

SUGGESTIONS ON GST ACT(s)

(July 2017)



Indirect Taxes Committee

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI**



INTRODUCTION

1. The Institute of Chartered Accountants of India considers it a privilege to submit its suggestions on Central Goods & Services Tax Act, 2017, Integrated Goods & Services Tax Act, 2017 etc.
2. We appreciate the steps taken by the Government of India and its commitment for an early and smooth introduction of the GST.
3. We look forward to contributing in the drafting of simple, transparent, & fair GST laws in India.
4. In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same. The contact details are:

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Suggestions on GST Acts

1. Definition of term Aggregate Turnover

Section 2(6) of CGST Act provides that “aggregate turnover” means the aggregate value of all taxable supplies, exempt supplies, **exports of goods or services or both** and inter-State supplies of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act, UTGST Act and the IGST Act, as the case may be;

Issue

- The term “exports of goods or services or both” cover all the exports which may be taxable as well as non-taxable. Reference may be drawn from wordings in section 2(108) (taxable supply) CGST Act read with sections 2(5) (export of goods) and 2(6) (export of services) Revised IGST Law.
- If ‘exempt supplies’ are included in the aforesaid threshold of Rs.20 lakh that would mean that if a dealer is involved in exclusive supply of exempt goods/services and if he happens to make a small supply of taxable goods/services, then he will become liable for registration. As such the turnover limit of Rs.20 lakh is too low a limit and if the exempt supplies are also included therein than a very large number of people will become liable for registration without any substantial revenue to the Government.

Suggestion

- *It is therefore suggested that the reference of the words “export of goods / services” be accordingly removed from definition of Aggregate Turnover.*
- *It is suggested that instead of words “aggregate turnover” the words “aggregate turnover of taxable supplies” be used.*

2. Definition of Capital Goods

Section 2(19) of CGST Law provides that “capital goods” means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business;

Issue

Under this definition, no treatment for the items have been provided which will be expensed during the year of purchase but not written off in the books due to their nature and use in industry.

Suggestion

- *It is suggested that an exception be provided for items which are written off during the year of purchase in books of accounts to treat them as capital goods even if not capitalised in books of accounts.*
- *Further, it is suggested that this definition may also include the goods, the value of which is amortized over a period in the books of accounts.*
- *Additionally, the term “in the course or furtherance of business” be replaced with “for the purpose of business” so that no scope for restriction of credit is left. Same change may*



also be done for definitions of “Input” & “Input Services”, “Outward Supply” and also in Schedule I & II.

- The term “value” be replaced with the words ‘purchase consideration’ for better clarity.

3. Definition of Electronic Commerce

Section 2(44) of the CGST Act defines the Electronic Commerce as supply of goods or services or both including digital products over digital or electronic network.

Issue

The current definition appears to include only 'supply on own account' and not 'supply through the portal but by other Suppliers'. Also, electronic commerce appears to exclude 'information portals' and 'customer to customer' portals but the same will be covered by section 52(1).

Suggestion

It is suggested that words “supply of” be replaced with the words “facilitating the supply of ……”

4. Definition of Exempt Supply - In line with Govt. Policy

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

Issue

- Non-Taxable Supplies have been excluded from the scope of Aggregate Turnover in the CGST Act but still the term “Exempt Supply” covers the same. Thus, inclusion of non-taxable supply in the exempt supply would ultimately bring it within the scope of aggregate turnover.
- Interpretation of aforesaid definition appears that supply made to job worker covered under exempt supply. Since a registered taxable person may send any inputs and/or capital goods without payment of tax, to a job worker for job-work and therefrom subsequently send to another job worker.

Suggestions

- *It is suggested that non-taxable supplies should be taken outside the ambit of ‘exempt supplies’ as well as ‘aggregate turnover’. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.*
- *An amendment may be required in said definition that ‘Exempt supply means any supply of goods/services which are non-taxable under this act **other than supply for job work in accordance with Section 143 of the Act** and includes such supply of goods or services or both, which attract nil rate of tax or which may be exempt from tax under section 11.*

5. Sale of Canned software not included as services



Section 2(52) of CGST Act, 2017 defines goods as ‘every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply’.

Further section 2(102) defines services as “anything other than goods”

Issue

1st Model GST Law specifically contained an Explanation in the definition of goods which clarified that goods do not include intangible property. The definition of services also contained a similar Explanation to the effect that service includes intangible property. Hence, it was made very clear that software in any form is always classifiable as a service and not goods.

However, the Explanations cited aforesaid have been deleted in the CGST Act. It has only been specified in Para 5(d) of Schedule II that development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software is a service. The deeming provision in Schedule II is a replica of what we have in Clause 66E of the Finance Act, 1994 which deals with Declared Services.

The deletion of the aforesaid Explanations would once again raise the long-standing classification dispute as to whether sale of shrink wrapped software or canned software is a supply of good or service.

Suggestion

It is suggested that an explanation as provided in Model GST law to the definitions of Goods as well as Services be restored.

6. Definition of “Inward Supply” – If removed denial of credit.

Section 2(67) of CGST Act provides that “inward supply” in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without **consideration**;

Issue

- Inward Supplies made without consideration are also treated as a part of total inward supplies. This means present definition shall cause the buyer to upload the purchases on GSTR2 for the free supplies which shall not be posted by the supplier causing reconciliation issues. Since there is no levy on the free of cost supplies, this inclusion of supplies without consideration need not be required.
- The current definition introduces new terms like 'purchase, acquisition, etc.' which appear to convey that they are the mirror opposite of each of the forms of supply in section 3(1)(a).

Suggestion



- *It is suggested that supplies made without consideration be kept outside the purview of the definition of “Inward Supply”.*
- *The above definition be changed to ‘Inward supply’ in relation to a person with reference to whom the place of supply is determined means the corresponding supply by the supplier of the outward supply”.*

7. Definition of Job Work – Repair should be part of JW

Section 2(68) of CGST Act provides that “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly;

Issue

The definition of job work appears to overlap with repairs etc.

Suggestion

It is suggested that a proviso be inserted to the definition of Job Work to provide that job-work will not include repair or maintenance or other forms of supply which are carried out with respect to the goods belonging to another taxable person

8. Definition of “Location of the supplier of goods”

Section 2(71) of CGST Act, 2017 defines “Location of the supplier of services” & “Location of the receiver of services” but does not define “Location of the supplier of goods”. Absence of definition is causing great concern.

Suggestion

It is suggested that “Location of the supplier of goods” be provided as Location of supplier means the location where goods are situated under the control of the supplier ready for supply

9. Term Provision to be included in Definition of Supply

Section 7(1) of CGST Act, 2017 provides that the expression “supply” includes—

- (a) 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;

Issue

There are various terms given under clause (a) as example which constitutes supply. However, the term “**Provision of service**” is not included here, which has been used at various places in the CGST Act.

Suggestion

It is suggested that the term “provision” be included in the scope of supply.

10. Removal of words “such as” as the definition of Supply is inclusive one.



Section 7(1)(a) of the CGST Act provides that

Supply includes—(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

Issue

In section 7(1)(a), the words 'such as' while listing the various forms of supply appears to be an indicative list and due to this, various concerns arise.

