

SUGGESTIONS ON GST Implementation Issues

(AUGUST, 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 Post GST implementation issues.
2. We look forward to contributing in the drafting of simple, transparent, & fair GST Rules in India.
3. 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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POST GST IMPLEMENTATION AND TRANSITION RELATED ISSUES

1. Difficulty in obtaining PAN by local bodies

Section 25(5) of CGST Act, 2017 provides that every person shall have a Permanent Account Number issued under the Income-tax Act, 1961 to be eligible for grant of registration.

Issue

Local bodies had been formed through Government order and for application of pan, copy of such Govt order is required. In many cases, these local bodies / municipalities were formed in 60s and 70' wherein Govt. order is not available, due to this finding difficulties in obtaining PAN.

Suggestion

It is suggested that appropriate mechanism be suggested to the Central Board of Direct Taxes for issuances of PAN in such cases

2. HSN code is required to be mention in GSTR 1 & 2

Notification No. 12/2017 – Central Tax dated 28th June 2017 provides that a registered person having annual turnover in the preceding financial year less than Rs.1 .5 Crore is not required to mention the digits of HSN codes in a tax invoice issued by him. However, in GSTR 1 & 2 he must give the details of stock sold HSN code wise.

Issue

In such cases although the small trader is not required to mention HSN code in invoice but he is required to give HSN code details in his returns.

Suggestion

It is suggested that an alternative way of identifying the rate-wise supplies being reported to give relief to small traders who are otherwise not required to mention the digits of HSN codes in a tax invoice issued by them.

LAW RELATED ISSUES

3. Non-availability of Input Tax Credit for Capital Goods to newly incorporated companies which were not registered under VAT

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

There may arise a situation wherein a company was incorporated in May 2017 but was not given registration by the VAT department or was unable to register with VAT department till 30.06.2017. Upon purchase of Capital Goods by the said company, the credit of VAT paid on such goods would not be available as the company is unregistered as per VAT records. Due to this the company would not be able to avail the credit of VAT paid on purchase of Capital Goods under GST regime as the amount of VAT so paid would not be reflected in the returns furnished under the earlier law.

Suggestion

It is suggested that there be provided appropriate transition provision to allow credit of VAT paid on purchase of Capital Goods not reflected in returns under earlier law.

4. Stage wise deduction for an Immovable property

The present provision for taxation of supply of under construction flat / premises do not take into consideration the status of the construction at the time of execution of the contract. Thus, if the flat is booked, say when 60% of the construction is completed; attracts same levy of tax as it would attract when construction is yet to begin or where the construction is 90% complete. During the course of the construction, by virtue/nature of the activity, by laying each brick it acquires the status of **immovable property** even while the building is getting constructed in the process. Therefore, such “immovable property” cannot be subjected to levy of GST. Therefore, an appropriate deduction should be provided to ascertain value to the extent of such “immovable property” at the time of entering into contract with the buyer of the flat. This is popularly referred to as “stage wise deduction” under the Maharashtra VAT Act,2002. Rule 58(1B) of the Maharashtra Value Added Tax Rules, 2005 is reproduced herein under.

- (a) Where the dealer undertakes the construction of flats, dwellings, buildings or premises and transfers them in pursuance of an agreement along with the land or interest underlying the land then, after deductions under sub-rules (1) and (1A) from the total contract price, the value of the goods involved in the works contract shall be determined after applying the percentage provided in column (3) of the following TABLE depending upon the state at which the purchaser entered into contract.

TABLE

Sr. No.	Stage during which the developer enters into a contract with the purchaser.	Amount to be determined as value of goods involved in
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		works contract.
(1)	(2)	(3)
(a)	Before issue of the Commencement Certificate.	100%
(b)	From the Commencement Certificate to the completion of plinth level.	95%
(c)	After the completion of plinth level to the completion of 100% of RCC framework.	85%
(d)	After the completion of 100% RCC framework to the Occupancy Certificate.	55%
(e)	After the Occupancy Certificate.	Nil%

Suggestion

A provision similar to the above may please be brought in under the GST.

5. Mandatory Registration under section 9(3) for Reverse Charge purpose need not trigger the provisions of section 9(4)

Section 9(3) of the CGST Act, 2017 provides that the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both 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.

Further section 9(4) of the 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

There may arise a situation wherein an assessee has obtained registration under GST for availing certain services on which tax is liable to be paid under Reverse Charge as per section 9(3) but the supply made by such an assessee is exempt under GST. Example: A hospital avails the services of an advocate for a pending litigation case needs to take registration under GST for paying tax under reverse charge even though the supplies made by hospital are exempt under GST. Now if the hospital makes any purchase from unregistered dealer the provisions of section 9(4) would be triggered and hospital would be liable to pay tax under reverse charge. This would not have been the case if the hospital had not taken registration for the purpose of section 9(3) i.e. availing advocate services. The aforesaid, situation implies that if an assessee obtains registration under section 9(3) the provisions of section 9(4) automatically applies on such assessees. This proves to be a burden on small assessees.



