



भारतीय सनदी लेखाकार संस्थान  
(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)



सीए. नवीन एन. डी. गुप्ता  
अध्यक्ष  
CA. Naveen N.D. Gupta  
President

o/c

ICAI/IDTC/2018-19/Letter/ 14

10<sup>th</sup> July, 2018

**Shri Piyush Goyal**

Hon'ble Union Minister of Finance, and  
Chairman, Goods & Services Tax Council  
Ministry of Finance,  
Government of India, North Block  
New Delhi – 110001



Respected Sir,

**Sub: Suggestions on GST Law**

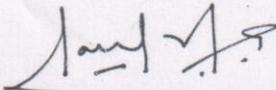
At the outset, we thank the Government for considering most of the suggestions on issues related to GST hitherto submitted by the ICAI.

Further, some more policy, law and procedural related issues on GST have been identified and reported by members across India who are involved in GST implementation and suggestion thereon. Compilation of these suggestions is enclosed herewith for your kind perusal. We hope that these suggestions would also be favorably considered.

We shall be glad to provide any further input as may be required and your office in case of any information may reach us at [idtc@icai.in](mailto:idtc@icai.in) or 0120-3045954.

Wish best regards,

Yours sincerely,

  
CA. Naveen N. D. Gupta



**Copy to:**

1. **Dr. Hasmukh Adhia**, Finance Secretary (R), Department of Revenue, Ministry of Finance, Government of India, North Block New Delhi - 110001
2. **Sh. Arun Goyal**, Additional Secretary, Office of the Goods & Services Tax Council, Tower-II, 5<sup>th</sup> Floor, Jeevan Bharti Building, New Delhi -110001

# Suggestions on GST Law



*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 Law. We have segregated the **121** suggestions on various topics under GST. We shall be pleased to discuss 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:

Name and Designation	Contact Details	
	Ph. No.	Email Id
CA. Madhukar N Hiregange Chairman, Indirect Taxes Committee	9845011210	<a href="mailto:madhukar@hiregange.com">madhukar@hiregange.com</a>
CA. Sushil Kumar Goyal Vice-Chairman, Indirect Taxes Committee	9830088400	<a href="mailto:skgoyal@icai.org">skgoyal@icai.org</a>
CA. Sharad Singhal, Secretary, Indirect Taxes Committee	09310542608 0120-3045954	<a href="mailto:idtc@icai.in">idtc@icai.in</a> ; <a href="mailto:s.singhal@icai.in">s.singhal@icai.in</a>

For any further information, please visit the website of Indirect Taxes Committee:  
[www.idtc.icai.org](http://www.idtc.icai.org).

## **EXECUTIVE SUMMARY**

<b>GENERAL</b>		
<b>S. No.</b>	<b>Topic(s)</b>	<b>Suggestion(s)</b>
1.	<b>Simplification of GST Law</b>	It is suggested that GST laws be made much simpler and less complex in a way that it could be understood even by a layman or an unorganised taxpayer without the intervention of a tax expert.
2.	<b>GST Compliance</b>	It is suggested that the compliance under GST law be made simple and transparent which would ease compliances, cut or control cost of compliance and create a sense of ease of doing business. For example, the input tax credit mechanism needs to be relooked and eased out – availment, apportionment, blockage, credit in special circumstances, and credit for capital goods / job work which is a painful and cumbersome process of computation.
3.	<b>System integration and testing</b>	It is suggested that adequate “use case testing” with several examples based on business models and business processes by tax experts be conducted / done / checked for compliance related forms and thereafter they should be made available for the end user on the online portal.
4.	<b>Delay in responses from GSTN Helpdesk</b>	Considering the bulk of enquiries made to the help desks it appears that the GSTN helpdesk is overloaded and therefore it is suggested that additional manpower be deployed for resolving queries/ issues, reduce call time/ email revert time, etc. to help keep up the good work undertaken by GST helpdesk. Assistance provided by properly trained officials will add to the smooth functioning of the GSTN helpdesk by way of providing specific answers to the queries/ issues as against being referred to GST Acts,

		Rules, FAQs etc.
5.	<b>The duties and responsibilities and powers of the Officers at various levels be specifically put up for public comment</b>	<p>It is suggested that:</p> <ul style="list-style-type: none"> <li>• Officers to be trained in respect of mind-set of trust and support to the industry as against tax terror, which is prevalent even today.</li> <li>• Officers to be trained in GST as the vast majority are unable to answer basic questions. If this is not the case, the concept of a proper examination can be introduced for officers.</li> <li>• Those who adjudicate and hear appeals to compulsorily go through a special learning and test of understanding.</li> </ul>
6.	<b>GST implications on third country trading/ manufacturing/ service from India</b>	<p>The service and goods purchased by them in one Country and sold / delivered in another Country and all that business done from India, are treated as service import and service export when it is accounted in the Books. Therefore It is suggested that suitable rules to be framed in respect of Third country trading / manufacturing /service Business Modules in the Indian Global Economy.</p> <p>It is also suggested that, third country trading / manufacturing /service companies need to be exempted from GST implications in respect of their global business done from India.</p>
7.	<b>Settlement Commission provision be restored</b>	<p>It is suggested that provisions relating to Settlement Commission as provided in Chapter VIII of the Model GST Law is to be reinstated as genuine/bonafide mistakes may occur in the initial phases of the GST regime due to complexity of the Law. These provisions act as an alternate dispute resolution mechanism which is essential and therefore, the settlement commission provisions need to be restored.</p>
8.	<b>Strengthening of Anti-Corruption measures</b>	<p>It is suggested that appropriate policies be formulated in order to strengthen the Anti-Corruption measures by building in the accountability of revenue officers. An end-to-end compliance rating concept to be given to the</p>

		officers to ensure compliance on their part.
9.	<b>Solution through Twitter handles</b>	It appears that a solution provided through twitter and /or FAQ in many cases are contradictory in nature. These are published with a disclaimer which is creating confusion. In such situations there is no guarantee that if a solution / clarifications provided through Twitter / FAQ is followed by a taxable person he will BE protected from any additional liability at a later point in time. As such, the disclaimer needs to be removed or such solutions be converted to official clarifications.
10.	<b>Prospective effect of notification notifying increase in tax</b>	Under the vulnerability of introduction of changes with the Council's concurrence power to retrospectively change / amend / alter / modify the nature of exemption may be detrimental to the interest of the assesseees. Therefore It is suggested that a proviso be added to sub-section 11 (3) of the CGST Act, 2017 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 only”.
11.	<b>Rate of tax on sale of ‘under construction units’ or ‘incomplete units’</b>	It is suggested that the GST rate for sale of under construction units i.e. sale of units before completion of construction shall not to be more than 12% (6% CGST + 6% SGST) of the agreement value which will make it comparable to the present situation.
<b>DEFINITIONS</b>		
12.	<b>Proviso to the definition of ‘job work’ – Exclusion of repairs / maintenance</b>	“Job work” means any treatment or process undertaken by a person on goods belonging to another registered person. By this it appears to cover any kind of treatment or process undertaken including repairs, maintenance etc. Therefore, 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.

13.	<b>Location of the supplier of goods</b>	The absence of the definition of “Location of the supplier of goods” is causing great concern to the trade and industry. Therefore, It is suggested that “Location of the supplier of goods” be defined as “the location where goods are situated under the control of the supplier ready for supply with a proviso to cover situations in case of bill to ship to model U/s10(1)(b) of IGST Act, 2017”.
14.	<b>EOUs deemed to delicensed vide notification 44/2016-Cus. dt. 29.07.2016 and circular 35/2016-Customs dated 29.07.2016</b>	After the notification no. 44/2016-Cus. dt. 29.07.2016, EOUs have been deemed to be delicensed as a warehouse with effect from 13.08.2016. Therefore, It is suggested to replace with “EOUs deemed to be bonded”. Amend 46/2016-Cus. and withdraw circular 35/2016-Cus. dt 29.07.2016 along with “deemed extension of warehousing period co-terminus with LOP”
<b>LEVY AND COLLECTION</b>		
15.	<b>Non-levy of GST on goods listed in section 9(2) of CGST Act</b>	In order to maintain a level playing field, it is suggested that all goods be brought into the purview of GST at the earliest, including petroleum, alcoholic liquor, and electricity. Other laws that govern the levy of taxes / duties on such non-GST goods be repealed.
16.	<b>Taxability of Transferable Development rights</b>	It is suggested that a clarification needs to be issued that TDRs are not taxable under the GST Laws since it is an immovable property right.
17.	<b>Levy &amp; Collection under Reverse Charge in case of supplies other than those in course of furtherance of business</b>	Section 9(3) of the CGST Act provides that the Government may specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient. By virtue of which tax is payable on any specified supply of goods or services whether or not in the course of furtherance of business therefore, it is suggested that, an explanation to Section 9(3) of CGST Act, 2017, be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 9(3) of the CGST Act.

<b>CLASSIFICATION AND EXEMPTION</b>		
18.	<b>Disputes and demands due to Classification issues</b>	It is suggested that timely and appropriate classification be provided to the industry on the basis of representation submitted by assessee or on by its own, on the basis of officer's feedback / past assessments in the earlier regime etc. To cite one example the clarification issued by the CBIC in respect of printing industry is one of the most confusing and debatable issues.
19.	<b>Transfer of immovable property by way of lease</b>	If an upfront fee is paid in respect of transfers by State Government Industrial Development Corporations or Undertaking to Industrial Units (such supplies for a period exceeding 30 years) then such supplies are exempt. However such upfront fee would remain taxable if the period of lease is lower than 30 years or to any person other than Industrial Units. Therefore, It is suggested that exemption may be extended to all transfers of immovable property irrespective of the period of lease and whether or not to an Industrial Unit.
20.	<b>Transfer of immovable property by way of Assignment of Lease - GST implications</b>	It is suggested that the assignment of an existing lease by one Lessee to another (Assignee) would not amount to an activity that would amount to a transfer of under GST Laws. Therefore, assignment of lease shall be exempt under GST on the same basis as sale of land.
<b>SCOPE OF SUPPLY</b>		
21.	<b>Movement of goods within same business not to be treated as supply</b>	It is suggested that the supply of capital goods (whether to own depot or to the customer) be kept outside the purview of GST, and only the leasing/ renting/transfer of right to use the asset be subject to tax. Movement of capital goods for provision of services like renting/ leasing/ transfer of right to use be excluded from the scope of supply under GST regime.
22.	<b>Amendment of Section 7 of the</b>	Without the ingredient of 'business', many transactions will not be taxable especially once-in-

	<b>CGST Act, 2017</b>	<p>lifetime activities involving immovable property or consideration received for non-competing in business just because they are specified in Schedule II. Therefore, It is suggested to amend Section 7 of CGST Act, by way of inserting a new sub-section (1A) in place of clause (d) of sub-section (1) of Section 7, as under:</p> <p>“(1A) the activities to be treated as supply of goods or supply of services as referred to in Schedule II will be deemed to be in the course or furtherance of business”</p>
23.	<b>Supply of Information technology software</b>	<p>Development , customization etc. of Information technology software will be treated as supply of service as per Para 5(d) of Schedule II however Supply of information technology software ‘as such’ through electronic form or through physical form (CD, DVD etc.) be considered as supply of ‘goods ‘under chapter heading 8523. Therefore, It is suggested to amend clause (d) and clause (f) of paragraph 5 of Schedule II of the CGST Act, 2017 in the following manner</p> <p>(a) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software excluding supply of information technology software as such .....</p> <p>(f) Transfer of the right to use any goods other than information technology software for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.</p>
24.	<b>Actionable claims</b>	<p>Certain claims and entitlements (in physical form or electronic form) representing real property are treated as an actionable claim i.e shall neither be treated as supply of services nor supply of goods.</p> <p>In order to avoid tax evasion due this lack of clarity it is suggested to insert an Explanation to para 6 of</p>