It appears to render 'manufacture' also to be liable to GST even if it is only in preparation of supply. Contracts signed without any goods or services being appropriated appears to attract GST.

Suggestion

It is suggested to remove words 'such as' and even after deletion supply does not become limited in any way as the definition is inclusive to take care of any extraneous situation.

11. Taxability of Import of services -

Section 7(1)(b) of CGST Act provides that supply includes import of services, for a consideration whether or not in the course or furtherance of business, and

Further, Schedule I Point 4 of the CGST Act provides that Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be treated as supply even if made without consideration.

Issue

Import of services is anyway covered in section 7(1)(b) and establishments outside India is a distinct person which will apply to import of services also. Dual coverage of import of services might lead to interpretational issues.

Suggestion

It is suggested that entry 4 of Schedule I of CGST Act be deleted.

12. Business Goods put to Private use by an assessee

Clause 4(b) of Schedule II of CGST Act, 2017 as specified in Section 7 provides that where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.

Issue

As per the provision, in the event, a car is owned by a taxable person in the name of a company and the same is being used by him occasionally for his personal use then such personal use would be considered as supply of service and would be subject to GST. In the given scenario, how should the taxable person determine the value of such services (personal use) for the purpose of leviability of GST?



Further, as per Section 17(1) Input Tax Credit on such services (used for other purpose) would not be available. This is a double jeopardy to the Taxable person.

Suggestions

- *It is suggested that an option be given to assessee to adopt some presumptive value of the use of specified assets for personal purposes based on the quantum of usage made by him.*
- *Further, if the Government intends to levy GST on such services (personal use) then Input Tax Credit on such services also be allowed to the Taxable person.*

13. Transfer of Land etc. by way of inheritance, testament, gift etc.

Clause 5 of Schedule III of CGST Act, 2017 as specified in Section 7 provides that Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building would be treated as an activity or transactions which shall be treated neither as a supply of goods nor a supply of services.

Issue

Sale does not include transfer of land by way of will, inheritance, testament etc. Such transactions if kept out of the purview may create problems and confusion.

Suggestion

It is suggested that transfer of land by modes other than sale also be included as an activity or transactions which shall be treated neither as a supply of goods nor a supply of services.

14. Availability of Composition Scheme to various assesseees

Section 10 of the CGST Act, 2017 provides for Composition Scheme availability to registered persons whose aggregate turnover in the preceding financial year did not exceed Rs. 75 lakh.

Issue

The benefit of composition scheme is available for works contract as defined in clause (119) of section 2 & 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 any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

However, composition scheme is not available for other set of services not eligible for input tax credit like outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, rent-a cab etc. as provided u/s 17(5)(b). Moreover, input tax credit is not allowed in such supplies except when used for making outward supply of the same category.

This goes against the very intention of GST which was believed to bring manufacturers, traders and service providers at parity. Such a provision may prejudice the interests of small service providers not wanting to undertake the lengthy compliances applicable to a normal supplier. This may further encourage tax evasion.



Suggestion

It is suggested that option of paying tax u/s 10 should also be extended to goods and services covered u/s 17(5)(b), (c) & (d) and services provided by professionals having small turnover.

15. Deferment of levy till Time of Supply

Section 12(1) & 13(1) of CGST Act provide that liability to pay CGST/ SGST shall arise at the time of supply.....

Issue

The language employed appears to indicate that the levy is deferred till the time of supply. It also states that the 'liability is on the goods' - this is not the case in GST. Tax levied under section 8 appears to be suspended until time of supply under sections 12 & 13.

Suggestion

- *It is suggested to clarify that the levy under section 9 would be final but the payment of the levy would be deferred under time of supply under section 12. Alternatively, it may be clarified that the levy under section 8 is complete only at the time of supply under sections 12 & 13.*
- *Thus, section 12(1) & 13(1) may be reworded as "Tax levied under section 9 is payable at the time of supply as determined in terms of the provisions of this section."*

16. Manner of determination of amount liable to be paid by the supplier

Section 15(2)(b) of the CGST Acts provides that the value of supply shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both

Issue:

Since the value of supply includes an amount liable to be paid by the supplier but incurred by the buyer, the basis for determination of the amount liable to be paid by supplier is not specifically mentioned herein. It could lead to large scale litigations if the amount to be determined is left open to the discretion of taxpayers.

Suggestion:

Therefore, it is suggested that the amount liable to be paid by supplier could have a reference to the contract or agreement between suppliers and recipient by the words 'by reason of or in connection with'. So, supplier's liability should be restricted within the scope of the contract or agreement.

17. Inclusion of Interest, penalty etc. in Value of Supply

Section 15(2)(d) of CGST Act provides that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply.

Issue



In most of the cases the amount of interest or penalty is not known at the time of supply. To be required to be included in the valuation at the time of supply is a cumbersome task.

Suggestions

- *It is suggested that clause d of section 15(2) be omitted.*
- *Alternatively, if it needs to be essentially included, it might be considered to shift this clause to section 31 as one of the circumstances requiring the issuance of debit note*

18. Blocking of Input Tax Credit for certain set of Services

Section 15(5)(b) of CGST Act, 2017 provides that no input tax credit is available on supply of goods or services or both: —

- i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply
- ii) membership of a club, health and fitness centre;
- iii) rent-a-cab, life insurance and health insurance with provided exceptions
- iv) travel benefits extended to employees on vacation such as leave or home travel concession.

Issue

Certain expenditure of the given nature can also be required to be made under the requirements of any law and not necessarily for making taxable outward supplies of the same category. Say, for example, food and beverages used in the canteen of a factory.

Suggestion

It is suggested that the facility of availing input tax credit not be blocked when goods and/or services are used or intended to be used in the course or furtherance of business in lines with the provisions of Section 17(1). Disallowances of such credit is not best practices anywhere in the world

19. Treatment of Credit for assessee making fully exempt supplies

Section 17(2) of the CGST Act, 2017 provides that where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under CGST Act or under IGST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Issue

This section does not provide for the cases where the assessee is engaged in fully exempted supplies. There is no specific provision for restriction of credit in cases of fully exempted supplies. This may cause litigations.

Suggestion



It is suggested that there be made specific provisions for treatment of credit in case assessee is making fully exempted supplies.

20. Ensuring free flow of credit

There is no requirement to create such a degree of suspicion about business and personal expenses. If the business needs justify the expense, then subject to the safeguard in section 17(1), credit should not be restricted. Provisions under Section 17 (5) relating to the Input Tax Credit needs to be simplified and brought at par with the simple concept that if outward supplies of a person are taxable then the inward supplies of the goods or services or both should be allowed as credit.

Suggestion

It is suggested to delete the sub-section (5) and may include cross-link to any income-tax disallowance of expenses being personal in nature

(if aforesaid suggestion be accepted to below _____ to ____ may not be consider)

21. Disallowance of Credit in respect of works contract services

Clause c Section 17(5) of CGST Act provides that works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service.

Clause d provides that goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business.

