed, in each Commissionerate.

The exporters and export organizations are requested to take benefit of this opportunity to get their pending refund claims processed. The facility to view reasons for pending IGST refunds have been provided on ICEGATE. As the IGST refund procedure is designed for seamless electronic processing if sufficient and correct details are filed by the exporter, so Export organisations and Export Promotion Councils must come forward to assist exporters in observing the correct procedure to file refund claims and in rectification efforts in the case of errors.

[Release ID :180618 dated 16th July,2018]

LEVY OF GST ON LIQUIDATED DAMAGES

Levy of GST on liquidated damages has been a debatable issue. Section 7(1) (d) of the GST Act, 2017 includes activities referred to in Schedule II in the scope of supply. Entry 5(e) thereof declares that "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" shall be treated as supply of service. The view supporting levy of tax on liquidated damages and forfeiture of earnest money is based on premise that the party has 'tolerated' the non-performance.

Meaning of Liquidated Damages:

Black's Law Dictionary (Tenth Edition) on page 473 defines Liquidated damages thus:

"An amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches. If the parties to a contract have properly agreed on liquidated damages, the sum fixed is the measure of damages for a breach, whether it exceeds or falls short of the actual damages."

The distinction between a penalty and genuine liquidated damages, as they are called, is not always easy to apply. In the first place, if the sum payable is so large as to be far in excess of the probable damage on breach, it is almost certainly a penalty. Secondly, if the same sum is expressed to be payable on any one of a number of different breaches of varying importance, it is again probably a penalty, because it is extremely unlikely that the same damage would be caused by these varying breaches.

Why liquidated damages:

Performance is the essence of a contract and hence parties to contract generally incorporate their expectation in terms of damage caused by failure of either party to perform its obligations completely or as per the agreed terms. The contract may prescribe damages for deficiency in the performance of contract known as 'liquidated damages'. It is to dissuade unsatisfactory performance or non-performance. For instance, contracts state that time is the essence of contract, and any delay invites, say, 1% of the value of the contract for every week of delay and the like. Other examples may be rent for delay in lifting goods; breach of agreement for not accepting alternate employment offer from competitor up to a stipulated period of time and so on.

Liquidated and unliquidated damages:

Liquidated damages (also referred to as liquidated and ascertained damages) are damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance). Liquidated damages clauses are used in many types of contacts, most frequently in IT and construction contracts. Including a liquidated damages clause in a contract provides certainty to the parties, facilitates the recovery of damages by avoiding the requirement of proof of loss, simplifies the dispute resolution procedure and may induce performance of a contract. Liquidated damages clauses regulate the rights of parties after a contract is breached, or alternatively quantify the party's secondary obligation to pay damages (which survives termination).

Unliquidated damages is not pre-fixed or determined. A claim for unliquidated damages is governed by common law. When damages are not predetermined/ assessed in advance, then the amount recoverable is said to be 'at large' (to be agreed or determined by a court or tribunal in the event of breach). For example, in a personal injury lawsuit, the exact amount of an award for actual and punitive damages aren't known and can't be calculated at the time of filing. Black's Law Dictionary (Tenth Edition) on page 475 defines unliquidated damages thus:

"Damages that cannot be determined by a fixed formula and must be established by a judge or jury."

Sometimes liquidated damages clauses in contract provide for 'NIL' or 'N/A' for rate of liquidated damages. There have been varied line of judicial thinking on interpretation of 'NIL' or 'N/A' clause for liquidated damages.

Court in Australia took the view that use of 'NIL' did not exclude right to claim unliquidated damages. The court emphasised that 'clear words' are required to rebut the presumption that a contracting party does not intend to abandon a common law breach of contract remedy. The liquidated damages clause here read as "If the builder breaches sub-clause 11.1, it shall be liable to pay the Proprietor liquidated damages at the rate of NIL Dollars ($00.00) per day for each day beyond the due date for practical completion until practical completion is deemed to have taken place." The Court found that the clause here did not contain clear words to express the intention that the owner could not claim unliquidated damages; it only provided that no liquidated damages could be claimed.

In a leading English case , unliquidated damages were excluded by the use of '£ NIL' as the rate of liquidated damages. The Court decided that the liquidated damages clause was an exhaustive agreement for the treatment of damages. As the parties agreed that damages for late completion were to be liquidated damages, it could not have been intended that the Principal should also be allowed unliquidated damages.

So far as the law in India is concerned, there is no qualitative difference in the nature of the claim whether it be for liquidated damages or for unliquidated damages. Section 74 of The Indian Contract Act, 1872 eliminates the some-what elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages 'and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by

mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties. A stipulation in a contract in terrors is a penalty and the Court refuses to enforce it, awarding to aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty, and according to this principle, even if there is a stipulation by way of liquidated damages, a party complaining of breach of contract can recover only reasonable compensation for the injury sustained by him, the stipulated amount being merely the outside limit.

View supporting levy of GST on Liquidated Damages:

The view supporting levy of tax on liquidated damagesis based on premise that the party has 'tolerated' the non-performance.

'Tolerate' is 'verb' for 'noun' 'toleration'. 'Toleration' is defined in Black's Law Dictionary (Tenth Edition) on page 1716 as "1. The act or practice of permitting or enduring something not wholly approved of; the act or practice of allowing something in a way that does not hinder. 2. The allowance of opinions and beliefs, esp. religious ones, that differ from prevailing norms….."

Erstwhile service tax regime, through the concept of declared service, levied tax on "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act."

Authorities administering the law have taken a view that payment of liquidated damages or fine for non-performance of a contract is an activity liable to tax.Entry 57 in Notification number 25/2012-Service Tax dated June 20, 2012 provided for exemption in respect of "Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract" GST Act has continued with the scheme of taxation and exemption under Service Tax law. Entry 5.(e) in Schedule II of the GST Act is identically worded and declares that "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" shall be treated as supply of service. Notification number 12/2017-Central Tax (Rate) dated June 28, 2017 provides for exemption from tax. Relevant entry in the said Notification reads thus:

In a matter before the Maharashtra Authority for Advance Ruling in the case of Maharashtra State Power Generation Company Limited 2018-TIOL-33-AAR GST on applicability of GST on Liquidated damages under the phrase 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' appearing in clause (e) of para 5 of Schedule II of the GST Act, the taxpayer had contention that

1. There is no explicit agreement between the company and the contractor wherein the company is intending to supply service of tolerance of delay.
2. The delay is neither desired by the company nor by the contractor but to impress upon the contractor to adhere to timelines.
3. Payment of damages, deducting the liquidated damages or the forfeiture of deposit does not restitute the person to whom loss or damage is caused.
4. Liquidated damages are in nature of a measure of damages to which parties agree, rather than a remedy.
5. By charging damages or forfeiture, one party does not accept or permit the deviation of the other party. It is an expression of displeasure.
6. Liquidated damages cannot be said to be the desired income, it is the compensation for loss suffered by recipient.
7. Damages are not received by the person for the tolerance of an act, but it is made to compensate the loss suffered.
8. Recovery of liquidated damage is not for supply of service for tolerance of an act. The word 'obligation' used in clause clearly means that person should undertake to tolerate an act. There should be a contract for the said purpose and the consideration should be received for such an act of tolerance.
9. Under the Australian GST, it has been clarified that if clause relating to early termination has been specified in the original contract of lease and early termination has been in accordance with the said contract then termination payment will be considered as change of consideration of earlier supply (i.e. redetermination of consideration). It will not be considered as separate supply, but will be considered as adjustment even in relation to that earlier supply.

