

Suggestions on GST Implementation Issues

(28th SEPTEMBER 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 GST Implementation Issues. We have segregated the 122 suggestions in 3 parts:

- Law Related Issues
- Procedural Issues
- GSTN related Issues

Out of which 10 important suggestions again classified into the following category for the discussion in meeting :

- Issue related to fundamental of GST like double taxation still happening in certain cases
- Implementation teething issues on GST
- GSTIN related issues
- Twitter or FAQ related issues

We shall be pleased to discuss the rest of the suggestion in meeting to illustrate the points made by us.

2. We look forward to contributing in the drafting of simple, transparent, & fair GST laws 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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IMPORTANT SUGGESTIONS

A. Issue related to fundamental of GST like double taxation still happening in certain cases

(i) Reverse Charge U/s 9(4) of CGST Act, 2017

As per Section 9(4) of CGST Act, 2017 if taxable person procures goods or services from unregistered person then recipient is subject to pay tax under reverse charge which is subject to double taxation.

For eg. :

A company purchases mineral water bottle from an unregistered person, then company has already paid all taxes on MRP basis on the said water bottle and further it is liable to pay tax under RCM as per section 9(4) /5(4) of Reverse Charge for which even credit is not allowed U/s 17(5) of CGS Act, 2017.

Issue :

- (i) Practically procurement of goods from unregistered suppliers could not be avoided wherein the limit of Rs.5,000 per day is very less.
- (ii) Recipient is required to identify the HSN Code and rate of taxable goods or services and in few cases compensation cess is also liable to be paid e.g Mineral water bottle.
- (iii) Tax has already being paid on such transaction leading to cascading & compliance of taxation.

Suggestion : It is suggested that :

- (i) Reverse charge compliances U/s 9(4) be deferred for the MSE Sector having turnover of less than Rs. 2 Crore in a year / not subject to audit under U/s 35 of CGST Act, 2017
- (ii) Reverse charge mechanism U/s 9(4) be liable to paid at a uniform rate say @ 18% only instead of HSN Code wise as credit of the same is available to the assessee and per day limit be enhanced to 10,000 for next one year till July, 2018.
- (iii) Credit U/s 9(4) be available in all cases even for goods or services on which credit U/s17(5) is restricted one as it leads to cascading of taxes on which unregistered supplier has already paid the taxes at the time of procurement of goods from his immediate registered supplier.



(ii) Composition Scheme U/s 10 of CGST Act - subject to double taxation

Under composition scheme dealer is required to pay tax based on Turnover including exempted Turnover of goods.

Issue :

- (i) Composition dealer can not avail the credit for the goods or services procured by him leads to cascading of taxes
- (ii) Additional Turnover Tax needs to be paid by composition assessee which is part of the cost of the composition supplier which is generally equivalent to the value addition for eq. if 1% is payable then value addition is charged on 10%.
- (iii) Registration applied for composition but granted under normal scheme

Suggestion :

- (i) It is suggested that credit available by composition assessee be passed to the recipient like under central excise law First stage dealer provisions or any other model of adhoc credit basis like 40% or 60% or any other basis as procurement by the recipient from the composition dealer affecting MSE Sector as prices of supplies made by composition dealer are high in comparison to the normal dealer.
- (ii) Registration wrongly granted be rectified to composition on immediate basis.

B. Implementation teething issues on GST

(iii) Compulsory Registration U/s 24 of CGST Act, 2017 in case of Inter State Supply

As per Section 24 of CGST Act, 2017 in case of Inter State Supply of Goods or Services Compulsory registration is required to be obtained.

Issue : Small assessee especially service provider is required to obtain registration causing hardship to the small and medium industry

Examples :

- (a) Guest lecturer invited as the faculty from other States.
- (b) Examiner of the Educational Institution.

Suggestions :

Exemption of Rs.10 Lacs / Rs. 20 Lacs be provided equivalent to the erstwhile service tax law wherein SSI exemption was available to such supplier. Hence exemption from registration be provided to such supplier.

Recipient will pay tax u/s 5(4) of IGST Act which in result resolve the problem being faced by the small and medium entrepreneur.



(iv) 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 by the recipient on reverse charge basis.

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.

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 outward supplies made by such an assessee is exempt under GST in case of Education Institution, Hospital etc..

When an assessee is dealing in wholly exempted goods having turnover more than Rs.20 lakhs he is not required to take registration by 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.