Explanation 1.- For the purpose of this clause, the word “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Issue

- Works contract is already limited to immovable property; hence the current language is redundant.
- Further, suppose that a person constructs a Factory Building, Hotel Building or a building which he wants to or has let out on rent, as per provisions of Section 17(4) (c) and (d) of the CGST Act, credit of any taxes paid on construction of Immovable property would not be allowed. This is a differential treatment being laid out that firstly where being a tenant of a building, a person would be getting the credit of the taxes paid on the rent to the owner of the Immoveable property but if a person has constructed building himself, then he would not be getting any credit of the taxes paid. This would be a huge negative for the Hotel Industry or the Manufacturing Industry wherein large investment is required in Building for the rendering of the supplies. Immovable Property in case of Hotel Industry, Industries and used in Letting out on rent forms an important part of the supply chain and cannot be treated as being used for self-consumption.



- It leads to cascading of taxes which is not the spirit of GST Law, as to provide seamless credit.

Suggestions

- *It is suggested that clause c be rephrased as “works contract and goods or services used in a works contract except where it is an input for further supply as works contract”.*
- *It is suggested that the provisions under Section 17 relating to the Input Tax Credit be rationalized and brought at par with the simple concept that if outward supplies of a person are taxable then the inward supplies of the goods or services or both should be allowed as credit.*
- *Further, it is suggested that renovation works, repairs etc. be eligible for credit if they are in course / furtherance of business.*
- *The restriction of ITC in respect of all works contracts resulting in immovable property at large be removed since in large number of contracts which qualify as works contracts, the end result would be immovable property'.*

22. Denial of Credit on Goods Confiscated or detained

Clause i of Section 17(5) of CGST Act provides that input tax credit shall not be available in respect of the any tax paid in terms of section 74, 129 or 130 dealing with confiscation and detainment of goods.

Issue

When the Confiscated Goods are released and sold it will be subject to tax and hence to deny the credit thereon is not appropriate subject to tax, interest & penalty.

Suggestion

It is suggested that there be no denial of ITC on goods confiscated or detained. Interest & penalty may be charged but denial of credit lead to cascading and multipoint tax philosophy.

23. Exempt Supply becoming Taxable Supply

Section 18(1) of CGST Act provides that a person who has applied for registration under this Act within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

Section 18(1)(d) of CGST Act provides that where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:



Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

Issue

- Though the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act is allowed, no clarification is provided as to credit of Capital Goods lying on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.
- Law only allows the Input Tax Credit for dealers applying for registration within thirty days from the date on which he becomes liable for registration and does not provides for dealer applying for registration beyond the period of thirty days. The law is trying to penalize the dealer on wrong front. It is agreed that the dealer has not taken registration within the prescribed time limit. He should be penalized for that with stringent penalty provisions.
- Bona fide view entertained about non-eligibility to tax cannot become such a burden that industry will be forced to look for ways to escape from such consequences.

Suggestion

- *It is suggested that suitable credit be allowed after deducting appropriate depreciation as the person earlier has some exemption but under come the taxable chain. Article 14 of the Constitution of India provides right of equality and if credit to such person is not allowed then it will lead to non-equality among the equal.*
- *It is suggested that as a principle of Natural Justice, dealers obtaining delayed registrations be allowed to set off the tax paid on the material on which output liability is being created as Output Tax would be collected from the dealer from the date when he became liable for registration.*
- *Following explanations be added to Section 18(1)(d)*
"Explanation 1 - exempt supply becomes a taxable supply includes when a bone fide view is overturned by law or decision of a Court or Tribunal and such bona fides declared in the law so laid down.

Explanation 2 –notwithstanding anything to the contrary in this Act, entitlement to take credit on input tax shall refer to input tax related to input, input service and capital goods, computed as aforesaid, used in relation to such supply.



24. Time Limit of 1 year for taking Input Tax Credit for Capital Goods

Section 18(1) of CGST Act, 2017 provides that subject to such conditions and restrictions as may be prescribed—

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed

Further, Section 18(2) of CGST Act, 2017 provides that registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of **one year from the date of issue of tax invoice** relating to such supply.

Issue

The provision seems beneficial but restricting the period of one year for availing Input Tax Credit on Capital Goods is very less. For a dealer purchase of Capital Goods is a rare activity where a huge investment is involved. The dealer will transit to GST with such high tax paid capital goods and is expected to use them for further supply in GST regime.

Further, as per clause (c) and (d) of Section 18(1) a percentage point method shall be prescribed for taking input tax credit in case of capital goods. Thus, there seems a gap between the provisions of section 18(1) and Sec 18(2) since percentage point method is used for a longer period.

Suggestion



It is suggested that period of 1 year for availing input tax credit be restricted only to inputs and in case of capital goods a longer period be prescribed.

25. Registration for Assesseees with Aggregate Turnover Over Rs. 20 Lakhs

Section 22 on the CGST Act, 2017 provides that every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakhs.

Section 7(1) of the CGST Act provides that “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.

Further section 2(6) of CGST Act, 2017 provides that (6) “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), **exempt supplies**, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Issue

In case a person is earning interest income from Fixed Deposit Receipts of Rs. 15 Lakhs and a Rental income from renting of immovable property of Rs. 6 Lakh, he would need to take registration and collect GST on rented property (as it covered under definition of supply). However, interest income on FDR is not liable to GST. On inclusion of interest income in aggregate turnover unnecessary burden is imposed on various assesseees including senior citizens who are at present not involved in carrying business and for that person complying the law is very difficult.

Suggestion

It is suggested that for computing the aggregate turnover limit of Rs. 20 lakhs for mandatory registration the income earned without any business motive not be considered.

26. Registration in case of a person required to deduct tax under section 46

Section 25(6) of the CGST Act provides that every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration under sub-section (1), (2) or (3):

PROVIDED that a person required to deduct tax under section 51 shall have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number (TAN) issued under the said Act in order to be eligible for grant of registration.

Issue

- It might be possible that the supplier is required to deduct TDS under GST law but is not required to deduct TDS under income tax act but mandating him to obtain tan under income tax act will add compliance burden.



- The entire issue boils down to the fact that, it an agreed and acceptable argument that PAN would be the bedrock for GST. Since PAN is not mandatory for every citizen of India, it would be a long-drawn process, and if for any reason allotment of PAN is delayed then the person would be suffering from loss of Input credit and penalty for delay in filing of application would also be levied on him. Loss of Input Tax Credit on the Capital Goods would be an even bigger loss.

Suggestion

- *It is suggested that the supplier who is required to deduct TDS under GST not be required to obtain TAN mandatorily under Income Tax Act and may obtain registration by using PAN.*
- *It is suggested that as was provided in the draft report to allot temporary registration in case of enforcement cases and then converting the temporary registration to PAN based registration. A temporary registration may also be allotted in normal cases till PAN is allotted with a maximum time of 15 days to update PAN and subsequently converting the temporary registration to PAN based.*

27. Time limit to fix effective date of Registration

Section 25(11) of the CGST Act provides that a certificate of registration shall be issued in the prescribed form, with effective date as may be prescribed.

Suggestion

It is suggested that time limit be relaxed due to lack of awareness for a period of 1 year i.e. delayed registered be provided credit from the date of liability itself not from the date of grant of registration.