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (per cent.)	Condition
77	Heading 9991 or Heading 9997	Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.	Nil	Nil

The Authority however held that tax was payable on Liquidated damages observing that

1. The value of work done and which is to be paid is not effected by the amount deducted therefrom towards liquidated damages. Thus the consideration for work done remains unaltered.
2. The act of delayed supply has happened. The same is being tolerated by an additional levy in the nature of liquidated damages.
3. The impugned income though presented in the form of a deduction from payments to be made to the contractor is the income of the applicant and would be a supply of 'service' in terms of clause (e) of para 5 of Schedule II of the GST Act.

In yet another matter, the same authority held that the act of vacating rented premises for redevelopment as per the redevelopment agreement is agreeing to the obligation to refrain from an act or tolerating an act or situation of redevelopment in place of old premises and of not causing hindrance or creating obstacles in the same.

Above understanding of sub-ordinate legislature and also of quasi-judicial authorities leads to undefined or boundary less expanse of entry "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act."

View opposing levy of GST on Liquidated Damages:

It is settled law that an exemption entry cannot presuppose the existence of levy. An exemption notification clearly is not a charging provision and it cannot be interpreted so as to create a duty liability where none existed under the Act (Tariff entry) .

The purpose of agreeing to payment of liquidated damages is to ensure performance. It cannot be said to be a consideration for tolerating non-performance.On the face of it, payments of compensation or damages are not consideration for supplies for tax purposes. This is because they invariably amount to financial settlement of losses caused by breach of agreement or infringement of rights rather than the provision of goods or services. Payment of damages or the forfeiture of deposit does not restitute the person to whom loss or damage is caused. Liquidated damages are in nature of a measure of damages to which parties agree, rather than a remedy. By charging damages or forfeiture, one party does not accept or permit the deviation of the other party. It is an expression of displeasure. Liquidated damages cannot be said to be the desired income or result of the contract. Liquidated damages are recovered for compensating the loss suffered by the recipient. Section 73 and 74 of the Indian Contract Act, 1872 provide for recovery of liquidated damages in case of breach of contract.

Liquidated damages whether re-determination of consideration:

There is one school of thought that levy of liquidated damages in effect reduces the consideration for supply. Thus, it is re-determination of price of supply. Under Australian GST, in one of the Commissioner's ruling relating to payment on early termination of lease of goods, it was clarified that if clause relating to early termination has been specified in the original contract of lease and early termination has been in accordance with the said contract then payment will be considered as change of consideration of earlier supply (i.e. re-determination of consideration). It will not be considered as separate supply, but will be considered as adjustment event in relation to that earlier supply. Thus, Australian GST has treated the payment of liquidation damages as part of the same supply and mere re-determination of the consideration of the same supply if it has been specified in the original contract i.e. if liquidation of damages are to be borne by the service provider then same will be considered as towards deficiency of services and thereby reduces the original consideration and it will not be considered as separate service and hence it is not covered by the term 'obligation to tolerate an act or a situation'.

Is GST leviable on Unliquidated Damages, penalties etc:

Penalties may be statutory such as penalty for late filling of tax returns, penalty for over speeding on a public road. Penalties may also be private such as loan prepayment penalty, penalty for wrong parking or not wearing helmet in an industrial township and so on. As discussed earlier, unliquidated damages are in the nature of penalty.

Black's Law Dictionary (Tenth Edition) on page 1313 defines 'penalty' as "punishment imposed on a wrongdoer, usually in the form of imprisonment or fine; especially, a sum of money exacted as punishment for either a wrong to the state or a civil wrong (as distinguished from compensation for the injured party's loss). Though usually for crimes, penalties are also sometimes imposed for civil wrongs."

CBEC Education Guide,at the time of introduction of Negative list based taxation of services , in para 2.3.1 explained that "to be a service an activity has to be carried out for a consideration. Therefore fines and penalties which are legal consequences of a persons' actions are not in the nature of consideration for an activity."Frequently Asked Questions on applicability of GST on Banking, Insurance and Stock Brokers Sector released by CBIC in June, 2018 through question 49 has clarified that "fines and penalties are imposed for breaking the law by a person. They are not in the nature of a consideration for an activity and hence, would not constitute a supply of service."

Breach of contract is between the two contracting parties, whereas breach of law is one between a citizen and the Government.The question whether any impost is in essence compensatory or is by way of penalty will have to be decided having regard to the relevant provisions of the law under which it is imposed and the circumstances under which it has been imposed. The mere nomenclature as interest, penalty or damages in the relevant Act may not conclusive. Expenditure for violating traffic rules by entering town on no entry times, one way traffic violation, penalty imposed by police in the course of regulating traffic all are in the nature of penalty.

Whenever certain damages are to be paid for the breach of a contract, such damages are treated to be normal incidences of business. Extending this logic, charges levied by airlines/ railways/hotels for cancellation of bookings as per terms of contract are not penalty, even if described as such. Similarly payments made for regularising certain deeds/ events on

payment of prescribed fees are not penalty.

In Kaira Can Company Ltd v DCIT [2010] 127 TTJ 514 (ITAT-Mumbai) the assessee made certain payments to SEBI under a scheme framed by SEBI to regularize default of certain disclosures under SEBI Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Revenue disallowed these payments as expenditure holding them hit by explanation to section 37(1) of the Income-tax Act, 1961. The Tribunal held that such payments cannot be said to be a penalty under section 15A of the SEBI Act hence not hit by explanation to section 37(1) of the Income-tax Act. In Ashok Kumar Damani v Addl CIT [2011] 130 ITD 287 (ITAT-Mumbai) the assesse made short payment of margin money to the stock exchange. The penalty levied by the stock exchange for the same was paid by the assesse during the period under consideration. The AO disallowed the same on belief that the said expenditure is not an allowable expenditure being in the nature of penalty. It was held by the Tribunal that the payment had been made to stock exchange on account of short payment of margin money. This is only a compensatory payment under the rules of the stock exchange which is allowable as revenue expenditure as the same is not for infraction of law. In Agarwal Roadlines P Ltd v Dy.Comm. of Income Tax [2010] 129 TTJ (ITAT-Ahemedabad)(UO) 49 the assessee paid overloading charges under a scheme of 'Gold Card' introduced by the Government of Gujarat which allowed carrying excess load in vehicle on payment of additional fees fixed for that gold card. Revenue contended that carrying overloaded goods being a cognizable offence and infringement of law and payment being penal in nature and not incidental to the assessee's regular business, the same is liable for disallowance. The contention of the asseessee was that this expenditure is incurred in the normal course of business and corresponding income out of carrying of overload was subjected to tax as the party was billed as per tonnage carried. It was further contended that overloaded vehicles were not detained or confiscated even when overloading was done on regular basis. These were allowed to ply if overloading fee was paid. The Tribunal held that such fees was compensatory in nature and not penal. Payment of this fees entitled transporters to carry over load to final destination without stopping them to unload the excess weightage. The fact that excess weight was not required to be unloaded demonstrates that payment under the scheme was compensatory and not penal as no Government machinery would encourage violation or infringement of legal provisions. Expenditure incurred was allowed as deduction.

Post GST Act amendment:

Schedule II of the GST Act was supposed to be mere an authoritative declaration as to nature of activity, whether it entails supply of goods or services. However, its positioning in definition of supply as clause (d) of sub-section (1) of section 7 of the GST Act made all the items listed in the Schedule 'supply'. This also led to several unintended conflicts in the scheme of Act.