(v) Transitional Credit is not available to Manufacturer / Service provider :

(a) Transitional credit not being available to some manufacturers/ service providers would be discriminatory and impact the margins. Needs to be provided to all if the goods/ services earlier were not liable to tax.

E.g. : Printing services were brought under the tax net w.e.f 01.07.2017 @ 18% / 12%, however no transitional credit is available to such service provider under proviso to section 140(3) of CGST Act, 2017 in case taxable person has procured the goods i.e paper of printing from the trader on which VAT /CST was charged as well Entry Tax was imposed.



Suggestion :

Adhoc transitional credit be provided in the line of proviso to section 140(3) of CGST Act, 2017.

b) Capital goods credit not available for exempted units/ service providers as well as traders who may have invested in pre GST period needs to be allowed with depreciations for number of years to build in fairness and equal treatment under GST.

Suggestion :

Credit be allowed in such cases.

(vi) Exemption to exporter from payment of Tax on Inputs the time system stabilize :

A general exemption maybe issued for a period 6 months to enable exports of goods as well as services to be carried out without any payment of taxes on inputs or inputs services as refund mechanism is not finalized due to system glitches margin erosion and impracticality

(vii) Exemption to small assessee be provided to pay tax on receipt basis wherein in erstwhile law upto Rs. 50 Lacs assessee was permitted to pay tax on receipt basis.

C. GSTIN related issues

(viii) Deferment of matching requirement & Time line provided for filing of return is cumbersome

Issue : Due to the matching concept filing of return leads to 10th, 13th, 15th, 17th & 20th as the case may be wherein in the present form GSTIN System is unable to handle such data loads and Time provided to the taxpayer for filing of return & its reconciliation in GSTR Form 2 is too less.

Example :

Supplier are required to submit details of its purchases of supply made in Form GSTR-2 which includes reconciliation of receipts of goods i.e good in transit/not received, calculation on the restrictive credit , common credit etc. 5 days provided for the return filing including holidays leads may lead to 2-3 days in some months.

Suggestion :

- Option of offset liability of tax payment at any time basis be provided to avoid interest as merely payment of cash payment in the cash ledger is not fulfilling the requirement of tax payment by the assessee.
- Matching concept be deferred in case of assessee having turnover less than Rs. 1 Crore/ Rs. 2 Crore of registration wise turnover for the initial period of 2 years as it was not there in the erstwhile law and law provides the provision of scrutiny assessment, audit as well.



- Filing of return period from monthly basis be shifted to bi-monthly and quarterly basis based on the turnover of the assessee.

(ix) One cash ledger instead of separate cash ledger(s)

Issue:

Credit in Cash ledger is segregated into different heads which made assessee unable to set off the cash credit of one head for other which can be possible if there is a uniform cash ledger . E.g.: If a person has 1,000/- in interest & a short amount of Rs.100/- in late fee then again, he need to transfer amount from Bank Account although an excess amount is lying Electronic cash ledger.

Suggestion

It is suggested that in cash ledger there should be only one cash ledger only like late fee, interest and penalty should not be there. Let cash ledger act as a E-wallet but, not as a dedicated column for the payment type. (late fee, interest, penalty adjustment should be possible in cash ledger.)

(x) Delay in responses from GSTN Helpdesk

Due to bulk migration and registration many assesseees have faced this issue that they are unable to reach the GST helpdesk and are unable to receive satisfactory responses from the helpdesks through emails or calls.

Suggestion

It is suggested that additional manpower be employed at GSTN helpdesk to cater to assesseees queries and their resolution in a timely manner

D. Twitter or FAQ related issues

Solution provided through Twitter and /or FAQ in some cases are contradictory in nature and even FAQ are having disclaimer which is creating confusion.

(xi) Supply of Business Assets on which Credit has not been availed is subject to tax again

Twitter has clarified that tax on the sale of capital assets is not subject to tax whereas provision of law does not provide such mechanism.

(xii) Salary to Partner by Partnership firm

Twitter has clarified that salary paid by partner by partnership firm is not subject to tax whereas it has not been clarified through circular or any notification exemption being provided.



(xiii) An Individual renting residential dwelling to Pvt Ltd Co. for **residential use of director/officer.**

Twitter replied liable to GST wherein exemption being provided for residential use.