28. Special provisions relating to casual taxable person and non-resident taxable person

Section 27(2) of the CGST Act provides that: A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

Suggestions

- *It is suggested to replace the word with estimated tax liability with “estimated output net tax liability” and it would be allowed to pay with input tax credit if any transfer of goods being made by causal dealer in the course of such transaction.*
- *It is also suggested to clarify that who would make the estimate of tax liability. Since, it is possible that authorities may intervene and reject estimate made by the dealer.*

29. Cancellation of Registration

Section 29(2) of the CGST Act provides that the proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, —
(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or



- (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Issue

- If cancellation of registration is permitted from anterior (earlier) date, it would lead to disruption of whole credit chain and difficulties will be faced by persons who have already availed credit.
- Dealers may not be able to file periodical returns on time due to financial hardship in paying tax. Hence, stringent times for non-filing of returns would lead to cancellation of registration, which may not be required.

Suggestion

- *It is suggested that clause (d) be deleted*
- *Also, it is suggested that not to permit cancellation of registration from earlier date.*

30. Definition of Books of Accounts for the purpose of GST

Section 35 of the CGST Act provides that every registered taxable person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods or services or both, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf:

PROVIDED that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned:

PROVIDED FURTHER that the registered taxable person may keep and maintain such accounts and other particulars in the electronic form in the manner as may be prescribed.

Suggestion

It is suggested to define the term “Books of Accounts” for the purpose of GST. The reference for the books of accounts has also been made in Time of Supply provisions. A clear meaning would thus support correct interpretation.

31. Furnishing details of outward and inward supplies by the casual taxable person

Section 37(1) of the CGST Act provides that every registered taxable person, other than an input service distributor, a non-resident taxable person and a person paying tax under the provisions of section 9, section 46 or section 56, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services effected, during a tax



period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within the time and in the manner as may be prescribed.

Further, Section 38(1) of the CGST Act provides that every registered taxable person, other than an input service distributor or a non-resident taxable person or a person paying tax under section 10, section 51 or section 52, shall verify, validate, modify or, if required, delete the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 38 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 38. Check 33

Issue

The given provisions are silent in case of the casual taxable person since the provisions related to non-resident and casual taxable persons are almost similar under the CGST Acts.

Suggestion

- *It is therefore suggested that the casual taxable person be excluded from the scope of Section 37(1) & Section 38(1).*
- *Also, a casual trader should be asked to furnish quarterly return under section 39.*

32. Furnishing of return by a registered taxable person under Section 10

Section 39(2) of the CGST Act provides that every taxable person paying tax under the provisions of section 9 shall, for each quarter or part thereof, furnish, in such form and in such manner as may be prescribed, a return, electronically, of inward supplies of goods or services, tax payable and tax paid within eighteen days after the end of such quarter.

Issue

There appears a clerical mistake in section 39(2) wherein it has used the words "inward supplies of goods or services".

Suggestion

It is suggested that the words "inward supplies of goods or services" be replaced with the phrase "inward and outward supplies of goods or services or both".

33. Matching, reversal and reclaim of input tax credit

Section 42(1) of the CGST Act provides that the details of every inward supply furnished by a registered taxable person (hereinafter referred to in this section as the 'recipient') for a tax period shall, in the manner and within the time prescribed, be matched-

- (a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,
- (b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and



Issue

There is no provision to cover situations where recipient pays tax on reverse charge which is not disclosed by the supplier. Where a recipient of Goods or Services pays the taxes on reverse Charge basis he should not be denied ITC of the same merely on the grounds that it is not disclosed by a Supplier.

Suggestion

- *It is therefore suggested that a specific provision be added to cover this aspect for the purpose of better compliance by supplier.*
- *Also exclude from the operation of this section in cases covered by section 18(4) – bona fide exemption reversed.*

34. No interest recovery on the credit reversal on date of completion of building

Section 50 of the CGST Act provides that every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rates as may be notified, on the recommendation of the Council.

Issue

There may be bona fide cases where the CENVAT credit was rightly availed at the time of availment but some external event (like grant of Original Certificate for building) can result in GST not being applicable. In such cases, demanding the interest recovery on the GST amount would be inequitable

Suggestion

It is suggested to insert a proviso in the section as under: -

"Provided that no interest would be payable in case of reversal of credit due to grant of permission or certificate in respect of building referred in Schedule II para 5(b)".

35. Electronic Commerce

The provisions relating to tax collection at source and thereby depositing the same with Government, by electronic commerce operator are provided in the Section 52 of the CGST Act. However, provision regarding 'issuance of certificate for payment of taxes so collected at source' appears to be missing. Accordingly, it would be difficult for the Supplier to claim credit of tax collected by the electronic commerce operators.

Suggestion

- *It is suggested that enabling provision regarding issuance of tax collection certificate may be incorporated in the CGST Act and the Forms be notified by way of Rules.*
- *Further, e-commerce operators covered by section 9(4) not be required to comply with the provisions of this section.*



36. Extension of time limit to furnish information by the Electronic Commerce Operator

Section 52(12) of the CGST Act provides that any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceeding under this Act, requiring the operator to furnish such details relating to—

- (a) Supplies of goods or services effected through such operator during any period, or
- (b) stock of goods held by the suppliers making supplies through such operator in the godown or warehouses, by whatever name called, managed by such operators and declared as additional places of business by such suppliers –

Also, Section 52(13) of the CGST Acts provides that every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

Issue

Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice. There is no provision for extension of this time period which may lead to difficulties.

Suggestion

- *It is therefore suggested to relax the given provision by providing extension of the time limit for furnishing of details by the Electronic Commerce Operator.*
- *Further, e-commerce operators covered by section 9(4) not be required to comply with the provisions of this section*

37. Certificate of tax collection in case of e-commerce operators

Section 52 of the CGST Act provides that every electronic commerce operator, not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by the operator.

Issue

- The provision regarding issuance of certificate for payment of taxes collected at source appears to be missing. Accordingly, it would be difficult for the supplier to claim credit of tax collected by the electronic commerce operators.
- The requirement to establish the absence of agency is cumbersome. As long as the supply (a) is not by the Electronic Commerce Operator on his own account and (b) payment is passed through the Electronic Commerce Operator, then TCS is applicable

Suggestions

- *It is therefore suggested that the enabling provisions regarding issuance of tax collection certificate be incorporated and suitable forms to be notified by way of rules.*
- *Further, it is suggested that the words “not being agent” be deleted.*
- *Further, e-commerce operators covered by section 9(4) not be required to comply with the provisions of this section.*



38. Refund in case of accumulated Credit where input tax credit amount is higher than tax liability.

Sec 54(3)(ii) of CGST Act provides that no refund of unutilised input tax credit shall be allowed in cases other than where the credit has accumulated on account of **rate of tax on inputs** being higher than the rate of tax on **output supplies** (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Issue:

A manufacturer or a service provider may have accumulated credit balances for the reason that he is availing input services which attract at higher rate of GST (say, 18% or 28%) whereas the final product or output service attracts GST rate of 18% or 28%. However, the authorities may deny refund on the ground that the provision allows refund benefits only if the input is subject to higher rate of GST and not in case where the input service attracts higher rate of GST. If a strict interpretation is taken that refund would be allowed only if the GST rate of input is higher without considering the rate of input service, then the very object of the provision would stand defeated.