When an assessee is dealing in wholly exempted goods having turnover more than Rs.20 lakhs he is not required to take registration by virtue of section 23 of CGST Act, 2017. However, Section 24 mandates to obtain registration in case the liability arises under reverse charge. This situation requires clarity as provisions of section 24 overrides the provisions of section 22(1) only and not section 23.

Suggestion

It is therefore suggested that there be provided a suitable clarification that in cases where registration is taken only for the purpose of section 9(3) i.e. payment of tax under reverse charge the provisions of section 9(4) will not be triggered.

6. Reimbursements to employees for business purposes whether liable to reverse charge u/s 9(4) of CGST ACT, if the supply of goods/service is from an unregistered person.

Section 9(4) of CGST Act, 2017 provides that a registered person will be liable to GST on reverse charge if he receives supply of goods/services from unregistered person.

Issue

In case, an employee consumes services/goods on behalf of his company from an unregistered person and claims reimbursement from the company as it is a business expense, then, in such cases it appears that the services/goods are consumed by the Company (registered person) through its employees from an unregistered person. Therefore section 9(4) will get invoked and company will be liable to GST on reverse charge.

Suggestion

It is suggested that a suitable clarification be provided if tax under reverse charge is payable on following reimbursements for business purposes if taken from unregistered dealers

- a) Conveyance of Employees through local conveyances like Taxi etc.*
- b) Food Expenses*
- c) Expenses for other goods/services consumed by the employee on company's behalf.*

7. Eligibility for Composition Scheme to dealers when they are receiving Interest Income.

Section 10(2)(a) of CGST Act, 2017 provides that the registered person shall be eligible to opt under sub-section (1), if he is **not** engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II.

Issue

Interest received on any amount appears to be a service and has been provided exemption under the exemption notification. Therefore, there is a doubt that in case dealer receives interest then he may not be eligible for composition scheme.



Suggestion

It is suggested that it be suitably clarified that in case a dealer receives interest the he would be eligible for opting Composition Scheme. Similar clarity is also required for inclusion/exclusion of non-operational income e.g. interest/dividend while calculating aggregate turnover for computing limit of Rs. 20 L for registration purpose u/s 22 & 24 of CGST Act,2017

8. **Restriction from making supplies through an e-commerce operator for opting composition scheme**

Section 10 of CGST Act, 2017 provides that the person exercising the option to pay tax under composition scheme shall comply with certain conditions and one of the condition is that a person opting for the scheme is not allowed to affect any supply of goods through an e-commerce portal, unless such portal is owned by the same person

Issue

As in the present trade, supply of goods through an e-commerce operator has become a general practice putting such restriction for opting composition scheme is irrelevant . Suppose a trader has complied with all other condition for composition levy but supply of few goods through an ecommerce portal makes him ineligible to opt for such scheme.

Suggestion

It is suggested that appropriate amendment be made to remove such restriction so that a trader can trade through an e-commerce portal and opt for composition scheme as well.

9. **Separate consideration charged for goods and services supplied in conjunction:**

Section 2(30) of the CGST Act, 2017 defines Composite supply as a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Issue

If separate considerations are charged for various goods and services supplied in conjunction with each other in ordinary course of business, whether the same shall also amount to composite supply.

Suggestion

It is suggested that there be provided a suitable clarification regarding same.



10. Ineligibility to opt for Composition Scheme if assessee has interstate purchased stock

Rule 5 of CGST Rules, 2017 provides that the person exercising the option to pay tax under section 10 shall comply with the following conditions, namely: -

- a) he is neither a casual taxable person nor a non-resident taxable person;
- b) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3;
- c) the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9;
- d) he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;
- e) he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year;
- f) he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him; and
- g) he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

Issue

There may arise a situation wherein an assessee who has been granted provisional registration and wishes to opt for Composition scheme satisfies all the conditions specified in Rule 5 of CGST Rules, 2017 except that he holds the stock which has been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State.

A further a condition provides that his stock should not include goods purchased from an unregistered dealer where tax has not been paid under reverse charge. But if he pays tax under reverse charge he is eligible to opt for Composition Scheme. Such a relaxation for payment of tax and opting for Composition levy is not available in case of purchases made in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State.

Also, Section 10 only restricts inter-state outward supply of goods, no restriction w.r.t. inter-state purchase or purchase from unregistered dealer.

Suggestion:

It is suggested that in case where the person wishing to opt for Composition Scheme holds such goods in stock which have been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or



from his agent or principal outside the State, he be allowed to opt for Composition Scheme upon payment of appropriate applicable tax under GST.

11. Double taxation on supply made by composition dealer

Section 17(5) of CGST Act 2017 provides that input tax credit shall not be available in respect of goods or services or both on which tax has been paid under section 10.