(xiv) Employee reimbursement

Twitter has clarified that employee reimbursement are **generally (with disclaimer)** are not liable to GST. Earlier it was explained that it is subject to tax also.

(xv) Credit of tax paid on RCM

Twitter has clarified that tax paid under RCM be allowed in the next month and as well as same month, dual answer. No such official clarification being provided.

(xvi) Credit of KKC

Twitter has clarified that tax paid under KKC is not allowed, however it was an eligible duty under earlier law and restriction of credit is unnecessary leading to cascading.



Law Related Issues

1. Definition of term Aggregate Turnover

Section 2(6) of CGST Act provides that “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

- 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) IGST Act, 2017.
- 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 Act 2017 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. 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.

4. 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”.

5. 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 be kept 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.*

6. 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

Draft 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.

7. 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”.*

8. Definition of Job Work – Repair should be part of Job Work

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.



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

Section 2 (70) & (71) of CGST Act, 2017 defines “Location of the recipient of services” & “Location of the supplier 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

10. 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.

11. 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.



12. 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.

13. 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.*



14. 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.

15. 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.

16. 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 assessee. This proves to be a burden on small assessee.

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.

- 17. 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.

18. 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 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.

19. 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.*

20. 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 lakhs.

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.



21. 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

It is suggested that benefit of composition scheme be extended to those who are supplying services or making any supply of goods which are not leviable to tax under the Act.



22. 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

23. 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.

24. 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.

25. 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 must 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.

- 26. 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 be 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.

- 27. 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.

28. 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. Tax levied under section 9 appears to be suspended until time of supply determined as per provisions of 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 9 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.”*

29. 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;
- (d) 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-
- (e) 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
- (f) 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.

30. 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.

31. 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 may 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 be restricted within the scope of the contract or agreement.

32. 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*

33. 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.

34. 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.

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

Section 17(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).

36. 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

37. 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(s)

- 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 may 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’.*

38. 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.



39. 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 registered persons applying for registration within thirty days from the date on which he becomes liable for registration and does not provide for registered person applying for registration beyond the period of thirty days. The law is trying to penalize the registered person on wrong front. It is agreed that the registered person 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.

40. 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.

41. 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 are 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.

42. 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.

43. Registration in case of a person required to deduct tax under section 51

Section 25(6) of the CGST Act provides that every person shall have a Permanent Account Number issued under the Income Tax Act, 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.*

44. 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.

45. 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 be paid 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.*



46. 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.*

47. 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.



48. 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.

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

Section 37(1) of the CGST Act provides that every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both 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 such time and in such manner as may be prescribed.

Further, Section 38(1) of the CGST Act provides that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 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 37.

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 may be asked to furnish quarterly return under section 39.*



50. 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
- (c) for duplication of claims of input tax credit.

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.*

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

Section 50 of the CGST Act provides that every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18%, as may be notified by the Government on the recommendations 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)".



52. 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*

53. 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.*



54. 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'.*

55. 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.

56. 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(10) of the CGST Act provides that the proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund

Issue

The time limit for issuance of order under sub-section (9) is in excess of the time limit prescribed under the erstwhile 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)

57. 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.

58. 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.

59. 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 again 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.

60. 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 erstwhile 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 erstwhile 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.

Issue

- The traders and manufacturers availing SSI exemption were not eligible for the CENVAT credit under the erstwhile 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.
- 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.
- 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.

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 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 erstwhile law.*
- *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.*
- *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.*



61. 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 erstwhile 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 erstwhile Clause 140(3) by “or who was”.

62. Credit of Transition stocks held with Branch

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.

63. 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.

64. 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”.

65. Transition provision for tax paid on receipt basis

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.

66. 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 covers 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.

67. 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 erstwhile 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 erstwhile 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.

68. 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.



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

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.

70. 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 erstwhile law, shall be disposed of in accordance with the provisions of erstwhile law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of erstwhile 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.

71. 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.

72. 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.

73. 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 or 3 years, as the case may be, 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.**”*

74. 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.

75. 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”.

76. 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 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%



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(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.



Procedure Related Issues

77. 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 difficulty 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

78. 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.

79. 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

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

80. 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.

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

82. 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.



83. 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.

84. 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.

85. 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.

86. 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.

87. 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.

88. 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.

89. 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: <ul style="list-style-type: none"> - “Unable to Submit form” - “Please fill the 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).