Suggestion

It is suggested that:

- *the word 'inputs' be replaced with the phrase 'inputs and input services'*
- *Also, the word 'Output Supply' be replaced with the word 'Outward Supply'.*

39. Provisional Assessment – Security or Surety to be furnished with the Bond

Section 60(2) of the CGST Act, 2017 provides that payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

Further as per Assessment & Audit rules, the proper officer shall issue an order in FORM GST ASMT-04, either rejecting the application, stating the grounds for such rejection or allowing payment of tax on provisional basis indicating the value or the rate or both on the basis of which the provisional assessment is to be made and the amount for which the bond is to be executed and security to be furnished not exceeding 25% of the amount covered under the bond.

The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub rule (3).

Issues:

The requirement of security or surety to be submitted along with the bond will cast additional financial burden on the taxpayer. There already exist adequate safeguards in the law to protect the interest of the Revenue and the taxpayer need not be burdened for the same.



When registered taxable person is giving indemnity bond then why again bank guarantee equivalent to 25% of the amount covered under bond is required. The same is because obtaining bank guarantee means registered taxable person has to block funds to get bank guarantee i.e. they may have to keep bank Fixed deposit to obtain bank guarantee. In addition to that Bank will charge commission on the same to the tune of 1% to 2% which can be huge which is a wasteful expenditure for registered taxable person. In addition to that GST will be levied on bank commission so further cost will increase

Suggestion

It is suggested that requirement of executing surety or security with prescribed bond be done away with.

40. Adjustment of additional tax paid - 60(3)

It is not clearly stated in the act as to when additional tax is paid then how will the registered person(s) adjust it against input/output liability as the case may be. Even if we assume that the decision shall be delivered by proper officer within a period of one year then the period of September of the following year would have lapsed if the application is filed in say July/August for which the final return is required to be filed u/s 39 (9) by the month of September of next year

Suggestions:

It needs to be stated that proviso of sec. 39 (9) says "Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier"

Alternatively, if the law is to stand as it is then it should be provided that notwithstanding the provisions of sec. 16 (4) and 39 (9) of the CGST Act the registered person(s) shall be allowed to adjust the amount paid in terms of order passed u/s 60 (3) of CGST Act in the month following the month in which final payment is made by the registered person or refund is received by the registered person.

41. Time limit for issuance of order for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any will full misstatement or suppression of facts

Section 73(9) of the CGST Act provides that the proper officer shall issue the order determining the amount of tax, interest and any penalty within a period of five years from the due date for filing of annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates or, as the case may be, within three years from the date of erroneous refund.

Issue

The time limit for issuance of order under sub-section (8) is in excess of the time limit currently prescribed under the existing laws. Since all the transactions are nowadays online and compliance systems are designed with enough safeguards & cross tally. In such a tech-savvy environment, the time frame of 3 years is not warranted.



Suggestion

It is therefore suggested that the time limit be reduced to 12 months except for fraud, suppression etc. in which case it can be 3 years (as per limitation Act)

42. Credit of unavailed CENVAT Credit in respect of Capital Goods

Section 140(2) of CGST Act, 2017 provides that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Issue

The traders and manufacturers availing SSI exemption were not eligible for the CENVAT credit under the existing law as they were not paying excise duty on the final products. Such entities, now falling under the GST regime would not be eligible for the credit on capital goods purchased before the appointed date which might lead to credit loss for such assessees.

Further section 140(3) does not provide for carry forward of credit of capital goods.

Suggestion

It is suggested that a proviso be inserted under section 140(2) to allow credit on capital goods lying on the appointed date which was not availed earlier as the person was not required to register under the existing law.

43. Credit of eligible duties and taxes in respect of inputs held in stock to a works contract service provider

Section 140(3) of the CGST Act, 2017 provides that a registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or **who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax**, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to specified conditions.

Issue:

The above provision does not contemplate a situation where a service provider providing works contract services opts not to avail the benefit of notification No 26/2012 but valuation as per Rule 2A of Valuation Rules and pays service tax on service portion derived with under deduction method or percentage method.



Suggestions

It is suggested that the necessary amendment be made in Clause 140(3) to avoid the ambiguity by replacing the word “and” in the existing Clause 140(3) by “or who was”.

44. Invoice not to be older than 12 months for availing credit

Clause (iv) of Section 140(3) of CGST Act, 2017 provides that transitional credit to a registered taxable person covered under Section 140(3) shall, amongst others, be subject to the condition that “such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day;”

Issue

There may arise a situation where stocks (in hand or in process) on the appointed day may contain goods which has been purchased prior to twelve months preceding the appointed day (especially in case of long term contracts/ works contracts wherein the contracts are in progress for more than a year). Disallowance of credit paid on inputs in such cases will result in financial hardship to the taxable person. The provision of deemed credit does not have any such 12 months’ period and therefore may not be harmonious as a whole. However, one who is less diligent would be eligible for deemed credit without any time limit.

Suggestion

It is suggested that the time limit of 12 months be prescribed for purchases made on or after the appointed day and as a one-time transitional measure, there need not be any time limit for availment of credits on the basis of purchase invoices/ documents pertaining to a period prior to 12 months, if all other conditions of allowability are satisfied.

45. Eligibility of Transitional Credit subject to the condition that supplier of services is not eligible for any abatement

Section 140(3) (v) of CGST Act, 2017 provides that transitional credit to a registered taxable person covered under Clause 140 (3) shall, amongst others, be subject to the condition that “the supplier of services is **not eligible for** any abatement under the Act.”

Issue

One may be eligible for abatement but might not have availed it. Benefit should not be denied in such cases.

Suggestion

It is suggested that the words “is not eligible for” be replaced with the words “has not availed”.

46. Lapse of Refund claims filed and rejected under earlier law

Section 142(3) of CGST Act, 2017 provides that every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash,



notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse

Issue

Lapse of fully or partially rejected CENVAT Credit shall put a financial hardship to the assessee if he is not given an opportunity of being heard and/or filing of appeal against such rejection.

Suggestion

It is suggested that assessee be given an opportunity of being heard and/or filing of appeal against such rejection.

47. Non-admissibility of input tax credit on revision of return furnished under earlier law

Section 142(9) of CGST Act, 2017 provides that if a return furnished under the earlier law is revised and if, pursuant to such revision, any amount is found to be recoverable from the taxable person, then the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

Issue

There may be cases where return filed under earlier law is revised voluntarily by the taxable person to pay due tax under forward or reverse charge. Inadmissibility of such tax payment as input tax credit under GST regime will result in undue hardship to the taxable person whereas the same is allowed under current law.

Suggestion

It is suggested that the input tax credit be allowed on the basis of valid documentary evidences and other conditions as may be prescribed, where tax has been paid and return revised voluntarily under the earlier law.

48. Input tax credit in respect of inputs sent for job work

As per section 143 (3) & (4) of the CGST Act, if the goods sent to job worker are not received within stipulated time then, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.

Issue

In case goods are received back subsequently i.e. after the period of 1/3 years, the levy of interest amount along with GST in such cases will be harsh to some extent.

Suggestion

It is therefore suggested that the section be amended as follows:

“if the goods sent to job worker are not received within stipulated time then, it shall be deemed that such inputs had been supplied by the principal to the job-worker on expiry of said stipulated time and issued invoice accordingly for which job worker be allowed to take credit.



49. Carry forward of credit - Sec 140 (3)(iv)

Section 140(3)(iv) allows a specified registered person, to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day based on such invoices or other prescribed documents which were issued not earlier than 12 months immediately preceding the appointed day.