The Lok Sabha on 9th August, 2018 has passed four amendment bills relating to GST. Section 7 of the CGST Act, 2017 defining 'supply' is being amended w.e.f. 1st July, 2017 itself. A new sub-section (1A) is inserted in section 7 and clause (d) of sub-section (1) is omitted. Thus now the role of Schedule II will be limited to classification of supply as 'goods' or 'service'. For levying tax on liquidated damage, transaction will have to first pass the test of supply, which appears to be a difficult proposition.Erstwhile service tax law, on introduction of negative list based taxation, declared activity of 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act', to be a service. GST law does not make any such declaration. It merely classifies supply as 'goods' or 'services'. Though levy of tax on these activities were not free from doubt in service tax law, under GST it is more doubtful as there is no such statutory declaration. Liquidated damages may hardly satisfy the essentials of supply of service.

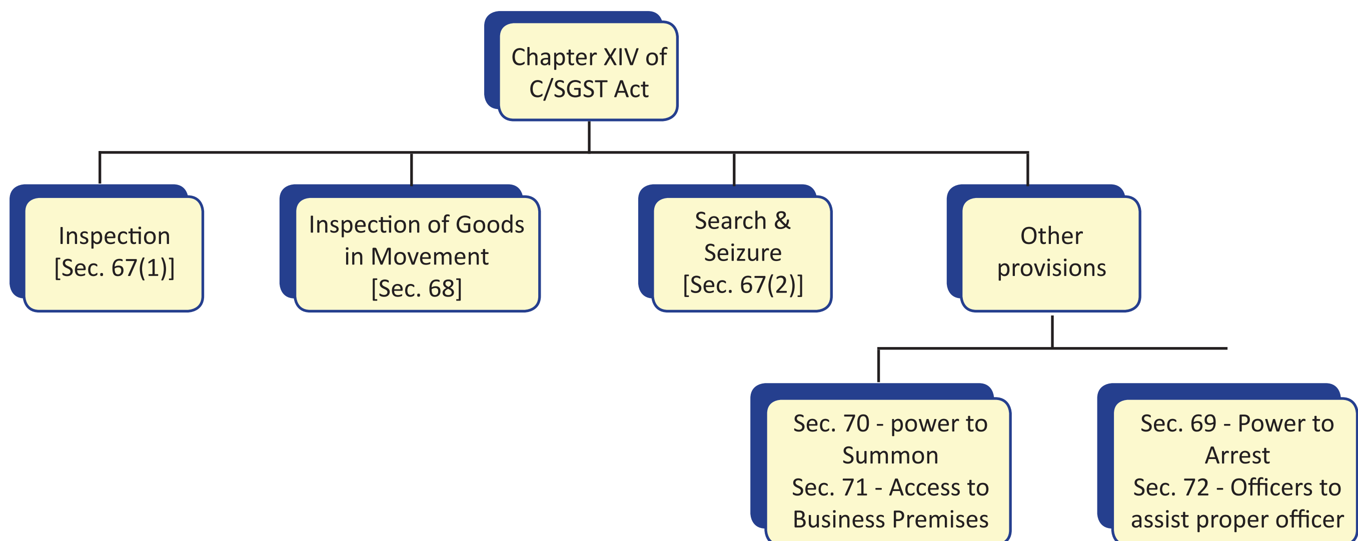
It is settled law that mere mention of an item in the Tariff, does not make the same as taxable. In Commissioner of Central Excise, Chandigarh-I v MarkfedVanaspathi and Allied Industries [2003] 4 SCC 184 the Court held that twin tests of 'manufacture and marketability' do not cease to apply if a good falls within a tariff entry, under Excise law. The Andhra Pradesh High Court in State of Andhra Pradesh v BSNL [2012] 49 VST 98 held that entry for recharge coupons in Schedule under the VAT Act represents sale of the recharge voucher, to the service provider, and not to the transaction between the service provider and the subscriber even if, in the process, the recharge coupons are routed through various distributors. Thus the Court held that tax can be charged only on paper value of the recharge voucher. The Division Bench of Karnataka High court in Sasken Communication Technologies Ltd v Joint Commissioner of Commercial Taxes Bangalore [2012] 55 VST 89 (Kar) held that entry number 11 in sixth Schedule to the Karnataka VAT Act, 2003 reading as 'Programming and providing of computer software', which purported to include this activity within the meaning of term 'works contract' for the purpose of levy of Vat was bad in law. It was held that State Legislature is competent to enact laws in respect of sale of goods. By introducing a schedule to the said enactment and describing under a works contract 'programming and providing a computer software', unless the said works contract involves an element of sale of goods, the State Legislature has no power to levy tax under the said Act.

INSPECTION, SEARCH & SEIZURE INCLUDING JURISDICTIONAL ASPECT

A. Introduction

Power of Search and Seizure are very strong investigation tool in the hands of revenue authorities, which gives enormous opportunity to gather evidences and unearth suppressed things and information so as to properly identify evasion of payment of tax and/ or contravention of any provisions of the law.However, such an action is having an effect of interfering into one's independence in addition to having a chances of hampering business activities to some extent, hence normally these powers are exercised as a last resort of gathering information. To ensure safeguarding interest of regular, law abiding and honest tax payers, reasonable provisions have been incorporated in law.

The provisions of Section. 67 to 72 of the Central/ State Goods and Services Tax Act 2017, and Rule 139 to Rule 141 of C/SGST Act deals with powers and procedure of Inspection, Search & Seizure, summary of which can be presented as under:



Provisions of GST law are similar but not exactly same as that of pre-GST laws. Section 67 provides for Inspection as well as Search & Seizure of goods. Inspection is much softer version of Search & Seizure and are similar to Survey as enumerated under section 133A of the Income Tax Act 1961.

B. Initiation of Inspection Proceedings

Section 67(1) reads as"where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that;

a. a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

b. any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place."

Some of key aspects of above provisions are as under;

- Authorisation of Inspection has to be given by the officer of the rank of Joint Commissioner and above.
- Authorising officer must have Reason to Believe about
  - o Taxable person –
    - Suppressing of any transaction; or
    - Suppressing Stock in hand; or
    - Claiming of excess Input Tax Credit; or

- Indulging in contravention of any of the provisions of the law to evade tax; or

  - o transporter is keeping the goods which has escaped tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax
  - o operator of warehouse or godown or any other place is keeping the goods which has escaped tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax

- Authorisation should be in writing in Form No. GST INS-01, for Inspection.
- Inspection can be of Place of Business only.

Place of Business has been defined in Section 2(85) to include godown or any other place where a taxable person stores his goods, maintain his books of accounts and place of agent. Accordingly, if books of accounts are being maintained or kept at residence of director or any other key managerial person the same may be treated as place of business and inspection can be carried out there.

C. Initiation of Search & Seizure Proceedings

Section 67(2) says "where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things"

Some of key aspects of above provisions are as under:

- Authorisation of Search & Seizure has to be given by the officer of the rank of Joint Commissioner and above.
- Authorising officer must have Reason to Believe about
  - o Goods liable for confiscation are secreted in any place
  - o Books, documents or something, which is useful or relevant for proceeding under GST law, are secreted in any place
- Authorisation should be in writing in form GST INS-01 for Search.
- In case of Seizure, Order of Seizure is to be issued in form GST INS-02.