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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.	Functionalities are not operational.



		(However, it may be noted that now rule has been amended to provide that such application can be filed upto September 30, 2017)	
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.

GSTN Related Issues

90. GST Helpdesk

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.

91. 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)
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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 have made some error.

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

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

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 then 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

93. 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.



94. 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.

95. 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.



REGISTRATION

96. Provision for cancellation of Provisional Registration

Section 139(1) of the CGST Act, 2017 provides that on and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.

Further, Section 139(3) provides that the certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.

Rule 24 of the CGST Rules, 2017 provides detailed procedure for migration of persons registered under the erstwhile law. It provides that an assessee who has been granted provisional registration as per section 139 but is not required to get registered under GST may make an application in FORM GST REG 29 for cancellation of registration granted to him on or before 30th September 2017

Issue

Presently, the assesseees who have been granted provisional registration but are not required to get registered under GST, are facing issues as the option for cancellation of registration by filing FORM GST REG 29 is not available to the said assesseees. Thus, such assesseees even though not required to get registered are required to collect GST on supplies made by them and ensure all the GST compliances like, payment of GST collected, filing of returns etc. are adhered upon. This is putting unnecessary burden on small assesseees who may also not have adequate access to online utilities.

Suggestion

It is suggested that provision for cancellation of migration and the consequent registration be provided for and the option to surrender GST registration be activated at the earliest with retrospective effect at the option of assessee.

97. Mismatch in GST Registration Number

Issue: In many cases GSTIN number issued by department and that mentioned on the GST certificate when downloaded are different which is creating confusion among assesseees to determine their GSTN number against which they have to comply with all requirements of GST.

For e.g.: In a particular case, wherein GSTIN number issued is 24ACCFS6822N2ZS but when the GSTIN certificate is downloaded the number generated is 24ACCFS6822N3ZR. This has raised a confusion as to which number needs to be used while complying with



GST requirements. Also by using 24ACCFS6822N2ZS GST Registration number to login the return dashboard showed no records.

Suggestion

It is suggested that such system glitches be looked into and resolved so that the genuine assesseees are not penalised for system defaults.

98. Registration taken under the Wrong Head

It has been observed under many cases that the assessee has taken registration under a head other than the head he intends to. For example, a small dealer who was covered under the Composition Scheme in VAT wants to register as a Composition dealer under GST but mistakenly selects nature of business as ISD, EOU etc. As the system doesn't have any checks or a certification of such activities the genuine applicant might lose on to apply as Composition dealer.

Suggestion

It is suggested that while making an application for registration under a particular head an option for reconfirmation field be added and later on assessee be permitted to modify such fields.

99. Issues faced while applying for GST Registration

Registration Rules provided under CGST Rules, 2017 provide for detailed registration processes.

a) Provision for amendment of registration particulars

While applying for registration there exists a possibility that the applicant might put in some wrong information due to lack of knowledge or by mistake. This may lead to cases where registration is granted with wrong particulars or the proper officer may reject the application altogether. There exists no provision for amendment of particulars of existing registration.

Suggestion

It is suggested that there may made available a facility on online portal for amending the particulars submitted while making an application for Registration.

b) Date of grant of Registration Certificate

Rule 10(2) of the CGST Rules, 2017 provides that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date. However, certain assesseees have faced the issues wherein the application was made within a



period of 30 days but the registration was effective from the registration was granted instead of the date of liability for registration.

Suggestion

It is suggested that the registrations so granted be checked for such anomalies and a provision for revision of date in such genuine cases be provided for.

c) Delay in grant of Registration Certificate

Rule 9(1) of CGST Rules, 2017 provides that the application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of 3 working days from the date of submission of the application. However, in many cases the assesseees are facing the issues like all the documents have been submitted and response to show cause notice have been timely made but still the Registration Certificate has not been issued within 3 days.

Suggestion

It is suggested that proper officers be requested to adhere to the time lines laid down by the law and support the assesseees with timely grant of Registration Certificate.

d) Proof of Business Premises

Assessee at the time of registration is required to submit the proof of business premises being owned by him. Many a times owner does not update name at Property tax and Electric Bill, as mainly property ownership was decided by its sales deed or Index 2.