Issue

In case of certain industries such as plyboard dealers, dealers dealing in non-consumable seasonal products such as Air conditioners, coolers etc as per the business trends they generally maintain large stocks of semi-finished and finished goods which may contain inputs for which the invoices or duty paying documents may pertain to a period earlier than 12 months

Suggestions:

It is suggested that for specific industries a relaxation be provided in respect of clause (iv) of Section 140(3) thereby extending the credit to invoices pertaining to a period which is earlier than 12 months based on the nature of the industry.

50. Capital goods in transit as on the appointed date

Section 140(5) of the CGST Act, 2017 provides that a registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes **in respect of inputs or input services** received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

Issue

The aforesaid provision does not allow credit of duties and taxes in respect of capital goods received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law. Excise and VAT paid on the capital goods will form a part of cost for the assessee. This might be unfair to disallow the credit of such taxes paid.

Suggestion:

It is suggested that the law be amended to allow credit of duty paid on capital goods which remain in transit during the appointed day.

51. Definition of Zero Rated Supply – already referred in general clause.

Section 2(23) of the IGST Act provides that “zero-rated supply” shall have the meaning assigned to it in section 16 of IGST Act.

Further Section 16(1) of IGST Act provides “zero rated supply” means any of the following supplies of goods or services or both, namely: —

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



Explanation- For the purposes of this sub-section, exempt supplies shall include supplies on which recipient is liable to pay tax on reverse charge basis under subsection (3) of section 8.

Issue

Section 16(1) refers to the possibility of a zero-rated supply being covered both under the CGST Act and under the IGST Act. However, this situation is not enabled by the definition. Zero rated supply (as used in section 16(1)) is understood to mean a supply where the applicable rate is 0%. Secondly, definition of zero rated supply shall have the meaning assigned to it under section 16 and not section 16 of IGST Act as provided in the definition.

Suggestion

Also exclude the use of 'zero rated supply under this Act' in section 17(2) of the CGST Act.

52. Nature of Supply under IGST – Correct nomenclature to be used

Section 7(1) & (2) of the IGST Act, 2017 provides that subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of goods in the course of **inter-State trade or commerce**.

Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of **inter-State trade or commerce**

Issue:

In both sections a phrase used is ***“in the course of inter-state trade or commerce”***. Which has been borrowed from various entries of the Constitution. However, the same has not been defined in the GST law but the definition of supply has been given. This creates a confusion since it is not necessary that a trade or commerce constitute a supply.

For Example- In case of clause 4(b) of schedule II where business assets are used for personal purpose outside the state of registration then such transaction is not one which is in the course of interstate trade or commerce. However, it is an interstate supply.

Suggestion:

It is suggested that in order to avoid the confusion the phrase “in the course of interstate trade or commerce” be replaced with “in the course of interstate supply”.

SUGGESTIONS ON *CONSTRUCTION* *SECTOR*

(July 2017)



Indirect Taxes Committee

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI**



INTRODUCTION

1. The Institute of Chartered Accountants of India considers it a privilege to submit its suggestions on Construction Sector.
2. We appreciate the steps taken by the Government of India and its commitment for an early and smooth introduction of the GST.
3. We look forward to contributing in the drafting of simple, transparent, & fair GST Rules in India.
4. In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same. The contact details are:

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www.idtc.icai.org.



Suggestions on Construction Sector

1. Taxability of Construction portion completed prior to Sale

Entry 5(b) of Schedule II read with Section 7 of CGST Act, 2017 provides that construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Issue

Considering a situation where a property is 60% complete and sold later, tax is levied on the 100% value of the property at the time of sale. The 60% portion which has already been completed prior to sale has already been subject to tax and including it again in 100% would lead to dual taxation. The tax should be applicable only in respect portion of the construction which will be carried out after the execution of the agreement with the respective buyer. Following Supreme Court's ruling in case of Larsen and Toubro Limited, the constructed portion which was already completed by the developer before execution of the agreement with the buyer should not be subject to tax.

Suggestion

It is suggested that tax be applicable only in respect of portion of the construction which will be carried out after the execution of the agreement with the respective buyer. Further, the credits pertaining to construction without any buyer may be suitably disallowed, to match with the above principle.

2. Availability of ITC in case of works contract services

Section 17(5)(c) of the CGST Act, 2017 provides that notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of works contract services when supplied for construction of immovable property, (other than plant and machinery), except where it is an input service for further supply of works contract service.

Issue

In the given section, a technical view can be taken that 'construction services' provider can be denied credit of 'works contract' service. In case a builder / developer is selling under constructed flats, such input tax credit will be used to provide a construction service as the builder / developer. Though construction is a part of works contract, both are different limbs in Sch. II. Usage of term "works contract services" creates a concern whether it is description of activity / supply or requirement of exact back-to-back supply.



Whether output is called 'construction services' or 'works contract service', credit should not be denied. The input service of works contract needs to be passed on not only to another works contractor but also to persons who provide any 'Construction service'

Suggestion

It be suitably provided that for the purpose of section 17(5)(c) from the point of ITC claimant 'works contract service' and 'construction service' be treated at par.

3. Availment of credit of input tax on Work-in-Progress

Section 18(1) of CGST Act, 2017 provides that Subject to such conditions and restrictions as may be prescribed-

(a) A person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

(b) A person, who takes registration under sub-section (3) of section 25 shall, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration.

(c) Where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed

(d) Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

Issue

As per the aforesaid provision, credit of tax paid on inputs held in stock, inputs contained in finished and semi-finished goods shall be allowed. However, there is no provision for claiming credit of stock of inputs contained in case of work in progress of works contract services. In semi-finished works contracts or work in progress, to keep it at par with goods, credit of inputs contained in work-in progress needs to be allowed.

Suggestion

It is suggested that to bring in parity, input tax credit of inputs contained in semi-finished works contract be allowed.



4. Treatment of Cancellation of bookings under construction

Section 34 of the CGST Act, 2017 provides that where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

Issue

There may arise a situation wherein a flat buyer cancels the booking after payment of initial instalments. The said installments would have been tax paid. The flat booking so cancelled will be put up for sale to other buyers. The cancellation of booking is akin to “goods return / deficiency in service”. However, due to peculiar nature of transaction, they, do not fit into broad concept of “goods return / deficiency in service”. Further there is no reduction in the output tax liability of the tax already paid on initial instalments received.

Suggestion

It is suggested that there be provided a provision for reduction in output tax liability in cases where cancellation is made after initial installments being paid. In such a cases, such fresh transaction also be entitled to stage wise deduction.

5. Credit of eligible duties in respect of inputs held in stock allowed for persons providing works contract services AND availing benefit under Notification No. 26/2012- Service Tax

Section 140(3) of the CGST Act, 2017 provides that a registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or **who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20.06.2012** or a first stage dealer or a second stage dealer or a registered importer, or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the specified conditions.

Issue

Notification No. 26/2012 – Service tax dated 20.06.2012 provides for abatement in case of construction of residential complex service when the gross value of the service includes the value of land.