Issue

If a trader takes inward supply of goods from a registered dealer who has opted for composition scheme than although the trader is not liable to pay tax under reverse charge under section 9(3) of CGST Act but on making further supply of goods he becomes liable to pay tax. As per the provision of section 17(5) of CGST Act 2017 he is not eligible to avail input tax credit which leads to double taxation as well as cascading effect

For example: Manufacturer Mr. A supply goods to registered dealer Mr. B after charging GST @ 28%. Since the dealer Mr. B has opted for composition scheme he has to pay tax @1% without availing input tax credit and Now Mr. C, who has purchased goods from Mr. B, supply goods to registered dealer Mr. D than he will be liable to pay GST@28% on its further supply this leads cascading of taxes on account of non availability of credit by composition dealer to registered dealer. This restriction on the credit transfer making the composition scheme ineffective.

Suggestion

It is suggested that appropriate amendment be made to avoid double taxation and cascading effect on supply made by composition dealer to registered dealer.

12. Applicability of composition scheme in case of caterer and banquet hall food supply :

Section 10 read with Section 6 (1) (b) of Schedule II of the CGST Act provides that composition scheme is available to the supplier who is providing services 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.

Issue

Whether caterer or banquet hall may claim composition scheme u/s 10.

Suggestions

It is clarified that whether caterer or banquet hall may claim composition scheme as it has been raised by such industries as Government in the press releases announce for the Restaurant only where in law does not stop it.



13. **Composition tax on entire turnover**

section 10 of CGST Act 2017 provides that, a registered person, whose aggregate turnover in the preceding financial year did not exceed Rs.75 lacs / Rs.50 Lacs rupees, may opt to pay @ 0.5%/1%/2% of the **turnover**, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—

Issue

section 10 provides tax rates as a % of turnover i.e on opting for composition levy an assessee becomes liable to tax on the entire turnover including exempted or nil rated supply of goods

Suggestion

It is suggested that appropriate amendment be made to provide relief to composition dealer on exempted supply or nil rated supply of goods as it is against the principal of taxability as well as creating inequality with the normal dealer.

14. **Per Day Limit of Purchase from Unregistered Dealer`**

Central Government vide *Notification No. 08/2017-Central Tax (Rate)*, dt. 28-06-2017 has w.e.f 1st July 2017 exempted supplies of goods or service or both received by a registered person from any or all such unregistered supplier(s) if the aggregate value of such supplies does not exceed Rs. 5000 in a day.

Issue

- a) The aforesaid Notification does not clarify the situation where a registered person purchases goods or services or both from an unregistered supplier for a value more than Rs. 5000 in a day but the purchases made on any subsequent day during the same month from the same supplier is less than Rs. 5000. For Example: Mr. A (a registered dealer) purchases certain goods from Mr. B (an unregistered dealer) on 4th July 2017 for Rs. 7000 and on 5th July 2017 for Rs. 4000. The purchases made on 4th July 2017 for Rs. 7000 are not eligible for exemption as per *Notification No. 08/2017-Central Tax (Rate)*. However, it is not clear whether the purchases made on 5th July 2017 for Rs. 4000 would be eligible for exemption under said notification.
- b) As per section 5(4) of the IGST Act, 2017 any purchases made by a registered dealer from an unregistered dealer will make the registered dealer liable to pay tax under reverse charge. However, exemption limit of Rs. 5000 in a day as per aforesaid notification does not apply to such inter-state supplies as no such notification is provided under Integrated Tax.



Suggestions

- *It is suggested that it be suitably clarified that the exemption provided vide Notification No. 08/2017-Central Tax (Rate), dt. 28-06-2017 is for value of each day of transaction and transaction made on subsequent for a lower value will continue to remain exempted.*
- *Further, it be suitable clarified that even under IGST Act, 2017 supplies of goods or service or both received by a registered person from any or all such unregistered supplier(s) are exempted if the aggregate value of such supplies does not exceed Rs. 5000 in a day.*

15. Incorrect Classification of goods or services

Section 122 of the CGST Act, 2017 provides that where a taxable person who supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any

such supply he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Issue

There may arise a situation wherein a product or a service is wrongly classified by an assessee, due to lack of information, owing to which he collects & pays incorrect tax amount to the government. The amount of penalty may burden a genuine assessee who due to lack of information or incorrect guidance classified the goods or services provided by him incorrectly and becomes liable to penalty under section 122.

For Example: Mr. A (a dealer) sells goods to Mr. B (a dealer) and charges GST @ 12% as per the incorrect classification of goods known to him. However, while making a further sale Mr. B charges GST @ 18% as per the correct classification. Here the government will receive tax @ 18% but Mr. A would be penalized for incorrect classification and issue of incorrect invoice.

Suggestion

It is suggested that initially, to support assesseees during transition process, for a period of 6 months or so the cases of wrong classification of goods or services be treated as tax neutral and assessee not be penalized for incorrect classification.

16. Reimbursement of expense for which invoice is issued in the name of employee

As per Schedule III of the CGST Act, 2017 services by an employee to the employer in the course of or in relation to his employment are treated neither as a supply of goods nor a supply of services.