		Schedule III to provide that, “for the purposes of paragraph 6, claims and entitlements representing real property whether presented in physical, electronic or other non-physical form will not be treated as actionable claims”
<b>COMPOSITE AND MIXED SUPPLY</b>		
25.	<b>Classification as Composite Supply and Mixed Supply</b>	GST law nowhere specify how to determine principal supply. A number of disputes may arise due to this. Therefore, It is suggested to clarify the manner of determination of a principal supply to avoid the disputes. It will help avoid classification disputes.
<b>COMPOSITION LEVY</b>		
26.	<b>Availability of Composition Scheme uniformly to all kind of supplies</b>	<p>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. Further non –availability of composition scheme on only specified service therefore,</p> <ul style="list-style-type: none"> <li>• <i>It is suggested that eligibility for composition scheme be made available uniformly to all suppliers whether supplying goods or services or both. The restriction on effecting interstate supplies in case of opting for composition scheme shall be removed. As GST is a destination based tax which promotes 'One Nation-One Tax', the restriction on interstate supplies seems to be opposite of the concept of GST.</i></li> <li>• <i>Alternatively, sector-specific composition schemes may be designed specifically to cater to need of different sectors. For instance, the benefit of composition scheme can be extended to service providers up to a limit of Rs. 35 Lacs including the suppliers effecting partly supply of goods and partly supply of services.</i></li> <li>• <i>It is suggested that in section 10(1) the words “under this Act” be added after the</i></li> </ul>

		words “in lieu of tax payable by him” to define and restrict the taxes liable to be paid to CGST/ SGST paid under this Act / respective State Acts.
<b>TIME &amp; VALUE OF SUPPLY</b>		
27.	<b>Amendments to Notification No. 4/2018- Central Tax (Rate) dated 25.01.2018</b>	<p>Following are the shortcomings identified in Notification No. 4/2018 which needs to be rectified</p> <ol style="list-style-type: none"> <li>1. The notification provides that development rights transferred only to a registered person is taxable and does not cover the supply of development rights to an unregistered person</li> <li>2. The notification covers only supply of ‘development rights’ in land.</li> <li>3. Uncertainty in ascertaining the time of supply for transfer of development rights against provision of construction service and vice versa.</li> <li>4. Uncertainty in the valuation mechanism to be adopted for the transfer of development rights by the land owner.</li> </ol> <p>Therefore, It is suggested to make following amendments in the Notification 4/2018-Central Tax (Rate):</p> <ul style="list-style-type: none"> <li>• The notification shall be suitably amended in such a way that the transfer of ‘any rights’ in land (not only development right) shall be made liable to tax under GST Laws. Further, the notification shall be made applicable even in case of transfer of rights in land to an ‘unregistered person’.</li> <li>• It is suggested that, the words ‘taxable person’ be substituted instead of ‘registered person’ in Section 148 of the CGST Act, 2017</li> </ul> <p>(In terms of Section 148 of the CGST Act, 2017, the Government may notify special procedures to be followed by certain classes of ‘registered persons’ with regard to payment of tax, registration etc.)</p> <p>After the amendment of Section 148, a</p>

		<p>corresponding amendment be made in the notification 4/2018-Central Taxes by substituting the words ‘taxable person’ instead of ‘registered person’ wherever applicable.</p> <ul style="list-style-type: none"> <li>• To ensure certainty, it is suggested that, the time of supply should be at the time of transfer of possession or right by the builder or developer by entering into a conveyance deed or a similar instrument with the supplier of development rights, irrespective of whether the complex was constructed or not. It is suggested that the word ‘constructed’ should be removed from Notification no. 4/2018-Central Tax (rate).</li> <li>• Since there is a deferment of point of taxation in the hands of the land owner for transfer of development rights, there shall be proper valuation mechanism in order to ascertain the tax liability in the hands of the land owner. It is suggested that the valuation rules be amended to give effect of the same.</li> </ul>
28.	<p><b>Correction in the provisions specified with respect to time of supply of goods or services in case of continuous supply</b></p>	<p>By giving a reference to Section 31(1) and Section 31(2) of the CGST Act, 2017, the applicability of Section 12 and Section 13 is restricted to normal supplies and do not cover issuance of invoice for continuous supply of goods / services which are covered under Section 31 (4) and Section 31 (5) of the CGST Act, 2017.</p> <p>Therefore, It is suggested that reference to only Section 31 be given instead of section 31(1) in the Section 12 of the CGST Act, 2017 and Section 31(2) in Section 13 of the CGST Act, 2017.</p>
29.	<p><b>Rationalization of time limit in case of time of supply of goods and services under RCM</b></p>	<p>The time period for payment of tax under reverse charge mechanism 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 / provision of service with invoice and may create unnecessary interest liability if payment is not made within 30 or 60 days.</p> <p>Therefore It is suggested that the time limit</p>

		prescribed in case of supply of goods and services under reverse charge mechanism shall be made to 90 from hitherto 30 days as prescribed in the erstwhile law.
30.	<b>Clarity on the nature of supply of vouchers</b>	<p>‘time of supply’ of supply of vouchers as services u/s 13(4) of the CGST Act, 2017 is creating a lot of confusion:</p> <ul style="list-style-type: none"> <li>• <i>It is suggested that Section 13(4) be omitted from the law.</i></li> <li>• <i>Further it is suggested that to avoid misinterpretation the following definition of term “Voucher” be provided:</i></li> </ul> <p><b><i>'voucher means</i></b></p> <p>(a) <i>any instrument or entitlement received from an arrangement with one person permitting another person to accept the same in redemption against payment owed in respect of a taxable supply, or</i></p> <p>(b) <i>any instrument or entitlement received from any Government under a law for the time being in force to redeem the same in respect of settlement of any payment owed towards any tax or duty</i></p> <p><i>Explanation 1: voucher shall not include a system of payment recognized under the Payment and Settlement Systems Act, 2007 or any other law for the time being in force.</i></p> <p><i>Explanation 2: voucher shall not include actionable claims"</i></p>
31.	<b>Valuation</b>	Valuation rules are complex and unclear. Therefore, It is suggested that the valuation mechanism under GST Laws can be further simplified to facilitate better understanding of the provisions and to mitigate confusion in the minds of the taxpayers. Complicated adjustments for computing the taxable turnover under GST Laws would affect the ease of doing business by the Assessees.

32.	<b>Exclusion of taxes/duties etc. paid under any other law from the transaction value of supply under GST</b>	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. Therefore It is suggested that any taxes, duties, cesses, fee and charges levied under any other statute shall be excluded from the transaction value under GST, as such charges are in the nature of statutory levies.
33.	<b>Valuation in case of sale of repossessed goods</b>	The proviso to Rule 32(5) of the CGST Rules makes a qualification that the defaulting borrower should be unregistered person. It is suggested that the applicability of the said proviso for disposal of goods repossessed from registered persons has to be clarified.
34.	<b>Deemed deduction towards land in case of sale of apartments</b>	Blanket deduction of 1/3 <sup>rd</sup> of the total value of the contract / agreement with the customer irrespective of where the land / apartment complex is erroneous. Therefore, It is suggested that: - <ul style="list-style-type: none"> <li>a) Land deduction may be provided either at market value of the land – as per the agreement entered between the developer and customer; or based on certification by an approved valuer.</li> <li>b) In case it is not possible to ascertain the land value as above, it is suggested that a schedule containing different rates (per sq. ft.) be prescribed for claiming of deduction towards land. Such rates shall be based on parameters such as location (urban or rural), cities or distance from cities (prime area) etc.</li> <li>c) Further, following clarifications may be provided vide circular to be issued in case deduction towards land prevailing at 1/3<sup>rd</sup> of the total consideration: <ul style="list-style-type: none"> <li>• The deduction towards land cost (at 1/3<sup>rd</sup>) be allowed to be availed upfront out of the first few instalments received i.e. on</li> </ul> </li> </ul>

		<p>FIFO basis.</p> <ul style="list-style-type: none"> <li>• The components of receipts that would form part and parcel of the total consideration for applying 1/3rd towards land cost deduction must include – Car park charges, club house charges, reticulated gas supply charges, modular kitchen, preferential location charges, floor rise charges, water and power charges, DG set charges, maintenance charges etc. This is because these costs are in the nature of construction costs.</li> <li>• In case of unsold flats as on the date of obtaining OC / PC, the manner of reversal of input tax credits attributable to such unsold flats must not be arbitrary. The reversal shall be based on area unsold as on the date of obtaining OC / PC. Such reversals must not be subject to consequential levies such as interest / penalties</li> </ul>
35.	<b>Value of land deduction in case of revenue sharing model in a Joint Development Agreement</b>	In case of revenue sharing model in a Joint Development Agreement, there is a lack of clarity regarding as who among the land owner or developer will claim land deduction It is suggested that in case of a revenue sharing model in a joint development agreement, a circular be issued clarifying whether the land deduction be claimed by the developer / Builder based on revenue share (%) attributable to the land owner (as per JDA).
36.	<b>Valuation of transfer of rights in land</b>	There is no proper valuation mechanism for valuation of transfer of rights in land by the land owner. Therefore, It is suggested to amend Section 15 of CGST Act, 2017 to provide that the amount actually paid or payable specifically towards sale of land and sale of building referred

		<p>in para. 5 of Schedule III of CGST Act, 2017 be deducted to calculate the value of supply of service as referred in para. 2 of Schedule II of CGST Act, 2017.</p> <p>The total amount received towards absolute sale of land shall be allowed as a deduction from the consideration received for transfer of rights in land. Therefore, GST shall be levied only on consideration attributable up to the point of execution of the absolute sale deed.</p>
<b>INPUT TAX CREDIT</b>		
37.	<b>Denial of input tax credit to the taxpayer due to failure in taking registration</b>	<p>Denial of input tax credit to the taxpayer due to failure in taking registration burdens the taxpayer and on the other hand, the Government is unjustly enriched. Further, there is no provision to claim input tax credit on capital goods purchased prior to obtaining registration. Therefore, It is suggested that</p> <p>a) The input tax credit shall not be denied to the taxpayer who obtains the registration belatedly merely due to procedural lapses on account of bonafide reasons. Therefore, the relevant section cited infra be suitably amended.</p> <p>b) The provisions relating to availing / claiming of ITC on the date of obtaining registration under the GST law, shall be made uniformly applicable for ‘inputs’ and ‘capital goods’. The claim of ITC on capital goods shall be restricted in proportion to the depreciation claimed over the year(s) and shall not be restricted fully.</p>
38.	<b>ITC Restriction for payment of tax as a result adjudication proceedings</b>	<p>The taxpayers may have defaulted in the payment of taxes under a bonafide belief for reasons such as, lack of understanding/interpretation of the Law, poor industrial policies in unorganised sectors, etc. Therefore, It is suggested that, in cases wherein 100% penalty (under Section 122 of the CGST Act, 2017) and interest is being levied</p>

		by the tax authorities on the grounds that the taxes have been evaded by the taxpayer on account of fraud, suppression of facts etc. the taxes proposed to be levied as a result of adjudication proceedings shall be allowed to be remitted to the Government by way of utilising the input tax credit, if any.
39.	<b>ITC Restriction/Reversal</b>	Restriction of ITC under section 17(3) leads to a reduction in the common inputs of the Assessee even when the common ITC does not relate to the outward supplies liable under RCM. In this regard, it is suggested that ITC restriction on common inputs to the extent of supplies liable to tax under reverse charge basis shall not be made applicable for the reason that, merely because the liability to pay tax is shifted from the Supplier to recipient, ITC on common inputs cannot be denied to the Supplier.
40.	<b>ITC Reversal on cancellation of Registration</b>	On opting out of GST regime, the input tax credit contained in the goods held in stock as on that date, would lapse immediately. In this regard, It is suggested that the input tax credit shall not be forfeited immediately as it is possible that one may again become taxable under GST Laws and at times it can be quite substantial. The lapse of ITC on account of cancellation of registration shall be deferred until the business is shut down completely or until the time it can be well established that the turnover would not cross the threshold of Rs.20 Lakhs in the future.
41.	<b>Sale of Capital Goods</b>	The taxes in respect of an inward supply of capital goods, where credit has been availed, would be paid by the recipient to the supplier, and consequently, remitted to the credit of the Government at the time of inward supply. Moreover, one must appreciate that cases where capital goods are disposed of for a value that is significantly lower than the purchase-price soon, after their receipt, upon availment of input tax credits, would be isolated transactions in respect of any business and would normally not be entered into with intent to evade or avoid taxes. Therefore it is suggested to levy taxes in such

		instances only on the transaction value.
42.	<b>Conditions to claim ITC</b>	The recipient shall be entitled to claim input tax credit on his inward supplies, only if the Supplier has remitted to the Government, the taxes collected from the recipient. In this regard, it is suggested that the recipient shall not be denied the benefit of claiming ITC merely because the same was not remitted to the Government by the Supplier. The recipient has paid the taxes in good faith and the Supplier only acts as an agent of the Government for collection of taxes. The Recipient cannot be made responsible for the default committed by the Supplier as it is the duty of the Government to identify such tax evaders.
43.	<b>Blocked Credit</b>	<p>Issues in this regard are as follows:</p> <ul style="list-style-type: none"> <li>• Input tax credit on motor vehicle if not allowed, becomes a major part of cost for the entity.</li> <li>• If the person has constructed the building himself, then he would not be getting any credit of the taxes paid</li> </ul> <p>a) <i>It is therefore suggested that Input Tax Credit be allowed in cases where incurring of such expense is mandatory in nature for an entity viz., input taxes on purchase of a motor vehicle in case of a BPO / KPO.</i></p> <p>b) <i>It is suggested that Section 17(5) (c) which restricts input tax credit in respect of works contract services ought to be deleted / omitted in a GST regime. This is because output taxes are being remitted when such immovable properties are put to use for example – a commercial complex which is let out or leased.</i></p> <p><i>Further, 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.</i></p>