Suggestion

It is suggested that at the time of registration sales deed/ Index 2 in name of owner be accepted as a valid proof of business premises.

e) Delay in responses from GSTN Helpdesk

Due to bulk migration and registration many assesseees have faced this issue that they are unable to reach the GST helpdesk and are unable to receive satisfactory responses from the helpdesks through emails or calls.

Suggestion

It is suggested that additional manpower be employed at GSTN helpdesk to cater to assesseees queries and their resolution in a timely manner.

f) Size of Documents to be uploaded while undertaking registration

At the time of registration, supporting documents are required to be attached. For that portal gives small size for uploading, mostly in KBs, which makes the documents non-readable.



Suggestion

It is suggested that the size limit of the uploaded files be increased so as to maintain the quality and readability of the documents uploaded.

g) Requisite Forms be activated on GST portal

It is suggested that forms related to Registration, Amendment, Cancellation or Modification in Registration be activated now so that the assessee requiring amendments or cancellations to their registrations may apply accordingly.

h) List of items/ services supplied to be specified in Registration form

- *It be clarified if the assessee starts dealing in goods/ services other than those listed while applying for registration does it call for amendment in Registration Certificate.*

i) Selection of Commissionerate code under state & central while applying registration

Issue: At the time of registration proper information about code is not provided, and in few cases officer has rejected the application in case of wrong commissioner code filed up by assessee

Suggestion: *it is suggested that system should select the appropriate system code on the basis of the area and pin code entered by assessee at state and centre both*



RETURNS

GSTR 3B Related Issues

100. Liability to pay interest on late payment of tax due to extension of due date of filing GSTR 1 & 2 due to technical problem

As per section 50 of CGST Act, 2017 every person who is liable to pay in accordance with the provision of this Act or the rules made there under, but fails to pay the tax or any part thereof to the government within the period prescribed shall for the period for which tax or part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18%, as may be notified by the government on the recommendation of the council.

Issue

In case if excess ITC availed or some supply is omitted to be furnished in form GSTR 3B, as it cannot be revised, the information furnished wrongly, if any, needs to be corrected at the time of filing GSTR 1 & 2. If there is any increase in liability on this account, then interest is also payable on the excess liability. It may be noted that for the month of July due date for filing GSTR 1 & 2 has been extended upto 10th October and 31st October respectively. Technical snags faced may lead to delay in discharging excess liability by approx. 55 days for which interest will also be liable to be paid

Suggestion

It is suggested that the interest payable on late payment of tax at least be waived off for the month of July 2017 for which due date for filing GSTR 1 & 2 has been extended due to technical problem in GST network. Alternatively, a payment mechanism of debit of cash or credit ledger be made available to the assessee at any time during such time period

101. One cash ledger instead of separate cash ledger

Credit in cash ledger is segregated into different heads which made assessee unable to set off the cash credit of one head for other which can be possible if there is a uniform cash ledger. E.g.: If a person has 1,000/- in interest & a short amount of Rs.100/- in late fee then again, he need to transfer amount from Bank Account although an excess amount is lying Electronic cash ledger.

Suggestion

it is suggested that in cash ledger there should be only major heads like CGST, SGST and IGST but minor heads like late fee, interest and penalty should not be there. Let cash ledger act as a E-wallet but, not as a dedicated column for the payment type. (late fee, interest, penalty adjustment should be possible in cash ledger.)

102. Copy paste option disabled in password

Copy paste option disabled in passwords and it is mandatory to change the password within specified period. There is no reason to disable the copy paste option from password & to change it in specified period. It only increases burden for filing returns.



Suggestion:

It is suggested to enable the copy paste option in passwords & does not make it mandatory to change the passwords.

103. No option to change Authorised signatory contact details

there is no option to change authorized signatory contact details in GST forms. If Authorized signatory contact details does not change then how he will generate Electronic verification code if there is no option to change the same in GST forms.

Suggestion:

It is suggested that there must be an option to change authorized signatory contact details in GST database.

104. No option to download return filed

After filing of GSTR-3B, download option is not coming in the GST Portal.

Suggestion

It is suggested that download option should be available on the GST Portal.

105. No acknowledgement for return filed

No Formal receipt of Acknowledgement is generated by the system on submission of various returns and forms except a message being displayed, which make it difficult for professionals to provide any evidence of work done to the clients.

Suggestion:

It is suggested that an option for generation of receipt in ARN tracking or View my Submissions tab for each filling done on GST portal.