Issue

There may arise many instances wherein an employee is reimbursed by his employer for expenses incurred by an employee during course of employment but for which a bill is issued in the name of the employee. For example, Mr. A hires a cab while on a tour for company work and makes the payment for the same. The bill is issued in name of Mr. A and company reimburses the amount so borne by Mr. A. This reimbursement is not a part of Mr. A's salary. The taxability of such transactions need to be clarified.

Suggestion

It is suggested that there be provided a suitable clarification regarding taxability of reimbursements made by an employer to the employee when the bill for a service etc. is issued in the name of that employee.

17. No Provision for availment of Credit of tax paid under earlier law

Section 140(1) of the 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, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

Issue

Carry forward of credit/ tax paid might lead to certain issues. The transitional provisions provide no clarification regarding the credit of advance service tax paid by an assessee under earlier law. Also, if an assessee makes payment of service tax under reverse charge on 6th July 2017 he would not be eligible to take the credit of the same as the same will not be carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law. It appears that this amount will lapse as there is no Transition Provision in the GST law to take credit of the service tax paid against GST.

Similarly, no clarification is available w.r.t. credit availed under Rule 6(3) and Rule 6(4A) of Service Tax Rules, 1994.

Suggestion

It is suggested to suitably clarify as to whether the taxes paid under earlier law like advance payment of service tax or tax amount paid after the appointed date would be eligible for Input Tax Credit under GST.

18. Transition provision for tax paid on receipt basis



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Rule 6 of Service Tax Rules, 1994 provides that in case of such individuals, partnership firms and one person companies whose aggregate value of taxable services provided from one or more premises is Rs. 50 lakhs or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or agreed to be provided by him up to a total of rupees fifty lakhs in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received.

Section 140(5) of 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.

Section 142(11)(b) of CGST Act, 2017 provides that notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994.

Section 174(2) of CGST Act 2017 provides that the repeal of the Finance Act, 1994 as amended to the extent mentioned in the sub-section (1) or section 173 shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts.

Issue

In cases where services were provided in the earlier law and option of payment of service tax was exercised on receipt basis. Now if invoice for a service was raised and service was provided on 31.10.2016 but payment is expected to be received in November 2017, then owing to aforesaid provisions assessee is required to pay tax on receipt basis i.e. service tax.

Suggestion

It is suggested that suitable clarification be provided in the law for such transition situations

19. Transitional Issue on progressive supply of service

Section 142(11) (b) of the CGST Act, 2017 provides that notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994

Rule 7 of Point of Taxation Rules, 2011 provides that notwithstanding anything contained in rules 3,4, or 8, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made.



Similarly, under sales tax WCT is deducted at the time of making payment to contractor.

Issue

In cases, where the vendor who has raised the invoice for the services (such as manpower or works contract service on which reverse charge is applicable) rendered in the month of June, 2017 and the payment is made in the month of September, 2017. Whether to pay service tax or GST in the instant case. Also, whether WCT is required to be deducted w.r.t. invoices dated prior to 1st July, 2017 payment made on or after 1st July, 2017.

Suggestion

It is suggested that same needs to be clarified.

20. Taxes paid under earlier laws but bill has been received after appointed day.

Input or Input Services received before appointed day, but bill dated on or before June 30, 2016 has been received after appointed day and taxes on same has been paid as per earlier laws.

Section 140(5) of 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.

In the law, it is stated that input or input services received on or after appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, hence by reading this it seems that it cover only the advance payments made on which taxes are paid under earlier laws.

Issue

In case , goods or services are delivered or received before the appointed date and the assessee received the invoices after appointed day i.e. supplier has raised the invoice on or before the appointed date but the recipient has received the invoice only after the appointed date in case services was provided earlier or in case of goods if goods were sent on approval basis as the same leads to drafting anomaly.

Suggestion

It is suggested that aforesaid issue be resolved suitably with introduction of specified format of getting input credit.

21. Credit of Transition stocks held with Branch



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Under CGST Act, Section 140(3) allows registered importers to avail the 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 certain conditions. One of the condition being possession of invoices or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs.

Issue

Suppose, ABC Ltd is a registered importer having its head office at Haryana and a branch at Odisha. The head office had sent goods to branch office prior to the appointed day through F form. Now while filing the TRAN 1, for the stocks lying with the branch, whether the branch shall be eligible to get the credit of all the taxes paid at the time of import on the basis of documents possessed by the Head office and the form F or branch shall be eligible for deemed credit on such transaction on the account of non-possession of documents?

Suggestion

It is suggested that aforesaid issues of transition be provided with its mechanism.

22. Reclaiming of credit which was earlier reversed due to non-payment of consideration within 3 months

Section 140 (9) of CGST Act, 2017 provides that where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

Issue

In case where an assessee received a service on which tax was chargeable under reverse charge and failed to make payment within the period of three months due to which he reversed the CENVAT credit under the service tax. Now after the appointed date if he makes a payment to vendor within 3 months, how credit of service tax paid be added to electronic credit ledger and also GSTR 2 does not mention about such input tax credit.

Suggestion

It is suggested that appropriate notification be issued in this regard with its mechanism.

23. Credit in respect of capital goods (of which no credit was admissible under the earlier law) as on 30/06/2017

As per Section 140(2) of CGST Act, 2017 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.