44.	<b>Input Tax credit on goods confiscated or detained</b>	When the confiscated goods are released and sold, it will be subject to tax and hence, it is not appropriate to deny the credit thereon on such goods which will be supplied eventually. Therefore, it is suggested that the output taxes paid on detention or seizure of goods by the supplier or recipient not to be restricted in the hands of the recipient in case of detention or seizure as per Section 129/130 of CGST Act, 2017.
45.	<b>Eligibility of input tax credit on purchase of dumpers, tippers or other motor vehicle</b>	Disallowing the claim of input tax credit on Dumpers and tippers results in extreme hardship to the works contractors. Therefore, It is suggested that the words “dumpers, tippers, bull dozers, pavers, and motor vehicles of similar nature” be excluded from the definition of motor vehicles for the purpose of GST laws and the same shall be included in the definition of plant and machinery, since the said dumpers, tippers, bull dozers, pavers and like are used in construction and not used in the transportation. Further, input tax credit on the same be allowed.
46.	<b>Exclusion of ‘Any other civil structure’ from the definition of ‘Plant and Machinery’</b>	Use of the term “Other civil structures” in the exclusion list of “Plant and Machinery” may lead to numerous disputes on the eligibility of credit on various plant and machineries as in most cases, various plant and machineries require civil works to support their operation. It is therefore suggested that the words “other civil structures” be removed from the said Explanation.
47.	<b>Restriction of input tax credit on Rent a cab services and travel benefit extended to employees like leave travel concession</b>	<ul style="list-style-type: none"> <li>• It is suggested that restriction of availing credit on Rent-a-cab services be dispensed with and input tax credit be allowed for rent-a-cab services if such services are used in course / furtherance of business under Sec17(4)(b) (iii).</li> <li>• Further, it is suggested to remove restriction on availing credits on travel benefits extended to employees on vacation such as leave or home travel concession as provided in</li> </ul>

		Sec17(4)(b)(iv)
48.	<b>Input tax credit on renting of immovable property</b>	It is suggested that a clarification may be issued clarifying whether the civil structures can be considered as "plant" so that input tax credit can be availed on it. This clarification will avoid many litigation in future.
49.	<b>Provisions relating to claim of Input Tax Credit and reversal of ITC in certain situations in the hands of Real Estate developers/builders</b>	It is suggested that a clarification be issued by way of a circular addressing the various issues relating to claiming of ITC, restriction of ITC and reversal of ITC in the hands of the builder / developer under various circumstances. This would address the concerns of the community at large and prevent avoidable litigation at a future date.
50.	<b>Availability of KKC credit</b>	Unutilised balance of KKC as on 30.06.2017 is not available as transitional credit under GST Laws. The unutilised balance of KKC has become a cost in the hands of the Assessee. Therefore, It is suggested that the credit of KKC be allowed to be brought forward as transitional credit under the GST regime as the Assessee had already considered the factor of availability of credit of KKC in their pricing and contracted for the provision of service accordingly. Since the due date of filing Form GST TRAN 01 has expired (i.e. on 27.12.2017), it is suggested that the portal be reopened in order to claim the unutilised KKC credit as appearing as closing balance in the Service Tax Returns for the month of June 2017.
<b>REGISTRATION</b>		
51.	<b>Exemption from registration for inter-state supply of goods</b>	There is no exemption provided from registration for interstate supply of goods having turnover less than Rs.20 lakh. In this regard It is suggested that a similar notification be issued under the IGST Act, 2017 stating that no registration is required even in respect of inter-State supply of goods in respect of persons whose aggregate turnovers do not exceed the threshold of Rs.20 Lakhs
52.	<b>Removal of mandatory</b>	Although the annual commission that an agent

	<b>registration requirements in respect of Agent</b>	<p>earns is far below the turnover threshold, agents are compulsorily required to obtain registration pursuant to section 24 of CGST Act, 2017.</p> <p>Therefore, it is suggested that the requirement of obtaining registration in terms of Section 24 of the CGST Act, 2017 regardless of the turnover being below the threshold limit be done away with.</p> <p>Also, one may consider introducing a concept like a ‘pure agent’ as is applicable in case of supply of services, in case of supply of goods as well. Under the erstwhile State Level Sales Tax Laws the concept of “accommodation sales” was a well-established concept</p>
53.	<b>Relaxation of time-limit for effective date of registration</b>	<p>It is suggested that in cases where the application for registration has been belatedly made by a person for bonafide reasons, the effective date of registration be granted from the date of liability itself.</p>
54.	<b>Cancellation of Registration obtained by registered person voluntarily</b>	<p>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.</p> <p>Therefore, It is suggested that clause (d) of Section 29(2) be deleted. Further, it is suggested that the facility of cancellation of registration from an earlier (ante) date be restricted as this would disrupt the entire credit chain.</p>
55.	<b>Registration in case of transfer</b>	<p>Section 22 (4) of the CGST Act provides that transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal. However, the ROC does not issue any Certificate of Incorporation specifically to give effect to the order of the High Court on amalgamation or demerger under Scheme of Arrangement.</p> <p>Therefore, It is suggested that the words “giving</p>

		effect to such order of the High Court or Tribunal” be deleted since in several situations there are delays in the RoC issuing such Certificate of Incorporation.
56.	<b>Activation of GST registration certificate</b>	Even after grant of deemed registration, the registered person would not be able to proceed with GST compliances such as payment of taxes, filling of returns, etc. unless the registration number is activated by the tax authorities. Therefore, It is suggested that the activation of the registration number be done on an immediate basis, so as to facilitate the registered persons to comply with the provisions of the law.
57.	<b>Insertion of overriding clause in Registration provisions</b>	It is suggested that Section 23 of the CGST Act, 2017 may commence with a non-obstante clause viz., "Notwithstanding anything contained in sections 22 & 24” so as to give effect to the provisions of section 22 and 24 of the CGST Act, 2017.  If this amendment is not carried out it appears that section 22 and section 24 will still hold the field even in situations covered under section 23 of the CGST Act, 2017
58.	<b>Registration of Works Contract services – Interstate Supply</b>	Works Contractors, having a principal place of business in one state may undertake execution of works across India in many States. The registration provisions require the works contractor to obtain registration in each such State even though he has no place of business in those States. In this regard It is suggested that a suitable clarification be issued in respect of registration requirements relating to construction works contracts executed by a registered person outside the State. It appears that mere installation works attracts registration requirement.
59.	<b>Verification of application and approval of registration</b>	If there is a validation error, the reason for the error is not provided through an email sent to the authorised signatory, and appears much later on the portal.

		In this regard, It is suggested that the reason for validation error be communicated to the applicant through email, sms, etc. so that he can take immediate corrective action by providing the correct particulars.
60.	<b>Option of having multiple Trade Names with single GSTIN</b>	It is suggested that the option of having multiple trade names against one GSTIN be provided to all registered persons, regardless of the constitution of business, to facilitate ease of doing business.
61.	<b>Effective date of cancellation of registration with regard to migrated tax payers from earlier regime</b>	It is suggested that an appropriate notification be issued stating that if cancellation application has been filed by an automatically migrated person within the specified time limit it will be effective from the appointed date to give relaxation to such assesses.
62.	<b>Mismatch in GST Registration Number</b>	It is suggested that system glitches be looked into and resolved so that the genuine assesseees are not penalised for system defaults. Where multiple GSTINs have been issued against a single PAN (may be due to migration from various registrations, or any other reason), within the same State, a communication can be sent to the respective persons to intimate them regarding the multiple registrations within the same State. Accordingly, where a person has wrongly been allotted more than one GSTIN in a State, he may be permitted to apply for cancellation of such registration as per his choice.
63.	<b>Proof of Business Premises</b>	It is suggested that the sale deed/ Index 2 in name of owner be accepted as a valid proof of business premises in the application for registration.
64.	<b>Size of Documents to be uploaded while undertaking registration</b>	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 in the GST online portal.
65.	<b>Selection of Commissionerate code under State &amp; central while applying registration</b>	It is suggested that system selects the appropriate Commissionerate code on the basis of the area PIN code entered by applicant, at both Centre and

		State jurisdictions.
66.	<b>Compulsory registration under GST</b>	<p>It is suggested to split Section 24 of the CGST Act, 2017 into two sub-sections, in the following manner</p> <p>“24(1) Subject to section 22 and 23, the following categories of persons shall be required to be registered under this Act,</p> <ul style="list-style-type: none"> <li>(i) persons who are required to pay tax under reverse charge;</li> <li>(ii) persons supplying services, through ecommerce operator other than supplies specified under sub-section (5) of section 9, through electronic commerce operator</li> </ul> <p>24(2) notwithstanding anything contained in Section 22(1). the following categories of persons shall be required to be registered under this Act,</p> <ul style="list-style-type: none"> <li>(i) persons making any inter-State taxable supply;</li> <li>(ii) casual taxable persons making taxable supply;</li> <li>(iii) person who are required to pay tax under sub-section (5) of section 9;</li> <li>(iv) non-resident taxable persons making taxable supply;</li> <li>(v) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;</li> <li>(vi) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise; Input Service Distributor, whether or not separately registered under this Act;</li> <li>(vii) every electronic commerce operator;</li> <li>(viii) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and</li> <li>(ix) Such other person or class of persons as may be notified by the Government on the recommendations of the Council.” </li></ul>
<b>TAX INVOICE</b>		

67.	<b>Receipt Voucher in case of receipt of Advances against supply of goods or services in same month</b>	<p>The GST Law requires a registered person to issue a receipt voucher each time an advance is received. This requirement for issuance of receipt voucher in such cases will unnecessarily increase clerical activity. Therefore,</p> <ul style="list-style-type: none"> <li>• It is suggested that the raising of Receipt Voucher with respect to advance received be made mandatory only for cases where the advances are to be adjusted against supplies to be made in a month subsequent to the month in which the advances are received.</li> <li>• A consolidated receipt voucher can be issued on a monthly basis to every recipient from whom advances are received. This is suggested to avoid complexity in documentation and ease the pressure on the IT system since the above does not involve any revenue implications.</li> </ul>
68.	<b>Raising of Invoice and Determination of value in case of Barter transactions</b>	<p>In this regard, It is suggested that a specific rule be inserted to prescribe for manner of raising tax Invoice Clarification is sought as to whether different values can be adopted by the supplier and receiver, respectively for the purpose of payment of tax on same transaction.</p>
69.	<b>Withdrawal of HSN disclosure in Invoice</b>	<p>It is suggested that till an appropriate and error free system is in place, GSTIN and general product details with some identification marks to correlate with an invoice or delivery challan is sufficient for invoicing. Place of supply, HSN and other mandatory fields be implemented when GST system is all set to run smoothly.</p>
<b>ACCOUNTS &amp; RECORDS</b>		
70.	<b>Definition of Books of Accounts for the purpose of GST</b>	<p>The meaning of ‘books of account’ is not provided by law and therefore, many taxable persons are not in a position to understand that what the records are that is required to be maintained. Each person would derive their own understanding of the term ‘books of account’. Therefore, It is suggested that the phrase “Books</p>

		of Account” defined for the purpose of GST Laws. Further, the reference to ‘books of account’ has also been made in the provisions pertaining to time of supply. Therefore, a clear meaning to be established by law would support the correct interpretation and guide taxable persons in maintaining the minimum records.
<b>RETURNS</b>		
71.	<b>Simple Annual Audit Formats</b>	It is suggested that a comprehensive annual return formats in Form GSTR-9 be thoroughly thought out, checked, beta-tested, use case tested and thereafter be put in place by the end of June 2018. It is also suggested that, comprehensive annual return formats be designed for entities with aggregate turnover exceeding Rs. 50 Crores and simpler formats for those with aggregate turnover less than Rs. 50 crores be evolved and notified well in time.
72.	<b>Online GST Portal- password for login</b>	It is suggested that the copy-paste options be enabled in passwords, and the requirement to change password beyond a specified time be done away with.
73.	<b>Pure agent reimbursement would have to be reported as non-taxable supply which may lead to excess reversal</b>	Since service provided as pure agent is not outward taxable supply so it is required to mention in column (c) of GSTR 3B i.e. value of nil rated or exempted supplies which leads to excess reversal of proportionate credit on service provided as pure agent Therefore, It is suggested that a suitable column in the return be inserted to reflect services provided as “pure agent” so that while calculating the proportionate ineligible credit, services provided as pure agent will not be considered as non-taxable supply.
74.	<b>Payment provision be made available in Form GSTR 1</b>	It is suggested that a payment option be provided in Form GSTR 1 so that any liability which is inadvertently left out in Form GSTR 3B is allowed to be recorded and gets paid at the time of filing GSTR 1.