  In search & seizure proceedings goods which are liable for confiscation can only be seized. As per Section 130(1) of the C/SGST Act, following goods are liable for confiscation, under the law:

(i) If supply is made in contravention of any of the provisions of GST law with intention to evade payment of tax, or

(ii) If goods are not accounted for on which tax is liable to be paid or

(iii) If goods liable to tax are supplied without having applied for registration (30 days time limit is there for applying registration, from the date person becomes liable for paying tax).

D. Difference between Inspection & Search

Aspect	Inspection – Sec. 67(1)	Search – Sec. 67(2)
Primary Purpose	Verification of transactions of supplies, Stock in hand, claim of ITC & contravention of provisions of the Act to evade tax.	Unearthing of goods liable for confiscationor Secreted Books, documents or things.
Scope	Inspection can be done at Place of Business only	Search can be done at Any Place including residence of tax payer and/ or employees.
Powers	Forceful action (Sealing or Break Open) cannot be adopted.	Seal or Break Open the door of any premises or break open any almirah, electronic devices, box, receptacle in which any goods accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied, can be resorted.
Seizure of Goods	Goods cannot be seized in inspection proceedings.	Goods can be seized if they are liable for confiscation. If not practically possible to seize, constructive seizure can be there.
Seizure of Books of Accounts/ Documents	Books/ documents cannot be seized in inspection proceeding.	Any secreted document, books or things, which may be useful or relevant to any proceedings can be seized.

E. Reason to believe

It is very well evident from the provisions of Section 67 that Proper Officer (JC or above) must haveReason to believe before authorising any action of Search & Seizure and Inspection as well. Term 'Reason to believe' is not defined under the GST law, however defined in Indian Penal Code 1860. Further the scope of the said term is more or less settled under Income Tax Law. As per section 26 of IPC "A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise".That means there are very less room for

any doubt or ambiguity. Reason to believe refers to a positive, strong and firm opinion based on information and evidences. It definitely a subjective matter which may vary from case to case, however 'Reason to believe is not same as that of Reason to Suspect' (Indian Oil Corporation – 159 ITR 956 SC).

Hon'ble supreme court in the case of 'Lakhmani Mewal Das (103 ITR 437)' has held that the reason for the formation of the belief must have rational connection with or relevant bearing on the formation of the belief.The rational connection postulates that there must be direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of this belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts.

The Hon'ble court further held that it is no doubt true that the court cannot go into sufficiency or adequacy of the material substitute its own opinion for that of the Income tax officer on the point as to whether action should be initiated for reopening assessment.At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

F. Power to Summon& Recording of Statements

As per Section 70 of the C/SGST Act proper officer(s) under the law have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry. The summon can be given for giving evidence by way of statement on oath or production of any books or accounts, documents or other things. However, summon can be issued only during pendency of any enquiry under the law. While exercising powers to issue summons provisions of the Code of Civil Procedure, 1908 shall apply and such enquiries shall be deemed as 'Judicial Proceedings' under section 193 and Section 228 of IPC. That means if anyone intentionally gives false evidence in response to summon issued under section 70, or fabricates false evidence for the purpose of being used in any stage of such enquiry, may be punished with imprisonment which may extend to seven years, and shall also be liable to fine.

At the time of recording of statement, it is quite possible that a person doesn't have exact knowledge of facts and/or figures or might have forgot the same. In such a case the documents can be referred to refresh memory and statements can be given accordingly. As per section 59 of the Indian Evidence Act 1872, "a witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

As regards to presence of advocate at the time of taking statement by tax authorities, it has been held that it is not a right of the tax payer to have its counsel along with him. However, looking to the medical or other conditions the counsel may be allowed to attend the proceedings, however no consultation is allowed at the time of recording the statements. Hon'ble apex court in the case of 'Poolpandi Vs. Sup. Central Excise (60 ELT 24)' while holding the same ratio observed as that "The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non – cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be expanded to favour exploiters engaged in tax evasion at the cost of public exchequer."

Issue of summon in any inquiry, to witness or give evidence should be reasonable and not arbitrary. The authority issuing the summon must issue summons to a witness only when the authority considers it necessary for summoning. This necessarily implies application of mind and is guided by the principles of reasonableness in the matter of summoning of witness. Guiding force for issuing summon should be 'necessity of witness for the purposes of inquiry'.

Hon'ble Jharkhand High Court in the case of 'Sudhir Deora Vs. CCE (284 ELT 326)' had observed that it is quite possible that the senior most officers like managing director or General Manager, who are at the helm of the affairs of the company might not be having knowledge of minute operational things. The hon'ble court held that Enquiry Officer should keep in mind that he being an Officer authorized by law to summon anybody does not make him an Officer having no control of reasonableness and though he has right to summon any person either the Managing Director or the General Manager of the company or even a clerk of the company but he should not summon unless it is required for the purpose of an inquiry.

G. Release of Goods Seized

Section 67(6)/(7), Rule 140

Goods seized at the time of search can be released on payment of applicable tax, interest and penalty. Alternatively the goods seized can be released provisionally on furnishing of:

- Bond in form No. GST INS-04 for value of the goods, declaring that goods shall be produced as and when required by the proper officer and any tax, interest, penalty, fine or other law full charges shall be paid within ten days

of their demand in writing AND

- Security in the form of bank guarantee equivalent to the amount of tax, interest and penalty payable in respect of such goods.

If goods are seized in any search and no notice in respect thereof is given within six months of the seizure of the goods, such goods shall be released to the person from whose possession they were seized.

H. Seizure of Perishable/ hazardous Goods:

Section 67(8), Rule 141, Notification No. 27/2018(CT) Dt. 13.06.2018

If the goods seized under any search proceedings are Perishable or Hazardous in nature (as notified) the same shall be disposed of by the proper officer as soon as possible after its seizure. If the taxable person pays lower of 'market price of such goods' or 'demand (including interest and penalty), which is payable or may become payable, by the tax payer' such goods shall be released to him after passing the order in Form GST INS-05. If the tax payer doesn't pay the amount as stated above the Commissioner will dispose of such goods and realisation proceeds shall be adjusted against tax, interest, penalty or any other amount payable in respect of such things.

Major goods notified for purposes of Section 67(8)i.e. to be treated as perishable or hazardous includes newspaper, batteries, petroleum products, fireworks, chemicals, drugs,unclaimed technology driven goods, all goods covered under chapter 1 to 24 of the Customs Tariff Act 1975 i.e.all animals and vegetables and products made from them.