Explanation.—For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

As per CENVAT Credit Rules, 2004, where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT credit shall be allowed on such capital goods meaning thereby CENVAT credit is allowed if assessee start production of goods or provision of taxable services within 2 years.

Issue:

In case an assessee purchased a capital good in April 2017 to be used for exempted services and therefore no credit was available in respect of such capital goods. However, with effect from 01/07/2017, such services have become taxable and such capital goods are now being used for providing such taxable services. In view of above section, credit in respect of such capital goods is not available as such credit was inadmissible under old law. In certain cases, there might be huge amount of credit in respect of such capital goods.

Suggestion

It is suggested that appropriate provision be provided to avail such credit in respect of capital goods which are used for supply of goods and services which become taxable with effect from 01/07/2017.

24. Type of tax liability of person liable to pay tax under reverse charge scheme

Under CGST Act, Section 9(3) / 5(3) of IGST Act, 2017 requires tax to be paid by recipient in case of receipt of supply notified by the government and Section 9(4) / 5(4) requires tax to be paid by registered person on receipt of supply of goods or services from an unregistered person.

Issue

Suppose, a recipient of supply of goods and services having registration at Delhi receives supply from an unregistered person who is based at Haryana. Supposing, the place of supply being



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Haryana as per the GST laws and the Location of supplier is at Haryana, the transaction is an intra state supply within Haryana, and hence H-SGST & H-CGST shall be charged on such transaction. But how the person registered at Delhi will pay the tax to the Government as supply from the prospective of supplier is intra state whereas from the prospective of recipient it is procurement in Haryana and goods brought to his registered office at Delhi .

Suggestion

It is suggested that suitable clarification be provided in the law for such transactions else it would create hardship for the recipient to get themselves registered in the States from where the supply is procured.

25. where Composition dealer deals in exempt as well as taxable supplies.

Issue:

Composition Dealers is dealing in taxable as well as exempted goods, since the composition dealer has to pay tax at 1% on all commodities he deals into. Whether he will have to pay tax on exempted goods also. This would be undue burden on the assessee dealing into both types of goods.

Suggestion

Suitable clarification be provided.

26. Treatment of capital goods with job worker as on 30.06.2017

Issue:

Section 141 of CGST Act, 2017 provides provisions for applicability of GST on inputs, semi-finished goods and finished goods available with job worker as on appointed day and returned after appointed date.

In due course of business, manufacturers also send capital goods e.g. moulds etc to job workers. These capital goods are used by job workers to perform specific job on inputs/semi finished/finished goods sent for job work. No clarification is available w.r.t. applicability of GST on return of these capital goods after appointed date.

Suggestion

Suitable clarification be provided.

27. ITC w.r.t. capital goods in transit as on 30.06.2017



Section 140(5) of 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:

Section 140(5) talks about inputs and 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 however no clarification is available w.r.t. capital goods in transit as on 30.06.2017.

Suggestion

Suitable clarification be provided.

28. **No input credit available for clean energy cess and other cesses paid on goods imported before appointed date**

Clean Energy Cess is duty of Excise under section 83 (3) of the Finance Act, 2010 on specified goods. Section 8 of GST (compensation to states) Act, 2017 provides that there shall be levied a cess on such intra-state supplies of goods or services or both as provided in section 9 of CGST Act, 2017 and such

inter- state supplies of goods or services or both including import of goods as provided in sec 5 of IGST Act, 2017 and collected in such manner as may be prescribed on recommendation of council.

Further proviso to section 11(2) of GST (compensation to states) Act, 2017 provides that the input tax credit in respect of cess on supply of goods and services leviable under section 8 shall be utilised towards payment of said cess on supply of goods and services leviable under said section

Issue

On the goods imported into India before the appointed date, clean energy cess was leviable on specified goods. As no input tax credit for such cess was available under earlier law so it becomes the part of the cost. Since the GST compensation Act has subsumed the clean energy cess there shall be levied of GST compensation cess on the supply of old stock imported before the appointed date. This leads to double cess on same goods due to which price of such goods inflates. For example: If coal was imported in the month of June there shall be paid clean energy



cess for which no input tax credit is available and on supply of such coal in the month of July there shall be levied a GST compensation cess also

Suggestion

It is suggested that input tax credit of clean energy cess be provided for payment of GST compensation cess to remove this anomaly.

29. ITC of tax paid under RCM

Issue

Under service tax regime, Rule 4(7) of CENVAT credit Rules, 2004 provides for availment of CENVAT Credit of service tax paid under RCM only after payment of tax however no such clarification is available in GST regime. After perusal of format of GSTR-2 prime facie it seems that ITC will be allowed in the month registered person show the amount payable under RCM ir-respective of payment of tax on 20th of the next month.

Suggestion

Suitable clarification be provided.

30. Treatment of tax paid on units cancelled

Under CGST Act, Section 34(2) provides that any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.