75.	<b>Actual date of Return filing missing</b>	It is suggested that the actual date of return filing must appear in the record of the assessee on the GST portal, along with the record of filings made by the assessee.
76.	<b>First Return cannot be filed if registration is granted in next month</b>	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 27 <sup>th</sup> July 2017 and has been granted registration on 2 <sup>nd</sup> 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. Therefore, It is suggested that there be made available a facility to enable filing of GST returns for the month(s) preceding the month in which registration is granted, if registration has been applied for within prescribed time limit.
77.	<b>Non-availability of filing of GST Return without payment of Tax</b>	It is suggested to permit filing of return without payment of tax before the 20th of the succeeding month and enable tax payments till last date i.e. 20th, which will be credited automatically in the ledger.
78.	<b>Aggregate turnover figure entered wrongly in return</b>	It is suggested that a facility be provided to the assessee to correct the amount of aggregate turnover which has been furnished wrongly by the assessee.
<b>PAYMENTS</b>		
79.	<b>Interest on Reversal of Capital goods</b>	It is suggested that in case of reversal of input tax credit on capital goods, the words “along with applicable interest” in Rule 43(h) of the CGST Rules, 2017 be omitted.
80.	<b>Implementation of Single Electronic Cash ledger</b>	It is suggested that as regards cash ledger there should be only one cash ledger and as the money in the cash ledger is still not (yet) revenue of the Government, whereas it can remain with the

		<p>Union. Let cash ledger act as an e-wallet but, not as a dedicated column for the payment type. Adjustment of late fee, interest, penalty, etc be made possible in cash ledger with any head. Accordingly, suitable changes to be made in FORM GST PMT-06</p>
81.	<p><b>No interest recovery on the credit reversal on date of completion of building or Occupation Certificate or Possession Certificate</b></p>	<p>There may be cases of reversal of input tax credit at a later date, and such reversals may occur after the financial year as well (e.g., reversal due to grant of occupancy certificate for buildings) which would render supplies as activities not to be treated as supplies. In such cases, demanding the interest recovery on the GST amount would be inequitable.</p> <p>Therefore, it is suggested that given proviso be inserted in the section 50 of the CGST Act: - "Provided that interest payable would be computed from the date on which the credits become ineligible".</p>
82.	<p><b>High rate of interest in case of default in payment or wrong availment of credit</b></p>	<p>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 high.</p> <p>Therefore, In the implementation phase of GST, the notified interest rate should be equivalent to present bank rate and in any event not exceeding 9% per annum, as tax payers would lack awareness, given that GST is a new law, and taxpayers may have made some inadvertent errors / mistakes.</p> <p>Even post first year, the notified interest rate should not exceed 12% per annum.</p>
83.	<p><b>Payment of refundable amount to applicant</b></p>	<p>It is suggested that all the input tax credits be seamlessly covered under the provisions of Section 54(6).</p>
84.	<p><b>Execution of LUT / bond for export</b></p>	<p>Execution of LUT for export of services is not practical and it does not serve any purpose. Therefore, It is suggested that execution of LUT be done away with export of services and</p>

		also for third country trading cases
<b>REFUNDS</b>		
85.	<b>Taxes paid incorrectly under wrong head due to error in determination of place of supply</b>	It is suggested that the taxes paid under incorrect head due to mistake in determining place of supply be allowed to be adjusted through a journal entry in the GST portal since claiming of refund is a cumbersome process and it also leads to blockage of working capital.
86.	<b>Refund in case of inverted duty structure</b>	<p><i>It is suggested that:</i></p> <ul style="list-style-type: none"> <li>• <i>the word 'inputs' be replaced with the phrase 'inputs and input services'</i></li> <li>• <i>Also, the word 'Output Supply' be replaced with the word 'Outward Supply'.</i></li> </ul> <p><i>A mechanism for computation of the refund due on account of an inverted duty structure, given that the rate of tax applicable to various components of the inward supplies used for effecting outward supplies taxable at a lower rate, may vary from one category of goods / services to another.</i></p>
87.	<b>Deemed exports</b>	It is suggested that Notification Number 49/2019-Central Tax to be made 'subject to' section 16 and 17 of CGST Act. There is no section granting entitlement to refund in case of deemed exports. Merely including it in the definition of refund in section 54 does not become a substantive provision for entitlement to refund in these cases.
88.	<b>Non-availability of refund to exporters due to technical glitches</b>	Although there are several circulars issued for speeding up of the refund process the ground reality is that trade and industry have not been in a position to obtain refunds. Therefore, It is suggested that some kind of accountability on the part of Officers be introduced to alleviate the difficulties faced by trade and industry.
89.	<b>Refund of unutilised ITC for deemed exports</b>	There is no specific section under GST Laws which grants the right to claim refund of unutilised input tax credit in case of deemed exports, although as per Explanation to Section 54 of the CGST Act, 2017, "Refund" includes refund

		<p>of tax on supply of goods regarded as deemed exports.</p> <p>Therefore, It is suggested that a third clause be added to the proviso to Section 54 (3) of the CGST Act, 2017 which reads as follows</p> <p style="text-align: center;">(iii) “supplies notified under Section 147 as deemed exports”</p> <p>Insertion of the above clause would give a better clarity in terms of refund claim on deemed exports.</p>
<b>ASSESSMENT AND AUDIT</b>		
<b>90.</b>	<b>Provisional Assessment – Security or Surety to be furnished with the Bond</b>	It is suggested that requirement of executing surety in the form of bank guarantee or security with prescribed bond be done away with.
<b>91.</b>	<b>Adjustment of additional tax paid – Section 60(3)</b>	It is suggested that the provisions of Section 60 (for provisional assessment) be amended to provide for utilisation of credits to discharge additional tax liability, and availment of additional credits in the hands of the recipient, upon finalisation of provisional assessment, and such provisions should have an overriding effect on the provisions of Section 16(4), Section 37, 38 and 39(9) of the CGST Act, 2017.
<b>DEMANDS AND RECOVERY</b>		
<b>92.</b>	<b>Time limit for issuance of order for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized not by reason of fraud or any will full misstatement or suppression of facts</b>	The time limit for issuance of order under sub-section (9) is in excess of the time limit prescribed under the erstwhile laws .Therefore, It is suggested that the time limit be reduced to 12 months in the cases covered by Section 73 (i.e., other than fraud, suppression etc. in which case it can be 3 years (as per limitation Act)).
<b>93.</b>	<b>General provision related to demand</b>	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 specific registered person's own case and accordingly, this could result in varied interpretations. Therefore, It is suggested that exclusion of time limit under Section 75(11) be qua registered person and qua State.
<b>ADVANCE RULING</b>		
94.	<b>Procedure for simplification of Advance Ruling</b>	It is suggested that Advance Ruling provisions be extended for filing of application on behalf of an association representing its members (with a unanimous vote from the members), whereby the decision rendered by the Authority would mutatis mutandis apply to all the members of association representing such issue /industry.
95.	<b>Advance ruling creating confusions in the trade and industry.</b>	Certain rulings have clearly shaken the faith one would have reposed in the Advance Ruling Authority, such rulings will also open flood gates of litigation. Therefore, It is suggested to re-think on the current mechanism as this eventuality will clearly defeat the purpose for which authority has been set-up.
<b>OFFENCES AND PENALTIES</b>		
96.	<b>Penalty provisions</b>	Until the law is made simple, transparent and easy to comprehend, clear & stable and unambiguous in all respects, it is suggested to suspend the penalty provisions under the GST Laws as it is unfair to penalise the tax payer for the reasons which are dynamic in nature. The penal provisions must be suspended at least until 31.03.2019.
97.	<b>Incorrect Classification of goods or services</b>	It is suggested that initially (say for a period of 2 years), to support taxpayers during transition process, the cases of wrong or incorrect classification of goods and/or services be treated as tax neutral, and any additional liability arising on account of incorrect classification be subject to interest alone, and not penalty, unless the incorrect classification is on account of fraud or wilful

		suppression, etc.
<b>TRANSITIONAL PROVISIONS</b>		
<b>98.</b>	<b>Transitional Claim</b>	It is suggested that the online portal for Form GST TRAN 01 be reopened for filing afresh/ allow rectification till the date of filing of annual return.
<b>99.</b>	<b>Refund claims with regard to Transitional provisions</b>	It is therefore suggested that a proviso be included in section 142(4) of the CGST Act by virtue of which the CENVAT credit may lapse only after being given an opportunity of being heard and based on the grounds of rejection given in writing.
<b>MISCELLANEOUS PROVISIONS</b>		
<b>100.</b>	<b>Eligibility of Input Tax Credit with regard to deemed supply to Job worker</b>	<p>It is suggested that the deeming provision for supply should consider the date on which the time period (1year/3year as may be applicable) prescribed by law expires as the date on which the goods are deemed to be supplied by the principal to the job worker.</p> <p>It is further suggested that the law expressly provides that the job worker would be entitled to input tax credit thereon, although the supply is made without consideration, regardless of the provisions of Section 16(2) read with Rule 37 of the CGST Rules, 2017; a similar provision should also be made to enable the principal to avail credit on receipt of goods from the job worker (or direct dispatch for supply from the premises of the job worker) where the event takes place after the expiry of the time period prescribed by law.</p> <p>Where the job worker is not a registered person, the principal must be entitled to avail the credit of taxes paid by him pursuant to the 'deemed supply', when the principal receives the goods from the job worker / directly dispatches the goods for supply from the premises of the job worker.</p>
<b>101.</b>	<b>Deletion/alteration of Anti-profiteering clause under GST</b>	<p>It is suggested that:</p> <p>(i) Some margin (may be upto 5%) depending on the value and volume of business may be allowed to the industry considering that</p>

		<p>GST has been recently implemented and therefore, frivolous issues be avoided. Further, investment made by Industries on implementation of GST in regards to changes in software &amp; other compliance cost be also considered for.</p> <p>(ii) The view of a professional be sought before taking final decision to invoke the Anti-profiteering clause i.e. before referring the matter to the Director General of safeguards for investigation.</p> <p>(iii) To ensure that only genuine complaints are being filed, a condition be imposed on the applicant that in case complain are found to be bogus, penalty would be imposed on the applicant.</p> <p>(iv) Some restriction/limit be imposed on the maximum number of complaints to be filed against a particular company.</p>
<b>IGST – LEVY &amp; COLLECTION</b>		
<b>102.</b>	<b>Levy of IGST in respect of goods ‘imported into India’</b>	<ul style="list-style-type: none"> <li>• <i>It is suggested that words “goods imported into India” in proviso to section 5(1) be replaced with “imported goods”</i></li> <li>• <i>It is suggested to withdraw circular 46/2017-Cus which states that ‘IGST is levied but deferred’ which is unauthorized in law</i></li> </ul>
<b>103.</b>	<b>Levy of Integrated Tax on goods remaining in Bonded warehouse</b>	<p>Goods that are ‘yet’ to cross the ‘customs frontiers’ of India are liable to duties under Customs Act (even if it is equal to IGST and cess). However, it is contingent on the fact whether they will really be cleared on ex-bond BE or re-exported outside India.</p> <p>Therefore, it is suggested that clause 100 of the Finance bill be omitted as integrated tax and Cess are leviable under Section 3(7) and 3(9) of Custom Tariff Act, 1975 is in the nature of ‘Customs Duty’ and without a levy section this quantification is meaningless.</p>

<b>PLACE OF SUPPLY</b>		
<b>104.</b>	<b>Location of the recipient where the address on record exists</b>	Section 12(2) of the IGST Act refers to the location of the recipient where the address on record exists (wherever they occur) which is potentially litigative and could result in multi-routing in the case of retail trade thereby depriving the appropriate State of their legitimate right to collect revenue. Therefore, It is suggested that appropriate clarification be provided for the cases in retail trade.
<b>105.</b>	<b>Place of Supply of Services</b>	In case supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break of various places should be clearly spelt out It is suggested to suitably clarify that the list of services provided in Section 12(4) be rephrased as follows: “(4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment and health service including cosmetic and plastic surgery shall be the location where the services are actually performed.”
<b>106.</b>	<b>Section 12(6): Place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park etc.-</b>	The words “or where the park or such other place is located” in Section 12(6) of the CGST Act, 2017 may turn out to be potentially litigative. The purpose is served without these words and without any ambiguity. It is suggested that the words "or where the park or such other place is located" be deleted. Also, a mechanism be provided for cases where services are provided at multiple locations under a single contract. A proviso be added as: Provided where the basis of allocation is not forthcoming, the duration in each State as a proportion to the total duration of

		the event shall be applied.
107.	<b>Place of Supply in case of Insurance of Immovable Properties-</b>	It is suggested that a mechanism for insurance of immovable properties be incorporated in the statute by way of following proviso: Provided that in the case of insurance of immovable property, where the basis of allocation is not forthcoming, the value of immovable property situated in each State as a proportion to the total value of the immovable property shall be applied.
108.	<b>Place of supply of services provided by tourism accommodation services such as hotels, cruises, campsites etc.</b>	<ul style="list-style-type: none"> <li>• It is suggested that suitable amendment in the place of supply provisions be made to achieve seamless flow of credit and avoid any harm to the tourism industry.</li> <li>• Place of supply of accommodation (B to B) service provided to <ul style="list-style-type: none"> <li>○ registered person shall be the location of recipient;</li> <li>○ Person other than a registered person shall be the location of immovable property.</li> </ul> </li> </ul>
109.	<b>Place of supply of services in case of works contractor</b>	In case of works contract being service movement of goods from one state to another state is not industry friendly, therefore appropriate amendment be made in CGST Rules. An equivalent provision similar to section 10(1)(b) be enabled in relation to services involving goods or all services to enable free flow of trade.
110.	<b>Relief from payment of IGST to representatives in India earning foreign exchange from Overseas Suppliers</b>	If this is ‘origin based tax’ rule cannot be omitted for whatever reason, it is suggested that the general definition of an “intermediary” in Section 2(13) of the IGST Act be reconsidered by excluding “an intermediaries for goods”, in order to provide a level-playing field to members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products.
111.	<b>Place of Supply in case of</b>	<ul style="list-style-type: none"> <li>• <i>It is suggested that section 12 and 13 of IGST</i></li> </ul>