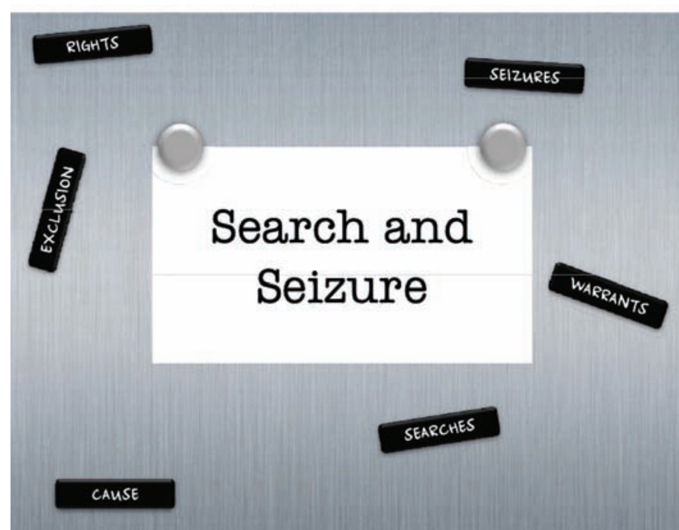
I. Release of Books/ Documents Seized

Books of accounts, documents or other things seized under section 67(2) are to be kept with proper officer till the time they are required for verification or examination for enquiry or proceedings under the GST law. However, after issue of notice if some documents, books or things seized are not relied upon in for issue of notice the same shall be returned within 30 days from the date of issue of notice. However, person from whom documents are seized shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officers at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

J. Jurisdiction for Inspection, Search & Seizure

GST is unique tax law from the aspect that its first time when State and Central governments are Levying & Collecting tax on same taxable event simultaneously. It poses challenges before the government for administration of assessess's as well. To address this challenge, Section 6 was inserted in both the enactments i.e. State and Central to provide for cross empowerment, so that Central Tax Officer can have jurisdiction under State Tax and vice a versa too. However, due to enabling cross jurisdiction by section 6, every tax payer gets covered by two jurisdictional authorities. Whereas, as enumerated by government many times, the idea was to have single jurisdiction (or interface) for all administrative purposes.In the 9th GST Council meeting held on 16th January 2017, to ensure its objective of single interface under GST State and Central government decided to share tax payer base, for all administrative controls, between them in the ration of 90 : 10 for small tax payers and 50 : 50 for other tax payers. Apart from the same it was decided that both the Central and the State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain. However, in the afterward meetings of GST Implementation Committee (GIC), on 25th August and 31st August 2017, the matter in relation to principles for division of taxpayers between the centre and the states i.e. cross empowerment were discussed and laid before GST Council again in its 21st meeting held on 9th September 2017, whereby the same was approved. For implementation of its decisions of cross empowerment GST council issued a circular no. 1/2017 dated 20.09.2017 mentioning its decision and principles for cross empowerment under GST for all administrative purposes. On the basis of this circular State GST Commissioners and Chief Commissioner of Central Taxes issued joint orders for cross empowerment, whereby it was specifically written that to ensure single interface tax payers are divided between state and centre for all administrative controls/ purposes. It is evident from documents of above meetings and circular that, intelligence based enforcement action was only discussed in 9th GST Council meeting and after that neither covered in 21st GST Council meeting nor the same was covered in authoritative documents released for cross empowerment of the assessee's i.e. Circular No. 1/2017 of GST Council and Cross Empowerment Order(s) of respective states. From above analysis, prima facie it appears that as on date Central Tax authority can exercise jurisdiction for all purposes (including search and seizure) under both the enactments i.e. State Tax and Central Tax for assessee's assigned to it only. And on the same line for assessee's assigned to State, all actions can be taken up by State Tax Authorities only. This understanding is not synchronised with what was decided in 9th council meeting for intelligence-based enforcement actions, accordingly needs clarification or amendment in orders.

Contributed by Jaipur Study Group



TYPES OF REVIEWS / AUDIT IN GST

Introduction:

The common audits we come across in India can be bifurcated into two parts:

A. **Statutory audits:** Companies Audit, Bank audit, Audit of insurance companies, Environmental audit, Energy audits etc. In taxation audit under Income Tax Act, 1961. In Indirect taxes the audit was prevalent [pre gst] under some of the local State VAT Acts and a mechanism of departmental audit and special audits was built in under the provisions of erstwhile Central Excise and Service Tax laws. Further, with the introduction of Goods and services tax laws, government has incorporated various audit requirements including audit by the independent professionals in line. The reconciliation and audit under section 35(5) for those above the threshold of Rs. 2 crores of aggregate turnover is yet to be notified.

B. **Internal Audit:** Internal audit is not mandated in the statute but conducted at the behest of the management. It has variants such as of operational audit which is a voluntary appraisal activity undertaken by an organization to provide assurance over the effectiveness of internal controls, risk management and governance to facilitate the achievement of organizational objectives. Internal audit can be performed by employees of the organization or by the professionals independent of the organization and who report to the management.

   Unlike external audit, whose scope is primarily restricted to matters that concern the financial statements, the scope of work of an internal audit can be very broad and can encompass any matters which can affect the achievement of organizational objectives. It could also be restricted by the management. Internal audit is centered around certain key activities which include:

   - Examining the effectiveness of internal controls and strengthening the same with various preventive, detective and corrective controls.
   - Monitoring compliance with laws and regulations
   - Reviewing and verifying where necessary the financial and operating information
   - Evaluating risk management policies and procedures of the company
   - Examining the operations/ process for their effectiveness and efficiency.
   - The role of information technology has increased by leaps and bounds and the controls embedded are critical. Examining the software used, the integration to the system would be of paramount importance.

The component of GST inwards for any service or goods could range between 5-20% of the total expenditure. The outward charge of GST could range between 0- 28 % for majority of products or services. This is significant and review of this is required by the tax authorities as well as management. In this article we examine the various options available to the management. We do not look at investigations or revenue audits as required under CGST Act 2017.

Types of GST Review:

The internal audits and management reviews thatbusinesses can undertake from the stand point of Goods and Services Tax can be as under:

1. **Complete Health check reviews:**

   GST health check reviews can be conducted on the periodical basis covering all functions having GST impact. This could include sales, procurements, inventory, finance etc. Such reviews would be also helpful for GST mandatory statutory audit and more importantly it provides management with the comfort on level of compliance in the organization. This exercise is also value additive where various benefits available in the law are also identified on timely basis. Broadly, this would cover the following:

   - Review of GST outward supplies, tax rates applied, concessions, and exemptions claimed, fulfilment of related conditions, export benefits claimed etc.
   - Review of GST input tax credits claimed to assess eligibility, ineligibility, completeness, documentation for credits, transitional credits carry forward etc.
   - Review of procedural compliances including GST registrations obtained, payment of taxes, filing of returns, disclosure of ITC & outward supplies in returns, movement of goods for job work, carry forward of credits etc.
   - Review of reverse charge compliance by reviewing the expense ledgers on sampling basis, payments made, availment of re-credit after payment, eligibility of such credits, rate and abatements if any claimed including documentation.

2. **Area specific reviews:**

   Management can decide to conduct area specific reviews as per the need and requirement of the organization. Various areas that can be reviewed on specific basis from GST point of view can be sales, procurements, IT, ERP/ systems, exports & refunds, ITC credits, reverse charge, compliance and documentation, agreements/ contracts, disputes & litigation management etc. Areas specific reviews are very niche and specific, its coverage is more in-depth and it helps management in streamlining and strengthening the specific business process being reviewed.

   In the light of the fact that the Income Tax form 3CD has added clause 44 relating to GST and the limitation of time for input tax credit upto September 2018 return filing, the need to complete a ITC review is imperative. [Readers may visit idtc@icai.in for detailed article with review program in this regard]

3. **Inter-branch transactions review:**

   With the advent of 'distinct persons', transactions which would have gone untaxed are not only brought to tax but are required to be reported as inward-outward supply, respectively. And these transactions cancel each other in the consolidated financials at the entity-level. As such, identifying what are inter-branch transactions, reviewing the accounting entries and reporting them for GST purposes

during each tax period requires close attention. With the introduction of IT systems, trade has almost forgetting branch-departmental account which GST is brining to the fore. And in case of banks, the option in section 17(4) increases the importance of this review. Reference may also be had to the implied transaction of management oversight services by Head Office to all branches (being distinct persons).