Issue

A Builder has issued demand note in the month of March. Buyer has cancelled the unit in December i.e. after filing of GSTR for the month of September. Now, how builder can avail credit/benefit of GST paid earlier at the time of demand note or builder has the option to go for refund.

Suggestion

Suitable clarification be provided.



31. Applicability of Section 140(3) for works contractors

Under CGST Act, Section 140(3) allows benefit of ITC to registered person who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012.

Issue:

Works contractor were not eligible to avail benefit of notification no. 26/2012 instead for works contractors benefit was available under Rule 2A of Service Tax (determination of valuation) Rules, 2006.

Suggestion

Suitable clarification be provided.

32. Treatment of ITC paid on goods subsumed in under construction building

Under CGST Act, Section 140(3) allows registered importers to avail the 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 certain conditions.

Issue:

Builder has used cement and steel for construction of building, which was subsumed in building constructed as on 30.06.2017. Builders are required to pay GST @ 12% on units old or demand raised on or after 1st July, 2017. Section 140(3) allow credit of eligible duties in respect of inputs held in Stock and inputs contained in semi-finished or finished goods held in stock. Now, issue arises whether under construction building with builder will qualify as semi-finished goods.

Suggestion

Suitable clarification be provided.

PROCEDURE RELATED ISSUES

33. GSTR 3B – Non availability of credits of earlier period

In GSTR – 3B there is no column to claim past input tax credit of earlier law (VAT, service tax, Excise Duty)

Issue



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There is a mechanism for claiming credit from the previous regime but that has not been integrated with the GST filing process. This transitional credit will be available only after filing of GSTR TRAN-1 on the GSTN common portal. Even if a taxpayer files TRAN-1 prior to August 20 (that is, prior to filing GSTR 3B for July), the credits would not be allowed to be migrated in GST as there is no specific table for

disclosing opening credit in GSTR 3B. TRAN-1 and TRAN-2 are the forms for transition of input tax credit while GSTR 3B is the form in which actual GST payable is filed. To be sure, input tax credit can be availed of after September in all instances

Suggestion

Any entity can claim credit of service tax or VAT paid in the previous regime against GST liability. If it does not have proof of payment of tax, it can take advantage of the deemed benefit norm. Therefore, it cannot be the intention of the government to deny the benefit of input tax credit of earlier laws . This need to be clarified and specific inclusion in the GSTR 3B is requisite to avoid tax cascading effect and outflow of working capital otherwise this leads to financial burden to industry

34. Blockage of working capital of exporters in refund process

As per section 16 of IGST Act, 2017 a registered person making zero rated supply shall be eligible to claim refund of tax paid on supply of goods or services or both subject to such condition, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both.

Issue

When an exporter buys products from local supplier against payment of GST there would be blockage of that Tax amount for at least 90-120 days as minimum time of executing any order for export is 45--60 days and then shipping the order, filling of return in next month, waiting for the system to generate refund assessment and release of refund which takes 10-14 days. In all the entire process of making an export upon payment of tax and claiming the refund of taxes so paid will cause working capital of exporters to get blocked in an unproductive process.

Suggestion

It is suggested that there be provided a provision for early refund of taxes paid by an exporter to refrain working capital from being blocked in the process.

35. Multiple returns in the month of September, 2017 under Direct & Indirect Taxes

GST 1, 2 & 3 is required to be filled in the month of September for the month of July 2017 as well as August, 2017 along with August month Form 3B.



It may also be noted that 30th September is also last date of Income Tax Return, if assessee is subject to Tax Audit.

Further, Company may hold its AGM for the last year also by 30th Sep, 2017 only.

Suggestion

Considering the Semitenous various returns due date under other laws are falling in the month of September, the date of filing of return of GST be extended appropriately.

36. Difficulty in keeping quantitative record of stock.

Retails traders are worried about stock keeping, as they have wide range of different products. It is very tough to keep quantitative details of all products.

37. Reason of Validation error not provided during registration

At the time of Registration if there is a validation error, the reason for error is not provided through the email. It is difficult to guess which field is entered incorrectly which has generated the validation error.

Suggestion

It is suggested that the reason for validation error be communicated to the assessee desirous of registration through email etc. so that he may provide the correct particulars and correct the errors promptly.

38. Multiple Details required to be provided in an invoice

Rule 46 of CGST Rules, 2017 provides that a tax invoice referred to in section 31 shall be issued by the registered person containing the specified particulars. The requirement of providing multiple fields in an invoice takes up a lot of time. Mandating the mention of all the fields makes invoicing process cumbersome.

Suggestion

It is suggested that till an appropriate system is in place, GSTIN and product general details with some identification marks to correlate with Invoice or delivery challan be sufficient for invoicing. Place, HSN and other mandatory details be implemented when GST system is set to run smoothly.

39. Option of having multiple Trade Names with single GSTIN

Under earlier law, in case of Proprietorship there was a provision of having multiple trade names while having single Registration No as an assessee may want to have multiple trade names for running his business. However, under GST there is no such option available of having multiple trade names against single GSTIN.