	<b>supply to SEZ</b>	<p><i>Act contain an explanation that “provisions of this section shall not apply to supplies effected to SEZ developer or SEZ unit and the same shall qualify as zero-rated supply”</i></p> <ul style="list-style-type: none"> <li>• <i>Accordingly, either IGST will be charged on all supplies ‘billed to’ SEZ or zero-rated benefit allowed.</i></li> </ul>
<b>ZERO RATED SUPPLIES</b>		
112.	<b>Payment of IGST on imports</b>	<p>It is suggested that the liability to pay taxes on import of supplies, can be remitted by way of utilising the input tax credit available in the electronic credit ledger of the exporter. Paying IGST on imports by way of cash and then claiming a refund of the same would affect the ease of doing business by way of blockage of working capital.</p> <p>It is also relevant to note that similar procedure is laid down in UAE VAT laws wherein the tax payment on imports is deferred to the point of outward supply</p>
113.	<b>Levy of IGST on import of services from outside India by SEZ be withdrawn</b>	It is suggested to issue a notification/circular indicating that import of services from outside India by SEZ is not leviable to IGST
114.	<b>Export of Goods on Payment of IGST</b>	It is suggested that the tax invoice may have reference of Commercial invoice and Table 6A may also have reference of commercial invoice so that the delay in refund may be avoided and additional exercise to match data between Table 6A and Shipping Bill need not to be carried out.
<b>COMPENSATION CESS</b>		
115.	<b>Compensation Cess on Coal</b>	It is suggested that Compensation Cess be levied on Coal only at the first point when the raw coal and lignite and peat are raised and dispatched from the mine and any further moment thereon, be exempted. Further the transitional Credit be allowed for the Clean Energy Cess paid under the

		erstwhile law.
116.	<b>GST Compensation Rules to be prescribed</b>	It is suggested that appropriate GST Compensation Rules be prescribed in relation to charge of compensation cess and manner of availment of credit of Compensation Cess.
117.	<b>The permanent/ temporary transfer of intellectual property right in respect of goods/service is classified as goods or services</b>	The GST law does not provide a clear answer to whether the permanent/temporary transfer of IPR in respect of goods/ service is classified as goods or service. Therefore, It is suggested that suitable clarification be provided in this regard so that applicable provisions will be considered for the respective supply.
118.	<b>Requirement of Information System Audit in GST</b>	Software's used by business enterprises across India are tailor made therefore, this is a big challenge for the Authorities and Auditors to understand different information systems placed at different assesseees and reports generated from the same. Therefore, It is suggested that some standard functionalities that the every information system should have be drafted by GST Council and software providers should be made compulsory to get the same audited from Chartered Accountants and the report for the same should be submitted to the tax authority.
119.	<b>Requirement to pay certain amount of tax before filing an appeal</b>	It is suggested that suitable clarification be provided to allow the registered person preferring an appeal to effect payment of the amounts specified in Section 107(6) of the CGST Act, 2017, either through electronic cash ledger, or electronic credit ledger.
120.	<b>No provision for carry forward of PLA balance in Excise LAW as on 30.06.2017</b>	There may be cases where the balance in PLA has not been fully utilised by the assessee as on 30.06.2017 for which there is no provision in the GST laws for carry forward into the GST regime. Therefore, It is suggested that a remedy for such balance of PLA be provided to the assessee, under

		GST.
--	--	------

**1. Simplification of GST Law**

**Issue**

The GST law is one of the most complex piece of legislations that has been drafted in a way that it is meant only for the large taxpayers, organised sectors and tax experts due to its very complex nature. The indirect tax laws in Malaysia and UAE are much simpler when compared to the GST Laws in India.

***Suggestions***

*It is therefore suggested that the GST laws be made much simpler and less complex in a way that it could be understood even by a layman or an unorganised taxpayer without the intervention of a tax expert.*

**2. GST Compliance**

**Issue**

It appears to a layman that the GST Law in India has been drafted to identify the law evaders. The focus is so much on the procedural and legal aspects rather than to create a sense of ease of compliance. More than 200 suggestions have been made by the trade & industries and professionals to make the GST law simple and fair. While a few have been considered several issues, some of them even procedural, have not been considered.

***Suggestions***

*It is suggested that the compliance under GST law be made simple and transparent which would ease compliances, cut or control cost of compliance and create a sense of ease of doing business. For example, the input tax credit mechanism needs to be relooked and eased out – availment, apportionment, blockage, credit in special circumstances, credit for capital goods / job work which is a painful and cumbersome process of computation.*

**3. System integration and testing**

**Issue**

It appears that there is an inadequate understanding of business and therefore, end user testing performed for all the forms/modules/application implemented till date in relation to the GST compliances is an unending exercise. This leads to duplication of work and efforts and is also a time-consuming process especially for Small and Medium Enterprises (SME).

### **Suggestions**

*It is suggested that adequate “use case testing” with several examples based on business models and business processes by tax experts be conducted / done / checked for compliance related forms and thereafter they should be made available for the end user on the online portal.*

#### **4. Delay in responses from GSTN 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.

#### **Suggestion:**

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

#### **5. The duties and responsibilities and powers of the Officers at various levels be specifically put up for public comment.**

#### **Suggestion:**

- *Officers to be trained in respect of mind-set of trust and support to the industry as against tax terror, which is prevalent even today.*
- *Officers to be trained in GST as the vast majority are unable to answer basic questions. If this is not the case, the concept of a proper examination can be introduced for officers.*
- *Those who adjudicate and hear appeals to compulsorily go through a special learning and test of understanding.*

#### **6. GST implications on third country trading/manufacturing/service from India**

#### **Issue**

Indian entrepreneurs have started making global business out of India. The service and goods purchased by them in one Country and sold / delivered in another Country and all that business done from India, are treated as service import and service export when it is accounted in the Books.

Moreover, if tax authorities intent to tax these services as import which may adversely affect the global competitiveness

**Suggestions:**

- *It is suggested that suitable rules to be framed in respect of Third country trading / manufacturing /service Business Modules in the Indian Global Economy.*
- *It is also suggested that, third country trading / manufacturing /service companies need to be exempted from GST implications in respect of their global business done from India*

**7. Settlement Commission provision be restored**

**Issue**

Settlement Commission provisions which existed under the Model GST Law has been omitted.

**Suggestion**

*It is suggested that provisions relating to Settlement Commission as provided in Chapter VIII of the Model GST Law is to be reinstated as genuine/bonafide mistakes may occur in the initial phases of the GST regime due to complexity of the Law. These provisions act as an alternate dispute resolution mechanism which is essential and therefore, the settlement commission provisions need to be restored.*

**8. Strengthening of Anti-Corruption measures**

*It is suggested that appropriate policies be formulated in order to strengthen the Anti-Corruption measures by building in the accountability of revenue officers. An end-to-end compliance rating concept to be given to the officers to ensure compliance on their part.*

**9. Solution through Twitter handles**

*It appears that a solution provided through twitter and /or FAQ in many cases are contradictory in nature. These are published with a disclaimer which is creating confusion. In such situations there is no guarantee that if a solution / clarifications provided through Twitter / FAQ is followed by a taxable person he will protected from any additional liability at a later point in time. As such, the disclaimer needs to be removed or such solutions be converted to official clarifications.*

**10. Prospective effect of notification notifying increase in tax**

Section 11 (1) of the CGST Act confers powers on the Central Government to exempt, either absolutely or conditionally, goods or services or both of any specified description from whole or part of the central tax, on the recommendations of the Council.

Further Section 11(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 may lead to a situation, where the benefit of exemptions intended to be granted to the supplies envisaged under this section, with the concurrence of the GST Council, could stand denied. Under the vulnerability of introduction of changes with the Council's concurrence, by way of retrospective effect, this sub section may be detrimental to the interest of the assesseees.

**Suggestion:**

*It is suggested that a proviso be added to sub-section 11 (3) of the CGST Act, 2017 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 only”.*

**11. Rate of tax on sale of ‘under construction units’ or ‘incomplete units’**

Hitherto, the sale of under construction units (which is on the basis of considering it as a Works Contract) was subject to both Service tax and VAT. The Service tax law allows an abatement of 70% on the total agreement value (where such value includes land value). Thus, Service tax is applicable @ 15% on 30% of the agreement value, making the effective Service tax burden only 4.5%.

On the VAT side, some of the States typically provide two ways of taxation in case of real estate construction contracts. Either the land value is included in the total taxable value which is then taxed at a very low rate or VAT is levied on the value after providing for standard deduction towards the value of land and labour. Effectively, on VAT side a substantial value of about 50% to 60% is reduced from the agreement value towards the land value. As against this, in Maharashtra the general Works Contract rate of VAT is around 5% which is brought down to 1% due to land value being included in the agreement value.

Thus, the net Service tax and VAT is about 7.5% of the agreement value. Both under Service tax law and VAT law, there is no levy of Service tax and VAT for sales after completion of the project.

Under GST, general rate for Works Contract is 18%. However, for sale of under construction real estate, deduction for land value is provided @ one-third of the sale value. Therefore, on account of land value, the GST rate is reduced from 18% to 12% which effectively results in an abatement of about 33%. Compared to this, currently the abatement both under Service tax law and VAT law is 50% to 60%. This has clearly resulted in a worse of situation under GST compared to the present law by almost halving the abatement from an average 55% to 33%.

Another consequence of such an abatement is that in projects where the land value is higher than 33% of the sale value of the property, then effectively the sale of land suffers GST. Although, under the GST law, there cannot be GST on sale of land. The constitutional validity of this needs to be examined.

Under the present Service tax law and VAT, there is a saving of 7.5% for any purchaser if the purchase is after completion of the project. However, under GST such saving will be higher at 12% which means effectively during the construction period there will not be any sales as every purchaser would look to save 12% GST by purchasing after completion of the project. This will wipe out the market for under construction project which will have adverse repercussions for everyone.

Given below is an example computing the GST liability together with passing on of the Input Credit.

In any building construction, the ratio between cost of material and labour + works contract is 4:6. Considering the same given below is an estimated GST as part of Input costs.

<b>Particulars</b>	<b>Ratio</b>	<b>Applicable GST rate</b>
Cement and RMC (goods)	1.2	28%
Steel (goods)	1.2	18%
Sanitary fittings / Marble / Granite / Tiles (goods)	0.8	28%
Miscellaneous materials (goods)	0.8	18%
Cost of labour + Works Contract (services)	6.0	18%

Thus, the average GST as a percentage of constructions cost will be 22%. On one hand, the Input Credit is 20% of the construction costs, while the Output liability is 12% of the sale price. Therefore, the Output GST liability although at a lower percentage is on a

higher value while Input GST percentage is on a lower amount of cost of constructions. This would not result in any higher set off and will ultimately lead to higher GST liability as compared to the ST and VAT liability.

**Suggestion**

*It is suggested that the GST rate for sale of under construction units i.e. sale of units before completion of construction shall not to be more than 12% (6% CGST + 6% SGST) of the agreement value which will make it comparable to the present situation.*

## DEFINITIONS

**12. Proviso to the definition of ‘job work’ – Exclusion of repairs / maintenance**

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 cover any kind of treatment or process undertaken including repairs, maintenance etc. Although that does not seem to be the intention of the Government while defining “job work”.

**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.*

**13. Location of the supplier of goods**

Section 2 (70) & 2 (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”.

**Issue:**

The absence of the definition of “Location of the supplier of goods is causing great concern to the trade and industry.

**Suggestion:**

*It is suggested that “Location of the supplier of goods” be defined as “the location where goods are situated under the control of the supplier ready for supply with a proviso to cover situations in case of bill to ship to model U/s10(1)(b) of IGST Act, 2017”.*

**14. EOUs deemed to delicensed vide notification 44/2016-Cus. dt. 29.07.2016 and circular 35/2016-Customs dated 29.07.2016**

**Issue:**

After this notification, EOUs have been deemed to be delicensed as a warehouse with effect from 13.08.2016, in order facilitate ease of doing business and goods entering into EOUs without payment of customs duties are hanging without statutory support for the unpaid duty.

**Suggestion:**

*It is suggested to replace with “EOUs deemed to be bonded”. Amend 46/2016-Cus. and withdraw circular 35/2016-Cus. dt 29.07.2016 along with “deemed extension of warehousing period co-terminus with LOP”*

### LEVY AND COLLECTION OF TAX

**15. Non-levy of GST on goods listed in section 9(2)of CGST Act**

**Issue**

Currently, petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel goods are kept outside the ambit of GST Laws due to which, businesses that consume such non GST products, would face issues like cascading of taxes, non-availability of credit, maintaining separate books of accounts etc.