GSTR 1, 2 & 3 related

106. CENVAT Credit reversed earlier due to non-payment

Section 140(9) of the 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 3 months from the appointed day.

Issue

CENVAT credit reversed earlier due to non-payment can be claimed as input credit if payment is made during July to September 17 period. However, there is no column in any



return forms to claim credit of this. Section 140(7) & 140(9) permit credit of CENVAT credit reversed earlier due to non-payment if payment is made in July to September period.

Suggestion

- It is suggested that GSTR TRANS 1 be amended and be allowed to be revised with eligible CENVAT Credit if payment is made in July- September 2017 period.
- Data Fields of GSTR TRANS 1 be modified so as to provide data field to reclaim ITC as per section 140(9) of CGST Act for Transitional arrangement for Input tax credit.

107. First Return cannot be filed if registration is granted in next month

Section 40 of the CGST Act, 2017 provides that every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

Rule 10(2) of the CGST Rules, 2017 provides that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

Issue

There have been cases wherein an assessee has applied for registration within prescribed time limit i.e. For July 2017 assessee applied for registration on 27th July 2017 and has been granted registration on 2nd August 2017 but is not allowed to file return for July. Dealer has inward supplies as well as outward supplies but is not able to insert bill wise details in GSTR 1 and thus unable to claim ITC for July.

Suggestion

It is suggested that there be made available a facility to enable filing of GST return if the registration has been applied within prescribed time limit.

108. Issue faced while filing GSTR 1 for the month of August

An assessee is not able to file GSTR-1 for the month of August 2017, even though one is eligible to file as on today, i.e. 17/9/17. After completing the process, when submit button is clicked, it throws error message. GST helpdesk is also unable to resolve the matter.

109. Multiple Monthly Returns under GST

An assessee needs to file 3 GST Returns viz. GSTR 1, GSTR 2, GSTR 3 on 10th, 15th & 20th of every month which is a burdensome process. In general view, it is felt that Tax & Trade ecosystem is not ready for 3 monthly returns. Assessee's need time of at least 2-3 months to adjust themselves with new return formats, for implementing required changes in the software and to know about how to do Data entry so that GSTR ready reports are available.



Suggestion

It is suggested that there be made applicable only one return monthly under GST which includes all combined details from GSTR-1 & 2 by 15th of next month and keep tax payment date to be 25th.

110. Error in system while filing GSTR 3B

Where TRANS 1 Form is filed but while Filing 3B, due to system problem it is showing an error that first file Trans 1. Whereas Status of Trans 1 is showing Return filed. so, it is absolutely unfavourable that if the return not filed by due date due to this system error than system will auto calculate penalty after due date.

Similarly, in one of the case Trans 1 has been submitted and validation error is reflecting that TIN under VAT is not available. However, the GST website itself shows the same TIN and the same is active with all returns under VAT being filed. Now the Trans1 for July is not letting deletion and since Trans1 is submitted but not filed, GSTR 3B is not getting filed.

Suggestion

It is suggested to remove auto penalty calculation system for few months till system get bug free to avoid hardship to genuine tax payers.

111. GSTN related problem

Processing time of GSTN is high as compare to other online portals due to which persons need to login number of times for the same task leads to unnecessary load on portal.

Suggestion

It is suggested that Processing be on real time basis to avoid system failure due to heavy load of users.

112. Non-availability of provision for filing of return without payment of tax

Everyone likes to file the return well before time but not to pay heavy taxes before time. Govt wants that return filer should not wait for last date and should file it earlier so that there is no load on the portal but the reason for filing the return in last days is payment of tax not the return.

Suggestion

It is suggested to allow return filing without payment so that Tax can be paid till last date i.e. 20th, which will be credited automatically in the ledger.



GST Form TRANS 1

113. No option for offline bulk uploading

There is no off-line utility for filing form Tran-1. In table 7 (b) for claiming ITC on input and services in transit, invoice wise details need to be punch which is very cumbersome. The same problem arises in case of table 6 for claiming unavailed amount of ITC on capital goods there also invoice wise details are required to be punched in but no offline utility is available for the same. Also, the total amount is not shown anywhere. So, if there is any mistake in manual data punching, the same cannot be checked anywhere.