Suggestion

It is suggested that option of having a multiple trade names in case of proprietor against one GSTIN be provided to facilitate ease of doing business.

40. Wrong format of Principle and Agent details in TRAN 1

Under CGST Act, Section 142(11) requires the details of goods held in stock as agent on behalf of the principal to be furnished in point no. 10 of TRAN 1.

Issue

Point 10(a) of TRAN 1 shall be filled by Principal which allows furnishing the details of goods of his own stock held by agent. However, the format asks for the GSTIN of principal to be furnished.

Suggestion

It is suggested that 10(a) of TRAN 1 should actually ask for the GSTIN of the agent which shall be furnished by Principal on the basis of which the agent can avail the credit of the goods lying with him on furnishing of TRAN 1.

REGISTRATION ISSUES

41. Small Exemption in case of Interstate supply of services being provided by Teacher / Trainer / Guest Speaker

Section 24 of CGST Act provides compulsory registration in case of Inter State supply of goods or services without any exemption limit.

Issue

In case of faculties of IIM, Universities, Trainers are being invited for lecturers across the countries, wherein some honorarium being paid to such faculties. In case of interstate supply Section 24 forced them to take registration under GST Law being an interstate supply even though recipient has paid the tax under reverse charge U/s 5(4) of IGST Act, 2017.

Suggestion

It is being suggested that a small exemption upto Rs.2,00,000 or appropriate limit be provided in case of interstate supply , where recipient is paying tax under reverse charge u/s 5(4) of IGST Act, 2017.



42. **Effective date of cancellation of registration in case of automatically migrated from earlier regime**

Section 29(3) of CGST Act,2017 provides that cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether such tax and other dues are determined before or after the date of cancellation.

Issue

Where a person was registered under earlier law but is not liable to register under GST than he has to file an application for cancellation of registration within 30 days to proper officer and as per section 29(3) cancellation effect will be prospective i.e even a delay by one day from appointed day in filing cancellation application makes the assessee liable to file return, pay tax and to comply with other obligations which is difficult for him as he has not collected tax on his supplies made before the date of filing application for cancellation of registration .

Suggestion

It is suggested that appropriate notification providing that if cancellation application has been filed within the specified time limit it will be effective from the appointed date to give relaxation to such assesses. It may also be noted that utility for cancellation of registration was also not provided to the taxpayers.

43. **Registration related issues under GST**

GST law came into force with effect from July 1, 2017, however for most interfaces between department and tax payer GSTN has been taken as common portal w.e.f 22nd June 2017. It is backbone for implementation of GST. After one month of implementation of GST still there are many areas whereby requisite functionality is not available or not properly working. Some of the issues faced are as follows:

S. No.	Relevant Law	Particulars	Issue/ Comment
1	Sec. 10 Rule 3(1) Form GST CMP-01	As per Rule 3(1), Intimation to for opting composition scheme has to be filed by persons migrated from existing regime to GST within 30 days from the appointed day (i.e. by 21 st July). However, the date has been extended till August 16, 2017.	Existing registrants are not able to file intimation for opting to pay tax under composition scheme in form GST CMP-01. Most of times system shows some error. Out of them common are: - “Unable to Submit form” - “Please fill the



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			jurisdiction” whereas tab of jurisdiction is blocked. - “You cannot opt for the composition as you are an ISD registrant.” (Whereas, applicant is not the ISD registrant.)
2	Sec. 10 Rule 3(4) Form GST CMP-03	As per Rule 3(4), Stock details are to be furnished within 60 days, in case Composition Scheme is opted by a person migrated from existing regime to GST.	Functionalities are not operational.
3	Sec. 22(2) Rule 24 Form GST REG-26	As per Sec. 22(2), all persons registered under the existing law, were supposed to get themselves registered under the GST. For which Form REG-26 is to be filed.	Most of Taxable persons who have been enrolled on the GST portal have not been allotted the GST REG-06 (Permanent Registration), even if they have filed GST REG 26 (Part B).
4	Sec. 24, 51 & 52 Rule 12 Form GST REG-07	Certain persons are required to deduct or collect tax at source under the GST law. (However, it may be noted that both the sections i.e. Sec. 51 & 52 are not notified for the time being).	Application for registration for TDS Deductor or TCS Collector are not available on GSTN portal.
5	Sec. 24 Rule 13 Form GST REG-09	Every Non-Resident Taxable Person has to take registration at least five days prior to making supplies.	Application of registration by Non-resident taxable person not available.
6	Sec. 24 Rule 14 Form GST REG-10	Registration by Taxable Person proving OIDAR Services	Registration functionalities not in operations as of now.
7	Sec. 25	Validation Errors	Many a times validation errors are there, in case of fresh registrations, but reason has not been communicated by GSTN.
8	Sec. 25 Rule 10 Form GST REG-06	Registration Certificate are not digitally signed.	REG-06 issued to the registered person is not digitally signed by the proper officer and section under which registration has been granted is