**Suggestions**

*In order to maintain a level playing field, it is suggested that **all goods be brought into the purview of GST at the earliest, including petroleum, alcoholic liquor, and electricity. Other laws that govern the levy of taxes / duties on such non-GST goods be repealed.***

**16. Taxability of Transferable Development rights**

Transferable Development Right (TDR) means making available certain amount of additional built up area in lieu of the land area relinquished or surrendered by the owner of the land, so that he can use the permissible extra built up area (on account of allotment of TDR) either by himself or transfer it to another person in need of the extra built up area for an agreed sum of money.

If the owner of any piece and parcel of land / property is required to surrender the same to the Government or Governmental Agency for the purposes of road widening, formation of new roads or development of parks, play grounds, civic amenities etc., as per the proposed

plan of the said Government or Governmental Agency he shall be eligible for the award of Transferable Development Rights. Such award will entitle the owner of the land in the form of a Development Rights Certificate (DRC) which he may use for himself or transfer it to any other person.

**Suggestion:**

*It is suggested that a clarification needs to be issued that TDRs are not taxable under the GST Laws since it is an immovable property right.*

**17. Levy & Collection under Reverse Charge in case of supplies other than those in course of furtherance of business**

Section 9(3) of the CGST Act 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 the CGST 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.

**Suggestion**

*It is suggested that, an explanation to Section 9(3) of CGST Act, 2017, be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 9(3) of the CGST Act.*

**CLASSIFICATION AND EXEMPTION**

**18. Disputes and demands due to Classification issues**

**Issue**

It appears that the complex nature of classification based on HSN is going to be one of the most litigated areas over the next decade. Classification disputes can be on multiple persons for same transaction which would lead to an unsettled law.

**Suggestions**

*It is suggested that timely and appropriate classification be provided to the industry on the basis of representation submitted by them or on by its own, on the basis of officers feedback / past assessments in the earlier regime etc. To cite one example the clarification issued by the CBEC in respect of printing industry is one of the most confusing and debatable issues.*

**19. Transfer of immovable property by way of lease**

A transfer of land under a long lease is essentially a ‘transfer of said property’ and is liable to State level stamp duties. However, under the GST law, it is proposed to treat even such transfers as ‘taxable supplies’.

However, if an upfront fee is paid in respect of transfers by State Government Industrial Development Corporations or Undertaking to Industrial Units (such supplies for a period exceeding 30 years) then such supplies are exempt in terms of notification no. 12/2017 dated 28<sup>th</sup> June 2017 (Central Tax-Rate).

It may be noted that under the GST laws, such upfront fee would remain taxable if the period of lease is lower than 30 years or to any person other than Industrial Units.

Further, it is to be noted that Central Government vide Circular no. 44/18/2018 dated 2nd May, 2018 has provided that merely because a transaction or a supply of tenancy rights involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from the payment of GST on tenancy premium.

**Suggestion:**

*Although a suitable clarification has been issued by the Government clarifying that such transactions will be subjected to the GST levy (Circular No.44/18/2018-CGST dated 08.05.2018). However, these transactions are related to an immovable property and subject to stamp duties. Therefore, the Government must reconsider the clarification cited supra and grant exemption to such transactions under the GST laws. Therefore, It is suggested that the exemption in Notification No. 12/2017-CT(R) dated 28.06.2017 be extended to all transfers of immovable property, irrespective of the period of lease and whether or not to an Industrial Unit.*

**20. Transfer of immovable property by way of Assignment of Lease - GST implications**

One of the means of acquisition of land is acquiring the leasehold interest of any Lessee in the land by way of an Assignment of Lease such that all the rights of the Lessee are transferred in favour of the Assignee. In law, title can be in different forms such as freehold title, leasehold title, etc.

Under the Service Tax law, transfer of title of any immovable property is a carve-out from the definition of Service and hence not liable to Service Tax. Moreover, under the Service Tax law, any service is defined to be an ‘activity’ carried out by a person for another. Therefore, Assignment of Lease is considered as transfer of title and not liable to Service Tax.

Under GST law, ‘services’ is defined to be anything other than goods. The point being that the concept of an activity in order for it to be a service is absent in the GST law. Under GST law, in Schedule III, item 5, sale of land and sale of building (in the case of building after its completion) is exempt as it is considered neither as supply of goods nor as supply of services.

**Suggestion:**

It may be suggested that the assignment of an existing lease by one Lessee to another (Assignee) would not amount to an activity that would amount to a transfer under GST Laws. Therefore, assignment of lease shall be exempt under GST on the same basis as sale of land.

**SCOPE OF SUPPLY**

**21. Movement of goods within same business not to be treated as supply**

As per section 7 of the CGST Act, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Further, Rule 28 of the CGST Rules, 2017 *inter alia* provides that value of supply of goods or services or both between distinct or related persons, other than through an agent will be determined sequentially:

- open market value of such supply
- value of supply of goods or services of like kind and quality
- value as per of rule 30 or rule 31

**Issue**

Taxability of movement of capital goods within the same business including branch transfers will cause lot of financial hardship. Capital goods like machines, cranes etc. require huge capital deployment and levy of tax when they are moved for business purposes will prove to be a huge financial burden for entities owning these and moving them from one place of business to another.

**Suggestion**

*It is suggested that the supply of capital goods (whether to own depot or to the customer) be kept outside the purview of GST, and only the leasing/ renting/transfer of right to use*

*the asset be subject to tax. Movement of capital goods for provision of services like renting/ leasing/ transfer of right to use be excluded from the scope of supply under GST regime.*

## **22. Amendment of Section 7 of the CGST Act, 2017**

Section 7 of the CGST Act, 2017 specifies the scope of ‘supply’ under GST. Schedule II of CGST Act, 2017 provides for ‘activities to be treated as supply of goods or supply of services’.

Schedule II is only for the purpose of classification of supply into supply of ‘goods’ or ‘services’. In other words, Schedule II flows from Section 7.

### **Issue:**

Without the ingredient of ‘business’, many transactions will not be taxable especially once-in-lifetime activities involving immovable property or consideration received for non-competing in business.

### **Suggestion:**

*It is suggested to amend Section 7 of CGST Act, by way of inserting a new sub-section (1A) in place of clause (d) of sub-section (1) of Section 7, as under:*

*“(1A) the activities to be treated as supply of goods or supply of services as referred to in Schedule II will be deemed to be in the course or furtherance of business”*

## **23. Supply of Information technology software**

Para 5(d) of Schedule II provides that development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software will be treated as supply of service.

### **Issue:**

Supply of information technology software

- ‘as such’ through electronic form or through physical form (CD, DVD etc.) ; or
- By way of transferring right to use of such software

be considered as supply of ‘goods’ under GST law and classifiable under chapter heading 8523 or as the case may be, and not supply of ‘services’

### **Suggestion:**

*It is suggested to amend clause (d) and clause (f) of paragraph 5 of Schedule II of the CGST Act, 2017 in the following manner*

*(b) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software excluding supply of information technology software as such*

.....

*(f) transfer of the right to use any goods other than information technology software for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.*

## **24. Actionable claims**

As per paragraph 6 of Schedule III of the CGST Act, 2017, ‘Actionable claims’ shall neither be treated as supply of services nor supply of goods.

### **Issue**

Certain claims and entitlements (in physical form or electronic form) representing real property are treated as an actionable claim, due to lack of clarity has led to tax evasions. For Eg: duty scrips etc., will not form part of actionable claim.

### **Suggestion**

*It is suggested to insert an Explanation to para 6 of Schedule III to provide that,*

*“for the purposes of paragraph 6, claims and entitlements representing real property whether presented in physical, electronic or other non-physical form will not be treated as actionable claims”*

## **COMPOSITE AND MIXED SUPPLY**

## **25. Classification as Composite Supply and Mixed Supply**

Under GST, a composite supply would mean 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. But GST law nowhere specify how to determine principal supply. A number of disputes may arise due to this.

### **Issue**

Circulars have been issued in this regard for specific transactions for eg: Circular No. 11/2017 dated 20th October, 2017, Circular No. 32/2018 dated 12th February, 2018, and Circular No.

34/2018 dated 1st March, 2018. Flyers on mixed and composite supply have also been issued. But these are found to be inadequate

### **Suggestion**

*It is suggested to clarify the manner of determination of a principal supply to avoid the disputes. It will help avoid classification disputes.*

## **COMPOSITION LEVY**

### **26. Availability of Composition Scheme uniformly to all kind of supplies**

Section 10 of the CGST Act provides that benefit of Composition Scheme would be available to a registered person, whose aggregate turnover in the preceding financial year does not exceed Rs. 1 Crore to pay, in lieu of the tax payable by him, an amount calculated, subject to certain conditions at such rate as may be prescribed, but not less than 1% in case of a manufacturer and traders and 5% in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II i.e. supply of food and / or beverage as part of service:

Provided that the Government may, by notification, increase the said limit of Rs. 1.5 Crore to such higher amount, not exceeding Rs. 2 Crore, as may be recommended by the Council.

Provided further that the registered person shall be eligible to opt u/s10 (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:

### **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 is unfair and appears harsh on such persons. Small suppliers, supplying only services are required to comply with the normal provisions of the law which could, in most cases, prove to be cumbersome for such suppliers. Further, small suppliers, effecting a negligible / few supply that not chargeable to tax (while majority of supplies are taxable) will be hit by the conditions and will find this provision an unnecessary burden on them.

**Suggestion:**

- *It is suggested that eligibility for composition scheme be made available uniformly to all suppliers whether supplying goods or services or both. The restriction on effecting interstate supplies in case of opting for composition scheme shall be removed. As GST is a destination based tax which promotes 'One Nation-One Tax', the restriction on interstate supplies seems to be opposite of the concept of GST.*
- *Alternatively, sector-specific composition schemes may be designed specifically to cater to need of different sectors. For instance, the benefit of composition scheme can be extended to service providers up to a limit of Rs. 35 Lacs including the suppliers effecting partly supply of goods and partly supply of services.*
- *It is suggested that in section 10(1) the words “under this Act” be added after the words “in lieu of tax payable by him” to define and restrict the taxes liable to be paid to CGST/ SGST paid under this Act / respective State Acts.*

## TIME & VALUE OF SUPPLY

### 27. Amendments to Notification No. 4/2018- Central Tax (Rate) dated 25.01.2018

Notification No. 4/2018-Central Tax (Rate) dated 25.01.2018 provides for special procedure with respect to payment of tax by developer/builder supplying service by way of construction against transfer of development rights by the land owner and vice versa. The said notification however, lacks clarity in various aspects and therefore shall be amended accordingly. Following are the shortcomings identified which needs to be rectified

5. The notification provides that development rights transferred only to a registered person is taxable and does not cover the supply of development rights to an unregistered person
6. The notification covers only supply of 'development rights' in land.
7. Uncertainty in ascertaining the time of supply for transfer of development rights against provision of construction service and vice versa.
8. Uncertainty in the valuation mechanism to be adopted for the transfer of development rights by the land owner.

### Suggestion

*It is suggested to make following amendments in the Notification 4/2018-Central Tax (Rate):*

- *The notification shall be suitably amended in such a way that the transfer of 'any rights' in land (not only development right) shall be made liable to tax under GST Laws. Further, the notification shall be made applicable even in case of transfer of rights in land to an 'unregistered person'.*
- *It is suggested that, the words 'taxable person' be substituted instead of 'registered person' in Section 148 of the CGST Act, 2017*  
*(In terms of Section 148 of the CGST Act, 2017, the Government may notify special procedures to be followed by certain classes of 'registered persons' with regard to payment of tax, registration etc.)*  
*After the amendment of Section 148, a corresponding amendment be made in the notification 4/2018-Central Taxes by substituting the words 'taxable person' instead of 'registered person' wherever applicable*
- *To ensure certainty, it is suggested that, the time of supply should be at the time of transfer of possession or right by the builder or developer by entering into a conveyance deed or a similar instrument with the supplier of development rights, irrespective of whether the complex was constructed or not. It is suggested that the word 'constructed' should be removed from Notification no. 4/2018-Central Tax (rate).*
- *Since there is a deferment of point of taxation in the hands of the land owner for transfer of development rights, there shall be proper valuation mechanism in order to ascertain the tax*

liability in the hands of the land owner. It is suggested that the valuation rules be amended to give effect of the same.

**28. Correction in the provisions specified with respect to time of supply of goods or services in case of continuous supply**

Section 12(2) of the CGST Rules, 2017 provides for the determination of time of supply of goods as earlier of the following dates, namely: -

- the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or
- the date on which the supplier receives the payment with respect to the supply.

Section 13(2) of the CGST Rules, 2017 provides for the determination of time of supply of services as earlier of the following dates, namely :-

- the date of issue of invoice by the supplier if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

**Issue:**

By giving a reference to Section 31(1) and Section 31(2) of the CGST Act, 2017, the applicability of Section 12 and Section 13 is restricted to normal supplies and do not cover issuance of invoice for continuous supply of goods / services which are covered under Section 31 (4) and Section 31 (5) of the CGST Act, 2017.