4. **Review of invisible-supplies:**

   Transactions that are not for 'monetary consideration' are also liable to GST. As such, even without an accounting entry, the said transaction will need to be reported for GST purposes and reconciled in the Annual Returns. For example, exchange of goods will not involve any monetary consideration and as such no accounting entries are warranted, even impermissible. There are many other instances where even without an accounting entry, there would be a transaction liable to be reported for GST purposes. This review attends to take advantage of the understanding of the business domain and identify the manner – timing and valuation – of such transactions which could be referred as 'invisible' transactions.

5. **Due Diligence reviews:**

   In business restructuring deals, tax due diligence of buyer side is required. This may require to be done voluntarily by buyer or based on specific direction by seller. The review is intended to highlight the tax exposure which may carry on to the new entity. This becomes more critical in cases where entity is exposed to multiple indirect tax laws. The review identifies areas of non-compliance current or in long term, potential risks and even threats, changes required if any in the terms of the contract and also suggest alternative structuring strategy to optimise tax incidence.

6. **Systems and processes reviews:**

   Indirect tax systems impact almost all financial transaction of business. This necessitates having proper control system to manage tax function at transaction levels. The businesses have now become system driven where human interference is reduced to very minimal. The complex business structure coupled with system automation requires flawless tax system inbuilt as a robust system in all the business processes. Therefore, this review assists management in identifying the risks and gaps at various levels of GST compliance and the possible threat if the same remains unaddressed. The review helps management in incorporating various preventive, detect and corrective controls at various levels of a business process and it helps in streamlining and strengthening the entire business process cycle from its inception to the end which eventually cuts down the chances of mistakes, errors and frauds thereby improving the overall compliance matrix. Examples of such reviews may be:

   - Maintenance and data-flow in 'control accounts' where some factor such as credit reversal for delay in payment to suppliers, tax payment for delay in return of inputs sent to job-worker, tax payment on disposal of fully depreciated assets in books (but less than 5 years old) and such other post-procurement conditions prescribed by GST law;
   - Ongoing review of payment of tax by suppliers which may not always be through monitoring GSTR-2A but additional checks by admission of timely tax remittance (invoice-wise) by the supplier;
   - EWB auto-acceptance review where the portal accepts EWBs within 72 hours but the underlying supply may not relate to the entity. Continuous monitoring is one aspect but the omission to reject in a timely manner resulting in auto-acceptance implies an admission of inward supply which may not be the case; and
   - Such other key factors that require continuous monitoring as section 35(1) requires the accounts and records to be contemporaneously maintained and not specially prepared during an annual audit event.

7. **IT/ ERP systems review:**

   GST as we have seen is IT dependent. The GSTN has been the focal point of compliance. Many tax payers have automated their processes and even the return filing is performed electronically with utilities provided by the GSTN as well as independent software vendors. The need for keeping the data confidential is the key objective when sharing data. Even in management decision making reliance is placed on the output of the IT systems and the ERP. Any error in the initial configuration/ set up, data entry, data transfer, software coding of utilities could have substantial impact on businesses. Therefore businesses would need get the audit of the IT/ ERP systems and software validated.

   Business would also need to get an IT/ERP audit done not just from the compliance side, but to assess what are the Technology features that an organisation is missing out. Today most of the reports are prepared in Microsoft Excel, without that application Finance & Taxation team could not perform their duties. However it brings the limitation of possibilities of Data Processing beyond Excel. Business can explore / assess what are the manual functions still that are performed. In today's world any work done on Microsoft Excel to be termed as Manual work, like use of Calculator in Financial statement a decade back.

   Possible Automations one can think of

   a) Filing of Returns straight from ERP to GSTN Portal
   b) Generation of e-Way Bill along with raising of Invoice
   c) Integrated Reconciliation of 2A with Book of Accounted
   d) Sending Reminders (Email/SMS) to Vendors wherever there is deficiency in Credits.
   e) Rule based Alerts for in eligible Credits.
   f) Reminder for procedure compliance like

   - Inputs to be received back from job worker with in 1 year
   - Raising of Invoice in timely manner for supplyonapproval or Basis

   As we see today functioning of an ERP with GST compliance is basic minimum expectation from professionals today.

Conclusion:

Today in there is anevolving GST law with Government proactively and regularly seeking to amend the law for fitment of rates, Act and Rules to make GST simple and easy. The compliance in this period therefore is challenging and applicability would depend on the date of amendment. Some issues are not very clear for which one needs an indepth understanding. The role of high automation is however certain. Therefore the Chaptered Accountants who have this knowledge,audit skills need to get tech savvy and then they would be well placed to comply as employees and provide the review services as practitioners.

Contributed by Pune Study Group

NON PROFIT MAKING ENTITIES – A GST POINT OF VIEW

There are Lacs of religious and charitable trusts in India. They may be Religious Temples, Halls or Dharamshalas, Charitable Trusts like schools, orphanages, Gau-shalas or other Non-Government Organisations like those whose purpose is child protection, women empowerment, etc.Hereinafter we will call them NPEs (Not for Profit-Making Entities).

Basic purpose of any such organisation is not doing any kind of commercial activity. Theirmotive is never that of profit making. But, they are always indulged in some or the other kind of activity for earning revenue, directly or indirectly. In this article, we will analyse NPEs and their revenue generating activities from GST point of view.

All NPEs carry out different activities for revenue. In GST, for any activity to be considered as supply, it has to first to pass the test of business under section 2(17) of the CGST Act (hereinafter called the Act) and should be covered in scope of supply under section 7 of the Act.

First and foremost thing to be considered is clause (a) of section 2(17) of the Act which clearly states that for an activity to be considered as business, profit making is not a required condition. That means even if the activity is not for making any profit it can still fall under the term supply. So, any NPE can become liable to GST.

Now, let's look at scope of supply from NPE point of view. As per section 7(1) of the Act, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

So, major conditions to be satisfied for a transaction for it to become a supply will be:

- All forms of supply are covered. Exchange is not spared. Even disposal of any goods will become a supply under GST.
- For a consideration. These are the saving words. There should be a consideration for any transaction to come within the ambit of supply. Most of the activities of NPEs are without any consideration. So, it saves them in most of the cases.
- In the course or furtherance of business. So, any transaction must first satisfy that it is an activity for doing a business. Business has very vast definition and covers almost everything. However, course or furtherance of business has not been defined anywhere in the Act, so has to be considered as in common parlance.

We should also note that according to Schedule I of the Act, there can be some transactions that will be considered a Supply even if there is no consideration involved. From our topic's point of view, 2nd Para of the Schedule is important.

As per clause (iii)of Explanation to section 15 of the Act, employer and employee are related. So, any transaction with any employee will become a supply, unless it is covered by the proviso mentioned above that gifts uptoRs. 50,000/- a year to an employee will not be considered as supply.

Also, as per clause (v) and (vi) of the said Explanation, if the transaction is with any person who controls the NPE or the NPE controls any other person or both are controlled by some third person, then transaction will become a supply even though no consideration is involved. So, transaction with all trustees or managers can easily come within the scope of supply. Let's take a simple example. A temple gives a room to its trustee without any charges. It will become a supply and will be valued as per valuation rules. One may argue that it is not the business of the temple to give room on rent. Logically, it is true, but as per clause (c) of section 2(17), there is no need of volume, frequency, continuity or regularity of any transaction for it to become a "Business". There can be hundreds of such examples where some tiny transactions easily satisfy the test of "Business".