			not mentioned on the form.
9	Sec. 25(9) Rule 17 Form GST REG-13	Assignment of UIN to special entities	Registration functionalities not in operations as of now.
10	Sec. 28 Rule 19 Form GST REG-14	In case of change in any information given in application of registration or UIN, the same has to be intimated to the department within 15 days from such change.	Functionalities are not operational.
11	Sec. 29 Rule 24(4) Form GST REG-29	Any person who migrated into GST, but not liable to get himself registered under the GST Law had to file application for cancellation of his registration within 30 days from the Appointed Day. (However, it may be noted that now rule has been amended to provide that such application can be filed upto September 30, 2017)	Functionalities are not operational.
12	Sec. 49	Ledger summary of cash paid and utilization thereof.	Registered persons are able to make payment of tax online on the GST portal, but the balance of the same is not been shown in ledger summary. Further, utilization of cash payment has not been enabled on the common portal.

Suggestion

It is suggested that aforesaid issues of registration be provided for and resolved appropriately.

OTHER ISSUES

44. **GST Helpdesk**



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GST helpdesks have been a boon for resolving transitions, registration etc. issues/ queries and is helping one and all with smooth transition to GST regime. Considering the bulk of enquiries made to the help desks, it results in minimum waiting time for each call to shoot up beyond 30 minutes, delay in revert by emails being more than 15 days which may or may not cater to the issue/ query so raised. Owing to these

concerns, it is suggested that additional manpower be deployed for resolving queries/ issues, reduce call/ email revert time to help keep up the good work undertaken by GST helpdesk. An assistance provided by properly trained officials will add to the smooth functioning of the GST helpdesk and providing specific answers to the queries/ issues as against being referred to GST Acts, Rules, FAQs etc.

45. Huge Interest rate in case of default in payment or wrong availment of credit

By notification no. 13/2017—In exercise of the powers conferred by sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council fixed the rate of interest per annum, for the purposes of the sections as specified in column (2) of the Table below, as mentioned in the corresponding entry in column (3) of the said Table

Serial Number	Section	Rate of interest (in per cent)
(1)	(2)	(3)
1.	Sub-section (1) of section 50	18
2.	sub-section (3) of section 50	24
3.	sub-section (12) of section 54	6
4.	section 56	6
5.	proviso to section 56	9

Issue

Comparing the notified interest rate of 18% or 24% with the present bank rate, which is not more than 7-8% per annum is too huge.

suggestion

In the implement phase of GST, interest rate be notified equivalent to present bank rate only as due to lack of knowledge of new law, taxpayer may made some error.

Even post 1 year, Interest rate be not exceed more than 12%.

46. Tax liability is to be first set off from input tax credit and then cash only



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In view of the restriction in section 49 read with rule 86(2). unless there is a surplus credit, the credit ledger balance must reach zero before utilization of cash ledger balance. Accordingly, Column 6.1 payment of tax in return GSTR-3B format provides for settlement of tax liability against ITC than TDS/TCS and then balance liability against cash paid .

Issue

As per the Return 3B format, tax liability is compulsorily required to discharge from ITC first than only cash can be adjusted .

Suggestion

It is suggested that appropriate amendment in the rule and return format be made to provide for settlement of tax liability from ITC or cash on the discretion of assessee

47. ISD - distribution of credit - returns not enabled.

Section 39(4) of CGST Act provides that every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month

Issue

Returns required to furnish by input service distributor under section 39(4) has not been enable yet.

Suggestion

It is suggested to enable return GSTR-6 so that credit be available to the tax payers.

48. Deemed credit- TRANS 2 returns not enabled.

RULE 117 of CGST Rules,2017 provides that the registered person availing the scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 at the end of each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;

Issue

Rule 4 provides for the submission of GST TRAN-2 for giving the details of supplies of goods during the tax period but the prescribed form has not been enable yet

Suggestion



It is suggested to enable form GST TRANS-2 at the earliest so that credit be claimed by tax payer.

49. **Pure agent reimbursement would go as non-taxable supply - may lead to excess reversal**
Column 3.1(c) of GSTR 3B Detail of Outward Supplies and Inward supplies liable to reverse charges requires total taxable value of other nil rated and exempted supplies

RULE 33 of CGST Rules provides that Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply

Further section 17 of 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 this Act or under the 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

As per section 17 of CGST Act,2017 credit shall be available for input goods or services used for providing taxable supplies only. Since service provided as pure agent is not outward taxable supply so it is required to mention in column (c) i.e value of nil rated or exempted supplies it leads to excess reversal of proportionate credit on service provided as pure agent

Suggestion

It is suggested that required column in the return to be inserted to show service provided as pure agent so that while calculating the proportionate ineligible credit, service provided as pure agent will not be considered as non-taxable supply.

50. **Form 3B is not enabled in case of registration granted in August but date of liability was from 1.07.2017**

In case, registration has been received in the month of August wherein date of liability to register was in the month of July. It is immaterial whether within 30 days or not application of registration was submitted.

Issue :

System is not allowing to file the Form 3B return in such cases.

Suggestion :

It may be allowed to assessee to file return for the month of July 2017 as taxpayer himself declared his date of liability in the month of July.