For example: facility allowed to issue invoices under section 31(4) are denied the application of section 12 due to the above limitation. Services supplied continuously may be invoiced periodically but time of supply is limited to the date of issue of invoice only and not the periodicity recognized in section 31(4).

**Suggestion:**

*It is suggested that reference to only Section 31 be given instead of section 31(1) in the Section 12 of the CGST Act, 2017 and Section 31(2) in Section 13 of the CGST Act, 2017.*

## 29. Rationalization of time limit in case of time of supply of goods and services under RCM

Section 12(3) of the CGST Act, 2017 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:

Whereas Section 13(3) of the CGST Act, 2017 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 for payment of tax under reverse charge mechanism 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 / provision of service 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 case of supply of goods and services under reverse charge mechanism shall be made to 90 from hitherto 30 days as prescribed in the erstwhile law*

## 30. Clarity on the nature of supply of vouchers

Section 12(4) of the CGST Act, 2017 provides that in case of supply of vouchers by a supplier, the time of supply shall be:

- (a) the date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases.

Similar provisions are provided in section 13(4) of the CGST Act, 2017.

Section 2(118) of the CGST Act, 2017 defines voucher as an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

**Issue:**

Vouchers are understood to be as actionable claim and since actionable claims are goods, the time of supply, the inclusion of provisions of ‘time of supply’ of supply of vouchers as services u/s 13(4) of the CGST Act, 2017 is creating a lot of confusion. Further, the definition of ‘voucher’ itself is ambiguous and not comprehensive.

For example:

- a) All Pre-Paid Instruments (PPIs) approved by RBI under Payments and Settlement Systems Act, 2007 are popularly referred to as ‘voucher’ such as Shopper’s Stop Gift Voucher but these PPIs fit the definition of money in section 2(75) in the phrase “..... or any other instrument recognized by RBI when used as consideration to settle as obligation.....”. Also, PPIs are of 3 types and all of them are called vouchers but section 12(4) or 13(4) should not apply, these should be covered by 12(2)(b) or 13(2)(b) as being ‘payment received’
- b) Loyalty points are also circulated as credits in a digital wallet or converted into a redeemable document and are popularly referred to as ‘voucher’. Where the issuer-and-redeemer are one and the same, these are ‘future discount entitlements’ and not vouchers. Loyalty is also rewarded by coupons – Domino’s coupon – or electronic code – Uber code – and these are only discounts but referred as vouchers.
- c) Vouchers are truly called vouchers (as defined) only if the issuer-and-redeemer are different distinct persons and an intermediary is undertaking trade or distribution of these vouchers to incentivize – Groupon.com now called nearbuy.com (<https://en.wikipedia.org/wiki/Nearbuy>) – where vouchers of any other company can be purchased for a price.

**Suggestion:**

- *It is suggested that Section 13(4) be omitted from the law.*
- *Further it is suggested that to avoid misinterpretation the following definition of term “Voucher” be provided:*

***‘voucher means***

- (c) *any instrument or entitlement received from an arrangement with one person permitting another person to accept the same in redemption against payment owed in respect of a taxable supply, or*
- (d) *any instrument or entitlement received from any Government under a law for the time being in force to redeem the same in respect of settlement of any payment owed towards any tax or duty*

*Explanation 1: voucher shall not include a system of payment recognized under the*

*Payment and Settlement Systems Act, 2007 or any other law for the time being in force.*

*Explanation 2: voucher shall not include actionable claims"*

### **31. Valuation**

The valuation Rules (Rules 27 to 35 of the CGST Rules) adopted under the GST Laws is borrowed from the erstwhile Central Excise provisions and Rules. The said valuation rules are complex and unclear. This leads to difficulty in arriving at the 'transaction value' for the purpose of Section 15 of the CGST Act, 2017.

#### ***Suggestion***

It is suggested that the valuation mechanism under GST Laws can be further simplified to facilitate better understanding of the provisions and to mitigate confusion in the minds of the taxpayers. Complicated adjustments for computing the taxable turnover under GST Laws would affect the ease of doing business by the Assessees.

### **32. Exclusion of taxes/duties etc. paid under any other law from the transaction value of supply under GST**

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:**

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), Mandi taxes 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**

*It is suggested that any taxes, duties, cesses, fee and charges levied under any other statute shall be excluded from the transaction value under GST, as such charges are in the nature of statutory levies.*

### **33. Valuation in case of sale of repossessed goods**

Rule 32(5) of the CGST Rules, 2017 provides for the manner of determination of value of taxable supply in case of trading in used goods and states that:

Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

Further, proviso to the said Rule specifically deals with a case where goods repossessed from a defaulting borrower would be disposed of by the lender for the purpose of recovery of loan or debt. As per the proviso to Rule 32(5) of the CGST Rules, the value of taxable supply in such case would be the purchase value of repossessed goods as reduced by five percentage points for every quarter or part thereof between the date of purchase and date of disposal by Banks/ NBFC, if the defaulting borrower is not registered under GST.

**Issue:**

While the proviso to Rule 32(5) of the CGST Rules makes a qualification that the defaulting borrower should be unregistered person, there is no such condition specified under Rule 32(5) of the CGST Rules. The issue that arises for consideration is that whether the option of determining the value of taxable supply as provided in Rule 32(5) of the CGST Rules is applicable to cases where the dealer disposes repossessed goods of the defaulting borrower, even when such borrower is a registered person.

**Suggestion:**

*The applicability of the said proviso for disposal of goods repossessed from registered persons has to be clarified.*

**34. Deemed deduction towards land in case of sale of apartments**

CBEC vide Notification No. 11/2017- Central Tax (Rate) specifies that the supply of services by way of Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply

**Issue**

The law does not take cognizance of the fact that the values of undivided share in land for construction of apartments are different in different localities in the cities across India.

The Government's move to provide a blanket deduction of 1/3<sup>rd</sup> of the total value of the contract / agreement with the customer irrespective of where the land / apartment complex is erroneous or not acceptable. Further, there is no clarity with respect to the manner of claiming of land deduction and related matters leading to confusion in the minds of the builders / Developers.

**Suggestion:**

*It is suggested that: -*

- d) Land deduction may be provided either at market value of the land – as per the agreement entered between the developer and customer; or based on certification by an approved valuer.*
- e) In case it is not possible to ascertain the land value as above, it is suggested that a schedule containing different rates (per sq. ft.) be prescribed for claiming of deduction towards land. Such rates shall be based on parameters such as location (urban or rural), cities or distance from cities (prime area) etc.*
- f) Further, following clarifications may be provided vide circular to be issued in case deduction towards land prevailing at 1/3<sup>rd</sup> of the total consideration:*
  - The deduction towards land cost (at 1/3<sup>rd</sup>) be allowed to be availed upfront out of the first few instalments received i.e. on FIFO basis.*
  - The components of receipts that would form part and parcel of the total consideration for applying 1/3<sup>rd</sup> towards land cost deduction must include – Car park charges, club house charges, reticulated gas supply charges, modular kitchen, preferential location charges, floor rise charges, water and power charges, DG set charges, maintenance charges etc. This is because these costs are in the nature of construction costs.*
  - In case of unsold flats as on the date of obtaining OC / PC, the manner of reversal of input tax credits attributable to such unsold flats must not be arbitrary. The reversal shall be based on area unsold as on the date of obtaining OC / PC. Such reversals must not be subject to consequential levies such as interest / penalties*

**35. Value of land deduction in case of revenue sharing model in a Joint Development Agreement**

One of the most recent and emerging concepts in a construction industry is where the Land Owner and the Developer enter into agreements to share the revenues generated from the project. Assuming that the revenue sharing arrangement is 40% to the Land Owner and 60% to the Developer.

Issue:

There is a lack of clarity regarding as who among the land owner or developer will claim land deduction.

**Suggestion**

*It is suggested that in case of a revenue sharing model in a joint development agreement, a circular be issued clarifying whether the land deduction be claimed by the developer / Builder based on revenue share (%) attributable to the land owner (as per JDA).*

### **36. Valuation of transfer of rights in land**

As per Para. 2(a) of Schedule II of the CGST Act 2017, any lease, tenancy, easement, licence to occupy land is a supply of services.

In terms of Para. 5 of schedule III of the CGST Act, 2017, sale of land is not a ‘supply’ under GST Laws.

On reading the above provisions, it is understood that the development rights or any other rights in land transferred by the land owner against consideration by way of construction services provided by the builder/ developer or otherwise, qualifies as a supply of service under GST Laws as per para. 2(a) of Schedule II of the CGST Act, 2017. The consideration received for transfer of such rights in land by the land owner includes the sale consideration for sale of land. However, sale of land is outside the purview of GST in terms of para. 5 of Schedule III of the CGST Act, 2017.

Therefore, a conflict arises between the para. 2 (a) of Schedule II and para. 5 of Schedule III. There is no proper valuation mechanism for valuation of transfer of rights in land by the land owner.

#### **Suggestion**

*It is suggested to amend Section 15 of CGST Act, 2017 to provide that the amount actually paid or payable specifically towards sale of land and sale of building referred in para. 5 of Schedule III of CGST Act, 2017 be deducted to calculate the value of supply of service as referred in para. 2 of Schedule II of CGST Act, 2017.*

*The total amount received towards absolute sale of land shall be allowed as a deduction from the consideration received for transfer of rights in land. Therefore, GST shall be levied only on consideration attributable up to the point of execution of the absolute sale deed.*

## **INPUT TAX CREDIT**

### **37. Denial of input tax credit to the taxpayer due to failure in taking registration**

*As per Section 18(1) of the CGST Act,2017, 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; Such ITC claim shall be made in Form GST ITC-01*

### **Issue**

- a) In some cases, a potential taxpayer fails to obtain registration in good faith/ due to bonafide reasons for eg., lack of understanding about the provisions under GST Laws for obtaining registration. Such taxpayers, on obtaining registration under GST Laws (irrespective of time lags), shall be levied with taxes on all the outward supplies effected by him from the date he becomes liable for registration till the date of filing the first return under the GST Laws. Denial of input tax credit to the taxpayer due to procedural lapse burdens the taxpayer and on the other hand, the Government is unjustly enriched.
- b) Section 18 of the CGST Act, 2017 enables the taxpayer to claim or avail credit only on 'inputs' lying in stock or 'inputs' contained in finished goods or semi-finished goods held in stock on the day immediately preceding the date of becoming liable to registration, provided the application for registration has been made within 30 days from the date on which he becomes liable to registration. However, the said provision does not provide for claiming input tax credit on capital goods purchased prior to obtaining registration, irrespective of whether the registration is obtained within 30 days from the date of becoming liable to registration or not.

### **Suggestions**

- c) *It is suggested that the input tax credit shall not be denied to the taxpayer who obtains the registration belatedly merely due to procedural lapses on account of bonafide reasons. Therefore, the relevant section cited infra be suitably amended.*
- d) *It is suggested that the provisions relating to availing / claiming of ITC on the date of obtaining registration under the GST law, shall be made uniformly applicable for 'inputs' and 'capital goods'. The claim of ITC on capital goods shall be restricted in proportion to the depreciation claimed over the year(s) and shall not be restricted fully.*

### **38. ITC Restriction for payment of tax as a result adjudication proceedings**

As per Section 17(5)(i) of CGST Act, 2017, input tax credit cannot be utilised in order to pay any tax as a result of demands/recovery proceedings initiated by the proper officers.

**Issue**

The taxpayers may have defaulted in the payment of taxes under a bonafide belief for reasons such as, lack of understanding/interpretation of the Law, poor industrial policies in unorganised sectors, etc.

**Suggestions**

*It is suggested that, in cases wherein 100% penalty (under Section 122 of the CGST Act, 2017) and interest is being levied by the tax authorities on the grounds that the taxes have been evaded by the taxpayer on account of fraud, suppression of facts etc. the taxes proposed to be levied as a result of adjudication proceedings shall be allowed to be remitted to the Government by way of utilising the input tax credit, if any.*

**39. ITC Restriction/Reversal**

As per Section 17 of the CGST Act, 2017 the input tax credit shall be restricted to the extent it is attributable for effecting exempt supplies. An exempt supply in terms of Section 17(3) includes supplies on which the recipient is liable to pay the tax on reverse charge basis. Such restriction/reversal of ITC shall be effected in the manner prescribed under Rule 42 of the CGST Rules, 2017 in terms of which the common credits (i.e. credit not directly attributable to taxable or exempt supplies) shall be restricted to the extent of exempt supplies.

**Issue**

Restriction of ITC under section 17(3) leads to a reduction in the common inputs of the Assessee even when the common ITC does not relate to the outward supplies liable under RCM

**Suggestions**

*In this regard, it is suggested that ITC restriction on common inputs to the extent of supplies liable to tax under reverse charge basis shall not be made applicable for the reason that, merely because the liability to pay tax is shifted from the Supplier to recipient, ITC on common inputs cannot be denied to the Supplier.*

**40. ITC Reversal on cancellation of Registration**

As per Section 29(5), Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger,

equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

**Issue**

When the registered person does not have any taxable supplies or where the aggregate turnover is below the threshold of Rs.20 lakhs, the said registered person can opt out of GST regime by way of surrendering the registration. However, the input tax credit contained in the goods held in stock as on that date, would lapse in terms of Section 29 of the CGST Act, 2017.