Suggestion

An offline utility and a report with the stock item and input claimed need to be generated before submission

114. Difficulty in carry forward of credit of branches under same PAN who had different registrations under service tax

As GSTIN is PAN based one GSTIN can be allotted against single PAN in a single state. Branches under same PAN have different Service Tax Registrations and Input credit is available to be carried forward against many branches but the Form accepts only the input credit of the branch against which the Provisions ID was allotted and all other Service Tax codes as invalid. During registration, all branches were dully mentioned with Service Tax as additional places of business.

Suggestion

It is suggested that the form should be amended so that input credit of other branches under same PAN can duly be carried forward.

115. TRANS 1 for Job Work transactions

In case of job worker, if goods are not returned within 6 months in current law we have to make reversal of Cenvat and once the goods are received back we can claim the Cenvat. What if in case there is reversal made on 30.06.2017 and the goods are received back by the dealer after 1.07.2017. The credit cannot be claimed as there is no section under GST provisions. Further, there is no mechanism in Tran-1 to claim the same. There is only disclosure of goods lying with job worker and its value.

There is case where dealer have moved goods with Job worker prior to 01.07.2016 and the he made reversal of the Cenvat and disclosed in TRAN-1 in section 141 but no Cenvat details are captured

Suggestion

It is suggested that in TRAN-1, there be one table or column, where one can disclose the CENVAT reversed under erstwhile laws and which can be claimed in future based on the occurrence of an event. i.e. goods received back by dealer from Job worker in order to avail that credit.



Refund to be claimed under earlier laws.

116. Clarification between nil and exempted supply

In GSTR 1 Return form there is a single column for nil, exempted and Non-GST supplies and consolidated figure of these three types of supplies is required to furnish in the return.

Suggestion

It is suggested that a dedicated column for different type of supplies be made in the return form. Such segregated data will also be helpful to perform various analysis by respective authorities. Further some clarification also be provided between exempted and nil rated supplies.

117. Compensation cess field missing in GSTR 1

There shall be levied a compensation cess on supplies of specified goods or services or both.

Suggestion

It is suggested that appropriate column be added in the return form to depict cess amount on export.

118. Compliance requirement where registration cancelled by department

In case of migration, provisional registration is provided first and thereafter on basis of documents furnished by assessee registration is cancelled but there is no clarification regarding compliance requirements after cancellation of registration like whether return is required to be filed or how will assessee pay tax to government which has been charged during the period of provisional registration.

Suggestion

It is suggested that suitable clarification be provided in this regard.

119. Credit Reversal in case of Banking Company

As per Section 17 of CGST Act, 2017 where goods and services is used both for taxable and exempted supplies, only proportionate credit is allowed to a registered person. However, in case of banking company or financial institution there is an option to avail 50% of total credit and reverse the rest but there is no provision in the GSTR 2 form to disclose such credit reversal.

Suggestion

It is suggested that Return form GSTR 2 be suitably amended to add a column for 50% credit reversal in case of banking company

120. Aggregate turnover figure entered wrongly in return



In case an assessee having more than one registration has inadvertently entered wrong figure of aggregate turnover while filing a return and corrected the figure of aggregate turnover in another registration return.

Suggestion

It is suggested to provide any suitable alternative to modify the figure of aggregate turnover which has been furnished wrongly in the Return by assessee.

121. Tax liability on MRP products when purchased from unregistered dealers and reverse charge liability

As per section 9(4) of CGST Act ,2017 recipient is liable to pay tax on goods purchased from unregistered dealer but in some cases where unregistered dealer is supplying goods on MRP basis there is no clarity whether recipient is still liable to pay tax on such MRP goods as MRP is inclusive of all taxes

For e.g.: Assessee has purchased a bottle of mineral water on MRP from unregistered dealer than as per section 9(4) assessee is liable to pay tax on such inward supply.

Suggestion

It is suggested that a suitable clarification be provided that liability of recipient in case of value U/s is inclusive of price paid to unregistered dealer or exclusive of price paid as taxes already been included in the value charged by unregistered persons.

122. No option to offset liability partially or periodically at the option of assessee

- a) In case there is a liability of tax to be paid in cash and assessee is short of cash on that particular day there is no option to discharge partial liability due to which he has to bear the interest burden on the entire amount of tax.
- b) there is no provision of periodic payment of offset of liability wherein assessee is not in hand ready with return filing data however desires to pay liability on Adhoc estimation basis to avoid interest liability.

Suggestion

It is suggested to allow partial / period payment of offset of tax so that an assessee can bear interest only on the short payment.