



ICAI Suggestions on GST Acts

1. General Suggestion(s)

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

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

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



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

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

Suggestion

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

3. Import of services for Personal Use

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

Issue

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

Suggestion

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

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

4. Purchase from Unregistered Dealers

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

Issue



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

Suggestions

It is suggested that:

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

5. Availability of Composition Levy

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

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

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

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

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

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



Issue

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

Suggestion

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

6. Power to grant exemption from Tax

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

Issue

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

Suggestion

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

7. Time of supply of goods and services under RCM

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



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

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

Issue

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

Suggestion

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

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

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

Issue:

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



Suggestion:

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

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

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

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

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

Suggestions

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

10. Value of Taxable Supply

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

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

Suggestions

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

11. Reversal of Credit on non-payment of taxes

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



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

Suggestion

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

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

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

Issue

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

Suggestion

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

13. Supply of Input Tax Credit paid Capital Goods

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

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

Issue

The provision deals with reversal of input tax credit in case of removal of capital goods but the current wordings "In case of supply of capital goods or plant and machinery" have a far-reaching impact. First it uses the term supply which includes even renting of that capital goods i.e. to say in case the capital goods is rented out, Sec 18(6) triggers



and there would be reversal of ITC which is not the intention and secondly the use of word plant and machinery is not required as they are already covered under the meaning of capital goods. It will help give the provision intended scope and not hit those transactions which are not intended.

Suggestion

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

14. General provision related to demand

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

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

Issue

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

Suggestion



*The Institute of Chartered Accountants of India
Suggestions on GST Act*

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

We are to have another meeting to discuss the balance suggestions as well as the changes expected on 3rd or 4th June 2017. After that we will submit the collated full and final suggestions.