Registration:

As per section 22 of the Act, every supplier is liable to be registered:

- if he makes any taxable supply (and)
- if his aggregate turnover in a financial year exceeds Rs. 20 Lacs (Rs. 10 Lacs in special category States)

In short, 2 conditions need to be satisfied. First,there should be a taxable supply. Many of the supplies carried out by NPEs are covered under Nil rate of tax and thus are exempt supplies. Like, sale of "PoojaSamagri" is covered under Nil rate. So, in case the trust is supplying only PoojaSamagri, then it does not require registration even if the turnover of the same is above the threshold limit.

Second, the turnover should be more than Rs. 20 Lacs/ 10 Lacs. Important thing that should be kept in mind is that even if NPE generally supplies exempted/Nil rated items; but if it supplies any other item in the course of business even if the value is very less, it will become liable to get registered. For example, an NGO has some extra space in its office that it gives on rent to someone for Rs. 50,000 per month and has other income of Rs. 20 Lacs from exempted activities; it will become liable to get registered because the aggregate turnover includes exempted supply.

Most Important Exemption:

Vide CGST Notification No. 12/2017(Rate), dated 28/06/2017, Serial No. 1, Services by way of charitable activities by an Entity registered under section 12AA of the Income-tax Act, 1961, have been exempted.

This is a very important exemption provided by the Government and will immensely help many organisations. However, the organisation must be registered under specific clause of the Income Tax Act. Many religious and charitable trusts do not get themselves registered to avoid any head-ache of filing, etc. under Income Tax Act. They will ultimately loose the exemption provided by this notification.

Also, exemption is only for 'Charitable Activities'. As per definition given in the relevant Notification:

"(r) "charitable activities" means activities relating to -

(i) public health by way of ,-

(A) care or counseling of

(I) terminally ill persons or persons with severe physical or mental disability;

(II) persons afflicted with HIV or AIDS;

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion , spirituality or yoga;

(iii) advancement of educational programmes or skill development relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;"

As per this definition, charitable activity mainly covers some health related activities, educational related activities, environment preservation activities and activities related to advancement of religion, etc. However, care has to be taken before considering any activity as charitable under this definition. Not all educational or health related activities are covered under this definition.

VARIOUS TRANSACTIONS FROM GST LENS-

Let's now look at different types of transactions that NPEs carry out from GST point of view.

Donations:

Donations do not come within the meaning of 'business' u/s. 2(17) of the Act as they are not in the nature of trade, manufacture, profession, vocation, etc. – again, there is no element of services embedded in a mere donation receipt. Therefore, donation receiptsin the absence of quid pro quo are outside the purview of GST. Donation receipts will also not be considered for calculation of total turnover.

Interest Income:

CGST Notification No. 12/2017 (Rate), dated 28/06/2017, exempts interest income from the ambit of GST. Inthe said Notification, Serial No. 27 reads as follows:

"Services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);"

Therefore, interest income received by the organisation under various SDs/FDs/RDs or in any other form will be exclusively exempted under GST, where interest or discount is the sole consideration.

However, interest income will remain a supply and thus should be included in total turnover. This makes it an important case as total turnover in many cases will increase, as interest is the major source of income of many NPEs. Such organisations may be selling some taxable goods. Though the amount might be very small, they will become liable to registration. Consequently, they have to follow the Act and all the applicable Rules like any commercial organisation.

Receipts from Trainings/ Seminars conducted:

As per CGST Notification No. 12/2017 (Rate), dated 28/06/2017, as amended via CGST Notification No. 2/2018 (Rate), dated 25/01/2018,Serial No. 66, Services provided by "Any educational institution" to its students, faculty and staff are exempted. So, unless the NPE comes under definition of educational institution its receipts from Trainings and Seminars will be taxable supply under section 7 and liable to GST. GST Rate for the same will be 18%.

Educational Services:

Some educational services are exempted while others are not. CGST Notification No. 12/2017 (Rate), dated 28/6/2017 as amended via CGST Notification No. 2/2018 (Rate), dated 25/01/2018, Serial No. 66 reads as:

"Services provided,-

(a) by an educational institution to its students, faculty and staff;

(aa) by an educational institution by way of conduct of entrance examinationagainst consideration in the form of entrance fee;

(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government, Union Territory;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv)services relating to admission to, or conduct of examination by, such institution;

(v)supply of online educational journals or periodicals;

Provided that nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

(i) pre-school education and education up to higher secondary school or equivalent; or

(ii) education as a part of an approved vocational education course."

Thus, there are two types of exemptions in this entry. Services provided by the educational institution and services received by educational institution. However, before that we need to understand what is an 'educational institution'. As per CGST Notification No. 12/2017(Rate), dated 28/06/2017:

"(y) "educational institution" means an institution providing services by way of,-

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;"

Services provided 'BY'educational institutions:

Any organisation satisfying the definition of educational institution as explained above, if supplies any services to its students, staff and faculty can enjoy the exemption from tax. Moreover, if the fee is for entrance exam, it will still come under exemption, even if it provided to anyone else. For e.g. ICAI providing educational services to course studying students will be exempt. However, if it is giving educational services like seminar for its members, it is taxable.

Services provided 'TO' educational institutions:

Now, let's come to the other side. Purpose of giving exemption to educational institutions is to reduce the cost of education so that it is affordable to all. However, if services received by educational institutions are liable to tax then it will beat the purpose of exemption. So, many services received by them have also been exempted.

However, there is something interesting to this side of exemption. Services like transportation, catering, house-keeping, security,

etc. are exempted only if they are provided to institutions providing education up-to high-secondary schools and not all. While services of admission and examination received by all institutions are exempt. Also, the most confusing part is receipt of online journals etc. is exempt only for institutions other than schools and vocational training centres. This is quite confusing and purpose of the same in not understandable.

Moreover, by amending Serial No. 22 (Services by way of giving on hire), via CGST Notification No. 02/2018(Rates), dated 25/01/2018 additional exemption is given to persons who give transport services to educational institutions up-to higher-secondary schools. Such transporters will get exemption from GST on hire charges if they use hired vehicle for transportation of students, faculty or staff of such schools. Interesting situation will arise again if a transporter uses same hired vehicle partly for such institutions and partly for other purposes. For e.g. a bus driver hires a bus and uses it for transportation of students in a school in the morning. While, in the evening the same bus is used for transportation of regular passengers. There is no clarification for such cases.

Healthcare Services/Hospitals:

Public health is always a top priority for any Government, so it can't tax healthcare services. So, Serial No. 74 of Notification No. 12/2017-Central Tax (Rate), dated 28/06/2017, specifically provides for exemption on healthcare services. The entry reads as:

"Services by way of-

(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;

(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above."

Important point to note here is that definition of health care services as per the notification specifically excludes hair transplant or cosmetic or plastic surgery, except when required due to any abnormality, injury, defect, etc. Now, consider a situation-a large hospital also has a plastic surgery department. It will be covered under taxable supply. Consequently, the hospital will need to get registered and all the provisions of the Act will become applicable to it.

Exemption entry and the definition of health care services are both silent about the room charges in hospital. However, Government has clarified through Circular No. 27/ 01/ 2018-GST dated 4/01/2018that room charges are also exempt services.

Exemption is also provided to veterinary hospitals engaged in health care of animal and birds, via Serial No. 46 of the said notification.