The services specified in section 140(3) include providers of works contract services **and** availing abatement benefits under *Notification No. 26/2012- Service Tax*. However, works contract service providers are also eligible for paying service tax as per Rule 2A of Service tax (Determination of Value) Rules, 2006 which is @ 40% of the construction value in the case of original works contracts.

There is no specific provision for a works contract service provider, to avail input credit of Excise duties paid on various materials in stock. Section 140 (3) covers only those works contract service providers, who pay service tax including land value. Many Contractors and residential / commercial construction service providers are not following Notification 26/2012 instead follow Rule 2A of Service tax (Determination of Value) Rules, 2006. Disputes may arise as to how works contract service providers following different valuation mechanisms can avail input tax credit for the inputs lying in stock.

Suggestions

It is suggested that the provision for allowing credit of eligible duties in respect of inputs held in stock also be allowed for persons providing works contract services eligible for paying service tax as per Rule 2A of Service tax (Determination of Value) Rules, 2006 or those who have chosen to bifurcate the material and labour value based on actuals in addition to existing provisions.

Ideally, there be kept no difference between works contractor who are paying taxes on 30% of the total value of the works contract and those who are paying taxes on 40% of the value of works contract.

6. Place of Supply for Works Contract Services

Section 12(3) of the IGST Act, 2017 provides that place of supply of services, —
(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or
(c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
(d) any services ancillary to the services referred to in clauses (a), (b) and (c),

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located

Issue

The provisions of section 12(3) also seem to cover works contract services provided in relation to an immovable property. Many a times works contract services are provided



on the instruction of some third party and actual place of provision of service i.e. location of immovable property might differ from the location of the works contractor or the person on whose instruction such works contract is undertaken. If we restrict the place of supply to location of immovable property the service provider would be mandated to register himself in the state where the immovable property is located.

Suggestion

It is suggested that in case of B2B supplies the place of supply be the location of service recipient irrespective of location of immovable property.

7. Requirement to maintain records as per Accounts & Records Rules

Accounts and Records Rules as notified by the board require specific records to be maintained which are too cumbersome to maintain.

Therefore, it is suggested that it be permitted to maintain contemporaneous records for common good.

8. Re-development of Existing Land Structure

Sr. No. 3(i) of Notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 provides that:

(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service

Further, para 2 at the end of notification, provides for valuation of services in respect of the description herein above reads as under:

2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation– For the purposes of paragraph 2, “total amount” means the sum total of,
- (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be.

Issue

In case of redevelopment of the existing structure, fresh purchase of land is not involved. However, additional area of construction is carried out compared to earlier one. To carry out such a project, the builder developer must acquire the TDR, additional FSI and fungible FSI etc. on payment of premium to the corporation/from others in the market. This is a huge expenditure to enable the developer to commercially exploit the



*The Institute of Chartered Accountants of India
Suggestions on Construction Sector- 2017*

potential of the plot of land. The plain reading of the para 2 of the Notification no. 11/2017-Central Tax (Rate), may not allow such deduction.

Suggestion

It is suggested that it be clarified that 'land cost' also includes amount spent to acquire the "interest in land" i.e. amount spent on redevelopment of existing land.



ICAI Suggestions on GST Acts

1. General Suggestion(s)

- a) In lines with Central Excise Tariff Act, interpretive notes to GST classification of Goods as well as Services be provided to ensure the correct classification of goods.
- b) Provisions related to Settlement Commission as provided draft laws be reinstated as initially due to complexity of the law genuine mistakes may occur and there may be provisions for settlement.
- c) Kar Samadhan Schemes under existing laws (both Central and state) be introduced to help the assessee clear their issues/ dues under existing law, support with hassle free transition and reduce litigations.
- d) Section 171 of the CGST Act provides for the Anti-profiteering measures so as to ensure that benefit of credit available is ultimately passed on to the consumer. However, with change in law and to enable ease of understanding for all the assessee Anti-profiteering measures be kept in abeyance for 2 years.
- e) In order to get acquainted with GSTN and related procedures, an optional access be provided to the interested assessee to help them with training and understanding of GSTN systems.
- f) In order to maintain the level playing field, Petroleum products and electricity to be brought within the ambit of GST immediately. These industries if kept outside the purview of GST, would face the issues like cascading of taxes, non-availability of credit, maintaining separate books of accounts for claiming ITC etc.
- g) In order to support smooth transition to GST, TRANS 1 format for service providers be released instantly.
- h) The Government of India and State Governments should sensitize their own departments about GST implications and the need to revisit the contractual clauses for price variation (upward or downward).
- i) In order to support smooth transition and ensure reduced litigations, Advance Ruling Authorities be notified at the earliest so as to enable the tax payers to make applications and gain a clarity regarding tax implications.
- j) Anti-Corruption measures need to be strengthened by building in the accountability of Revenue officers. A 360 degree Compliance Rating be given to the officers ensure compliance on their part.
- k) It has been communicated to us, due to paucity of time hasty disposals of pending cases being done resulting into undue huge demand leading to pendency of cases as well blockage of funds due to mandatory pre deposit.

2. Business Vertical definition w.r.t to Ind AS

Section 2(18) of the CGST Act provides that “business vertical” means a distinguishable component of an enterprise that is engaged in supplying an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business verticals;



Explanation: Factors that should be considered in determining whether products or services are related include:

- (a) the nature of the products or services;
- (b) the nature of the production processes;
- (c) the type or class of customers for the products or services;
- (d) the methods used to distribute the products or provide the services; and
- (e) if applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.

Suggestion

The word 'product' be replaced by the expression 'goods', to remove any possible ambiguity that may arise.

3. Import of services for Personal Use

Clause b of Section 7(1) of IGST Act provides that supply includes import of services, for a consideration whether or not in the course or furtherance of business.

Issue

As per clause b persons importing services for personal purposes shall also be liable to GST on reverse charge basis since the importation of service would be treated as a Supply whether or not for the business purposes. Compliance with GST provisions is a costly and time consuming process and as such, making it applicable on household personals will not be fair to individual assessee.

Suggestion

It is suggested that import of services for personal purposes be kept outside the purview of GST.

Alternatively, an exemption limit of Rs. 1 lakhs be prescribed for such transactions.

4. Purchase from Unregistered Dealers

Section 9(4) of CGST Act, 2017 provides that the central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Issue



This provision would work against small operators as being unregistered dealers the registered assessee might not be interested to purchase from them while might lose onto their business and customers.

Suggestions

It is suggested that:

- *Purchases of goods or receipt of services from unregistered vendors, who are below threshold limit of Rs. 20,000 be exempted based on declaration.*
- *In order to support with smooth implementation & success of GST the provisions of this section be kept in abeyance for 6 months/ 1 year.*

5. Availability of Composition Levy

Section 10 of the CGST Act provides that benefit of Composition Scheme would be available to a registered taxable person, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but

- (a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,
- (b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
- (c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

Further, the registered person shall be eligible to opt under sub-section (1), if—

- (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;
- (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;
- (c) he is not engaged in making any inter-State outward supplies of goods;
- (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
- (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Further sub-section (4) of Section 10 provides that if the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty and the provisions of section 63 or 74, as the case may be, shall apply mutatis mutandis for determination of tax and penalty.