Renting Services:

As perCGST Notification No. 12/2017(Rate), dated 28/06/2017, Serial No. 12 "Services by way of renting of residential dwelling for use as residence" are exempt; while, renting of commercial property, wedding halls, space, or renting of any space given for hoardings, etc. will attract GST at 18% rate. However, for renting service, there is another exemption entry at Serial No. 13 for NPEs, which reads as follows:

"Services by a person by way of-

(a) conduct of any religious ceremony;

(b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:

Provided that nothing contained in entry (b) of this exemption shall apply to,-

(i) renting of rooms where charges are one thousand rupees or more per day;

(ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day;

(iii) renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month."

This exemption is only for those NPEs which are registered under specified clauses of the Income Tax Act which mainly cover religious and charitable trusts and NGOs. NPE may not be the owner and is just managing the property than also it can avail the exemption. However, maximum amount limit has been provided creating a road-block for many such NPEs. Exemption limits are Rs. 1,000/- for room rent, Rs. 10,000/- for community halls and Rs. 10,000/- per month for shops. Rents are quite high even in 2-tier and 3-tier cities now. There are many Dharamshalas or Community Centres which charge more than Rs. 10,000/- per day for any ceremony. In many cases, total rent includes electricity charges thus crossing the limit provided in the exemption. Such cases should be planned accordingly by such NPEs.

Also, since the word 'precincts' is not defined in Notification No. 25/ 2012-Service Tax, dated 20.6.2012, there were disputes in interpreting the scope of the said notification. It has been clarified vide Circular No. 200/ 10/ 2016-Service Tax that field formations may not take restricted view of the word 'precincts' and consider all immovable property of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located, as being located in the precincts of the religious place. The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place.

The exemption in GST is identical to the exemption entry in service tax; therefore, this clarification may also be applicable under GST regime.

Services by way of training or coaching in recreational activities

As per Serial No. 80 of Notification No. 12/ 2017-Central Tax (Rate), dated 27-Jun-2017, the NPEs enjoys another exemption relating to training or coaching in recreational activities. The entry reads as under-

"Services by way of training or coaching in recreational activities relating to-

(a) arts or culture, or

(b) sports by charitable entities registered under section 12AA of the Income-tax Act,"

Thus, training or coaching provided by NPEs in dance, music, art, literature, theatres, drama etc. or any of the sports will be exempt from GST.

Services by way of Right to Admission:

Many NPEs indulge in exhibition, dramas, and sporting events etc. which have entry fees. If no exemption is given, all such organisations will come within the ambit of GST. So, in the Notification No. 12/2017-Central Tax (Rate), dated 28/06/2017, Serial No. 81 as amended by Notification No. 2/2018-Central Tax (Rate), dated 25/01/2018, following exemption is provided:

"Services by way of right to admission to-

(a) circus, dance, or theatrical performance including drama or ballet;

(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;

(c) recognised sporting event;

(d) planetarium,

where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than Rs. 500 per person."

So, if there is entry fee up-to Rs. 500/- at any of the events mentioned above, then they will be exempted from GST. Amount limit was Rs. 250/- which was increased to Rs. 500/- through amendment. This exemption entry seems specific and only for the services mentioned therein. So, any other services in nature of "right to admission" at any place for a consideration, which is not specifically covered above may not enjoy exemption. Now, comes the interesting point. Even some religious places have some token entry fees. Amount charged may be quite low but the total of the same is way more than the prescribed limit of registration. There being a separate exemption entry for 'right to admission' a thought may arise whether entry fees at such religious places will be taxable or it will be covered under the definition of 'Charitable Activities' and can take benefit of Serial No. 1 of the main exemption Notification. Chances of litigation are surely there.

Receipts in Nature of Reimbursements:

Purpose of Trade Unions, Housing Societies, etc. is also not that of making profit. They incur expenses on behalf of all its members and charge their members to recover the expenses. So, it is a form of reimbursement rather than services. Therefore, in the CGST Notification No. 12/2017 (Rate), dated 28/06/2017 as amended by CGST Notification 2/2018 (Rate), dated 25/01/2018 following exemption entry is there at Serial No. 77:

"Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

(a) as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of Goods and Service Tax; or

(c) up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex."

Important point to be noted here is clause (c). Only for residential societies, exemption limit is given up-to Rs. 7,500/- per month. If the association is an office-bloc, it will not be covered under this exemption.

Import of service by NPEs

As per Serial No. 10 of Notification No. 9/ 2017-Integrated Tax (Rate), dated 28-Jun-2017, any service received from a provider of service located in non-taxable territory by any entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities shall be exempt from GST. Thus, the charitable entity is not liable to pay GST on import of services under reverse charge mechanism. However, "charitable activities" shall have the same meaning as defined under paragraph 2(r) of the said notification. It is also specified in this entry that exemption shall not apply to online information and database access or retrieval services received by such charitable entities.

Sale of Memorabilia / Trust Publications:

Sale of memorabilia or any trust publications will come under the definition of business. Also, this being sale for a consideration will attract the provisions of "Supply" under section 7. Therefore, it will be liable for GST. However, Printed Books covered under HSN Code 4901 and Newspapers, periodicals & journals covered under HSN Code 4902 attract "Nil" rate of Tax. While Calendars covered under HSN Code 4910 attract 12% GST Rate. Also, there will be different rates depending upon the type of Memorabilia sold.

Many NPEs indulge in such supplies to cover many of their expenses. Sale of T-shirts, key-chains, etc. is quite common. These transactions will not always be covered under "Charitable Activities" as explained above. However, if such things are given as Souvenirs without charging any consideration for the same, it will be out of scope of supply. In such cases, the organisation should keep in mind that purpose of such supply should be in nature of any activity covered under the definition of "Charitable Activities".

Now, consider a situation. An NPE has some bank deposits whose interest amounts to 19 Lac Rupees. However, for earning more income, it indulges in sales of calendars. Total of this sale is Rs. 2 Lacs only. Now, due to limit of 20 Lacs Rupees, the trust becomes liable to get registered and will need to charge GST on calendars.

Sale of some other Goods:

Nowadays, many religious institutions charge token money for sale of Prasadam. Considering this, Government has provided exemption through Serial No. 98 of Notification No. 2/2017-Central Tax (Rate), dated 28/06/2017. It covers Prasadam supplied by all religious places. Entry reads as:

"Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc."

Also, Puja Samagri has been exempted via Serial No. 148 of the notification. Entry reads as:

Puja samagri namely,-

(i) Rudraksha, rudraksha mala, tulsikanthi mala, panchgavya (mixture of cowdung, desi ghee, milk and curd);

(ii) Sacred thread (commonly known as yagnopavit);

(iii) Wooden khadau;

(iv) Panchamrit,

(v) Vibhuti,

(vi) Unbranded honey

(vii) Wick for diya.

(viii) Roli

(ix) Kalava (Raksha sutra)

(x) Chandantika"

Receipts by the way of sale of scrap:

Once any NPE becomes liable to get registered under GST, even sale of scrap will become taxable supply under section 7, as it will be "in the course of business".

Conclusion:

Most of the activities of NPEs are generally exempted. However, there may be some activities that can attract GST lens. Care should be taken while involving in any revenue-generating transactions. Also, activities mentioned above are undertaken by profit-making entities, nowadays. Like, there are many private schools and hospitals everywhere. The exemptions will be applicable to them also.