Issue

Non-availability of composition scheme to those who are supplying services or making any supply of goods which are not leviable to tax under the Act seems to be harsh on such person. Small suppliers, supplying services only shall be required to comply with the normal provisions of the law which could prove to be cumbersome for such suppliers. Further, small suppliers making few of the supplies not chargeable to tax while majority of supplies are taxable may find this provision an unnecessary burden on them.

Suggestion

• *Penalties in respect of cancellation of registration under a composition scheme of a registered taxable person for whatever reason must be limited to recovery of differential taxes after giving adjustment to input tax otherwise available.*

6. Power to grant exemption from Tax

Section 11 of the CGST Act empowers Central/ State Governments to exempt Goods or services or both from whole/ part of tax leviable thereon. Further section 6(3) provides that the Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Issue

This provision empowers the Central / State government to retrospectively change / amend / alter / modify the nature of exemption. This leads to a situation, where the benefit of exemptions intended to be granted to supplies under this section with the concurrence of the council could stand denied to supplies of such goods/services. In the possibility of retrospectivity as well as the vulnerability to introduce changes with the Council's concurrence, this sub section may be detrimental to the interest of the assesseees.

Suggestion

It is suggested that a proviso be added to sub-section 3 to provide that “every such insertion / amendment / modification that has the effect of increasing the tax payable be effective from the date of such insertion”.

7. Time of supply of goods and services under RCM

Section 12(3) of the CGST Acts provides that in case of supplies of goods in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely—

(a) the date of the receipt of goods; or



(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:
However, as per section 13(3) of the CGST Acts provides that in case of supplies of services, the time of supply shall be the earlier of the following dates, namely-

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Issue

The time period of 30/60 days from the date of issue of invoice by the supplier is quite short considering the time taken for delivery of goods with invoice and may create unnecessary interest liability if payment is not made within 30 or 60 days.

Suggestion

It is suggested that the time limit prescribed in both the cases be made 90 days in line with the current provision of service tax.

8. Taxes/duties paid under IGST not to be included in value of supply

Section 15 of the CGST Act provides for the valuation of supply. Sub-section (2)(a) of section 15 includes any taxes, duties, cesses, fees and charges levied under any statute, other than the {SGST Act/the CGST Act} and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient.

Issue:

- Though the taxes, duties, cesses, fees and charges levied under SGST Act/the CGST Act are excluded from the value of supply but it appears that the taxes levied under IGST Act shall be included in the transaction value under Section 15(2) (a). If IGST Act is not mentioned in the Section 15(2) (a), the GST would be levied on it which would lead to cascading effect of taxes.
- Inclusion of any taxes, duties, cesses, fee and charges levied under any other statute would defeat the very purpose of eliminating tax cascading and may lead to interpretational issues as well as litigations at a later date. The charges such as Passenger Service Fee (PSF), User Development Fee (UDF), and other alike charges are levied by Airport Authority of India, under Airport Authority of India Act, 1994, and collected by Airlines on the tickets issued to passengers



Suggestion:

- Thus, it is suggested that in section 15(2)(a) after the words “other than the (SGST Act/the CGST Act)”, the word “IGST Act” be inserted.
- Any taxes, duties, cesses, fee and charges levied under any other statute be excluded from the transaction value so that spirit of GST may be maintained. Such charges, being simply in the nature of statutory levies, never form part of the taxable value, as no supply is rendered by airlines per se, in lieu of such charges.

9. Change in Rate of tax w.r.t Supply of Services

Section 14 of the CGST Act indicates the provisions for determining the time of supply in case where there is a change in the rate of tax in respect of services.

In case service has been provided before change in rate of tax the time of supply will be date of payment or invoice whichever is earlier.

In case service has been provided after change in rate of tax the time of supply will be date of payment or invoice whichever is later. In case both payment and invoice are received before change in rate of tax the time of supply will be earlier of the two dates.

Suggestions

In order to avoid possible litigation, it must be suitably clarified regarding time of supply in case of change in rate of tax w.r.t continuous supply of services/goods.

10. Value of Taxable Supply

Section 15 of CGST Act provides that the value of a supply of goods or services or both shall be the transaction value, that is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

Further, Section 15(4) lists down the special situations where the transaction value cannot be determined as such and needs to be determined as per the rules.

Suggestions

- It is suggested that the words “for the purpose of this Act and notwithstanding anything contrary to any other law for the time being in force” be added before the words “value of supply.....” so as to enable section 15 application to CGST, SGST & IGST.

11. Reversal of Credit on non-payment of taxes

Second proviso to the Section 16(2) of the CGST Act provides that where a recipient fails to pay to the supplier of services, the amount towards the value of supply of services along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the



recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

Suggestion

The need to collect interest may be omitted as a supplier does not compensated.

12. Exempt Supplies to include reverse charge supplies for credit apportionment

Explanation to Section 17(2) of CGST Act provides that for the purposes of this subsection, exempt supplies shall include supplies on which recipient is liable to pay tax on reverse charge basis under subsection (3) of section 9.

Issue

Supplies on which reverse charge is applicable is an input service & cannot be used in pro-rata formula for determining pro-rata credit between taxable & exempt supplies. Inclusion of supplies (covered under RCM) into value of exempt supplies for the above purposes will have effect of same supply being taxed two times. Such supplies being considered as exempt seems to be illogical as such supplies are taxed, though tax has been paid by the recipient instead supplier.

Suggestion

It is therefore suggested that supplies covered under reverse charge mechanism be kept outside the ambit of exempt supplies for the purpose of proportionate credits.

13. Supply of Input Tax Credit paid Capital Goods

Section 18(6) of CGST Act provides that in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Issue

The provision deals with reversal of input tax credit in case of removal of capital goods but the current wordings "In case of supply of capital goods or plant and machinery" have a far-reaching impact. First it uses the term supply which includes even renting of that capital goods i.e. to say in case the capital goods is rented out, Sec 18(6) triggers and there would be reversal of ITC which is not the intention and secondly the use of



word plant and machinery is not required as they are already covered under the meaning of capital goods. It will help give the provision intended scope and not hit those transactions which are not intended.

Suggestion

It is suggested that the in place of words “in case of supply of capital goods or plant and machinery” the words “In case of supply of capital goods, on which input tax credit....” be used.

14. General provision related to demand

Section 75(11) of the CGST Act provides that where an issue on which the First Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the First Appellate Authority or the Appellate Tribunal or as the case may be, the High Court is pending, the following periods be excluded in computing the period referred to in Section 73(8) or Section 74(8), as the case may be, where proceedings are initiated by way of issue of a show cause notice under Section 73:

- between the date of the decision of the First Appellate Authority and the date of decision of the Appellate Tribunal or
- the date of decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be or
- the date of the decision of the High Court and the date of the decision of the Supreme Court

Issue

Section 75(11) provides exclusion of time limit for issuance of order by proper officer, where the matter was under challenge before any court of law. The provision does not limit itself to matters which are pending to the assessee’s own case and accordingly this could result in difficult situations. For e.g. where a decision is passed in case of some other assessee, the period of limitation gets extended for all other assessees. Similarly the provisions of excluding of time limit should apply only on account of the appeals pending in that particular State , as it may result in situations where other States may have already completed assessment and the same would be re-opened based on decision of dispute pertaining to some other State.

Suggestion

It is suggested that exclusion of time limit under Section 75(11) be qua assessee and qua state.