***Suggestions***

*It is suggested that the input tax credit shall not be forfeited immediately as it is possible that one may again become taxable under GST Laws and at times it can be quite substantial. The lapse of ITC on account of cancellation of registration shall be deferred until the business is shut down completely or until the time it can be well established that the turnover would not cross the threshold of Rs.20 Lakhs in the future.*

**41. Sale of Capital Goods**

As per Section 18(6) of the CGST Act,2017, 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 higher of the following;

- input tax credit taken or availed on the said capital goods / plant and machinery as reduced by percentage points as prescribed; or
- the tax on the transaction value of such capital goods or plant and machinery as determined under section 15 of the CGST Act, 2017

**Issue**

The taxes in respect of an inward supply of capital goods, where credit has been availed, would be paid by the recipient to the supplier, and consequently, remitted to the credit of the Government at the time of inward supply. Moreover, one must appreciate that cases where capital goods are disposed of for a value that is significantly lower than the purchase-price soon, after their receipt, upon availment of input tax credits, would be isolated transactions in respect of any business and would normally not be entered into with intent to evade or avoid taxes.

***Suggestions***

*Therefore, it is suggested to levy taxes in such instances only on the transaction value.*

#### **42. Conditions to claim ITC**

As per Section 16(2) (c) of the CGST Act, 2017 the recipient shall be entitled to claim input tax credit on his inward supplies, only if the Supplier has remitted to the Government, the taxes collected from the recipient.

#### ***Suggestions***

*It is suggested that the recipient shall not be denied the benefit of claiming ITC merely because the same was not remitted to the Government by the Supplier. The recipient has paid the taxes in good faith and the Supplier only acts as an agent of the Government for collection of taxes. The Recipient cannot be made responsible for the default committed by the Supplier as it is the duty of the Government to identify such tax evaders*

#### **43. Blocked Credit**

Section 17(5) of the CGST Act provides for certain goods and/or services for which input tax credit shall be not available.

- a) Clause (a) of Section 17(5) of the CGST Act restrict the input tax credit in case of motor vehicles and other conveyances except when they are used—
  - (i) for making further taxable supplies, transportation of passengers; or imparting training on driving, flying, navigating such vehicles or conveyances;
  - (ii) for transportation of goods;
- b) Section 17(5)(c) of the CGST Act provides that ‘works contract services’ when supplied for construction of immovable property, other than plant and machinery, is not eligible as input tax credit except where it is an input service for further supply of works contract service.

Section 17(5) (d) of the CGST Act 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, is not eligible as input tax credit, even when used in course or furtherance of business.

#### **Issue**

- a) Entities like BPO (Business Process Outsourcing) and KPO (Knowledge Process Outsourcing) incurs some mandatorily expenses on purchase of motor vehicles for which input tax credit, if not allowed, becomes a major part of cost for the entity.
- b) The definition of works contract services is limited to activities undertaken in relation to immovable property and hence, the language used in Section 17(5)(c) of the CGST Act i.e. when supplied for construction of immovable property is redundant.

Further, assume 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(5) (c) and (d) of the CGST Act, the credit of any taxes paid on construction of such immovable property would not be allowed. This is a differential treatment being meted out to the persons on account of the fact that being a tenant of a building, the person would be eligible for credit of the taxes paid on the rent to the owner of the immovable property but if the person has constructed the 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 towards infrastructure for the rendering of the services. Being an important part of the supply chain, they cannot be treated as being used for self-consumption.

It leads to cascading of taxes which is not the spirit of GST Law; one of which is to provide seamless credit.

### **Suggestion**

- a) *It is therefore suggested that Input Tax Credit be allowed in cases where incurring of such expense is mandatory in nature for an entity viz., input taxes on purchase of a motor vehicle in case of a BPO / KPO.*
- b) *It is suggested that Section 17(5) (c) which restricts input tax credit in respect of works contract services ought to be deleted / omitted in a GST regime. This is because output taxes are being remitted when such immovable properties are put to use for example – a commercial complex which is let out or leased.*

*Further, 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.*

### **44. Input Tax credit on goods confiscated or detained**

Section 17(5) (i) of the CGST Act, 2017 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, it is not appropriate to deny the credit thereon on such goods which will be supplied eventually.

**Suggestion:**

*It is suggested that the output taxes paid on detention or seizure of goods by the supplier or recipient not to be restricted in the hands of the recipient in case of detention or seizure as per Section 129/130 of CGST Act, 2017.*

**45. Eligibility of input tax credit on purchase of dumpers, tippers or other motor vehicle**

Section 17(5)(a) of CGST Act, 2017 restricts the input tax credit on certain items including motor vehicle and other conveyances except when they are used –

(i) for making the following taxable supplies namely:

- A. Further supply of such vehicles or conveyances; or
- B. Transportation of passengers; or
- C. Imparting training on driving, flying, navigating such vehicles or conveyances

(ii) for transportation of goods.

**Issue:**

Dumpers and tippers are integral to the provision of services in the nature of works contract / construction. Works, such as road making, earth work etc. are not possible without the usage and assistance of such motor vehicles. Disallowing the claim of input tax credit on such motor vehicles will result in extreme hardship to the works contractors.

**Suggestion:**

*It is suggested that the words “dumpers, tippers, bull dozers, pavers, and motor vehicles of similar nature” be excluded from the definition of motor vehicles for the purpose of GST laws and the same shall be included in the definition of plant and machinery, since the said dumpers, tippers, bull dozers, pavers and like are used in construction and not used in the transportation. Further, input tax credit on the same be allowed.*

**46. Exclusion of ‘Any other civil structure’ from the definition of ‘Plant and Machinery’**

Explanation to Section 17 of the CGST Act, 2017, for the purposes of Chapter V (Input Tax Credit) and Chapter VI (Registration) provides that the ‘Plant and Machinery’ means apparatus, equipment, and machinery fixed to earth by foundation or structural support

that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) Pipelines laid outside the factory premises.

**Issue:**

Inclusion of the term “Other civil structures” may lead to numerous disputes on the eligibility of credit on various plant and machineries as in most cases, various plant and machineries require civil works to support their operation.

**Suggestion:**

*It is therefore suggested that the words “other civil structures” be removed from the said Explanation.*

**47. Restriction of input tax credit on Rent a cab services and travel benefit extended to employees like leave travel concession**

Section 17(5) (b) of the CGST Act *inter-alia* provides that input tax credit will not be available in respect of supply of the following;

- rent-a-cab, life insurance and health insurance except where except where-
  - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
  - (B) such 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 part of a taxable composite or mixed supply;
- travel benefits extended to employees on vacation such as leave or home travel concession;

**Issue:**

- Rent-a-cab, today, has become a significant mode of transport of employees for business purposes. Placing such restrictions are arbitrary. Like other services, credit of rent a cab could also be allowed to the extent it is used in the course / furtherance of business i.e. for meeting with business partners, business travel etc. Non-availability of Input Tax Credit in respect of such specified services will lead to cascading effect of taxes under the GST regime.

**Suggestions:**

- *It is suggested that restriction of availing credit on Rent-a-cab services be dispensed with and input tax credit be allowed for rent-a-cab services if such services are used in course / furtherance of business under Sec17(4)(b) (iii).*
- *Further, it is suggested to remove restriction on availing credits on travel benefits extended to employees on vacation such as leave or home travel concession as provided in Sec17(4)(b)(iv)*

**48. Input tax credit on renting of immovable property**

Section 17 (5) (d) of the CGST Act, 2017 restricts claim of credit in respect of all goods or services or both on all contract services which are for construction of an immovable property unless, such immovable property is ‘plant and machinery’.

**Issue:**

Where a building is constructed and let on rent, it is important to understand that such building would qualify as ‘plant’ – hence the corresponding input credits used in constructing the said building be allowed. Similarly, for construction of factories, office premises etc where such premises are used in business, such structures would qualify as ‘plant’ and the corresponding credits be allowed.

**Suggestion:**

*It is suggested that a clarification may be issued clarifying whether the civil structures can be considered as "plant" so that input tax credit can be availed on it. This clarification will avoid many litigation in future.*

**49. Provisions relating to claim of Input Tax Credit and reversal of ITC in certain situations in the hands of Real Estate developers/builders**

Section 17 of the CGST Act, 2017 mandates that credit of tax on works contracts can be availed only if the output is also works contracts – specifically for developers, while the sub contract work is ‘works contracts’, the output is ‘construction services’. Keeping in line with the objective of the GST law, outward supply being ‘construction services’ will not disentitle the developer from claiming input credit.

**Suggestion**

*It is suggested that a clarification be issued by way of a circular addressing the various issues relating to claiming of ITC, restriction of ITC and reversal of ITC in the hands of the builder / developer under various circumstances. This would address the concerns of the community at large and prevent avoidable litigation at a future date.*

**50. Availability of KKC credit**

Krishi Kalyan Cess (KKC) @ 0.5% was introduced w.e.f 01.06.2016 on the value of all or any of the taxable services for the purposes of financing and promoting initiatives to improve agriculture and relating purpose thereto and its credit was allowed to be used for payment of the KKC on the service provided by a service provider.

**Issue**

The CENVAT credit of Krishi Kalyan Cess (KKC) was eligible to be utilised as credit only for the payment of KKC under the erstwhile Service Tax Laws. KKC is not prevalent under GST Regime because of which the unutilised balance of KKC as on 30.06.2017 is not available as transitional credit under GST Laws. The unutilised balance of KKC has become a cost in the hands of the Assessee.

**Suggestion**

*It is suggested that the credit of KKC be allowed to be brought forward as transitional credit under the GST regime as the Assessee had already considered the factor of availability of credit of KKC in their pricing and contracted for the provision of service accordingly. Since the due date of filing Form GST TRAN 01 has expired (i.e. on 27.12.2017), it is suggested that the portal be reopened in order to claim the unutilised KKC credit as appearing as closing balance in the Service Tax Returns for the month of June 2017.*

## **REGISTRATION**

### **51. Exemption from registration for inter-state supply of goods**

Section 24 of the CGST Act provides for compulsory registration in case of persons making inter-State taxable supply. However, the Central Government, in exercise of the power given under section 23(2) of the CGST Act, vide [Notification No. 10/2017 – Integrated Tax dated October 13,2017](#) has exempted the persons making inter-State supplies of taxable services and having an aggregate turnover not exceeding an amount of Rs. 20 lakhs in a financial year from obtaining registration.

Further, aggregate turnover limit should not exceed Rs. 10 lakhs for availing exemption from registration for the states specified in Article 279A (4) (g) of the Constitution

**Issue**

There is no exemption provided from registration for interstate supply of goods having turnover less than Rs.20 lakh while the Government vide notification no. 10/2017 (IGST) dated 13.10.2017 has notified that no registration is required in respect of inter-State supply of services in respect of persons whose aggregate turnovers is below the threshold limit of Rs.20 Lakhs.

### **Suggestion**

*It is suggested that a similar notification be issued under the IGST Act, 2017 stating that no registration is required even in respect of inter-State supply of goods in respect of persons whose aggregate turnovers do not exceed the threshold of Rs.20 Lakhs.*

### **52. Removal of mandatory registration requirements in respect of Agent**

Section 24 of the CGST Act, 2017 *inter alia* provides that persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise is required to obtain registration, compulsorily, regardless of the fact that the agent's turnover may be below the threshold limit specified in Section 22 of the CGST Act, 2017.

#### **Issue:**

In India, the trade practice of commission to middlemen is widely practiced. Although the annual commission that an agent earns is far below the turnover threshold, agents are compulsorily required to obtain registration pursuant to section 24 of CGST Act, 2017. Moreover, Schedule I of the CGST Act, 2017 requires treatment of all dispatches made by an agent to the principal, and vice versa, as supplies, although the same lacks consideration.

#### **Suggestion:**

*It is suggested that the requirement of obtaining registration in terms of Section 24 of the CGST Act, 2017 regardless of the turnover being below the threshold limit be done away with.*

*Also, one may consider introducing a concept like a 'pure agent' as is applicable in case of supply of services, in case of supply of goods as well. Under the erstwhile State Level Sales Tax Laws the concept of "accommodation sales" was a well-established concept.*

### **53. Relaxation of time-limit for 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.

Rule 10(2) of the CGST Rules, 2017 states 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 thirty days from such date.

Rule 10 (3) of the CGST Rules, 2017 states that where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration under sub-rule (1) or sub-rule (3) or sub-rule (5) of rule 9.

**Issue:**

There are numerous ground level issues faced by the assessee w.r.t. IT infrastructure glitches, plethora of notifications / circulars, corrigendum, amendments, interpretation of laws etc. on account of which the industry has been grappling with various issues including registration procedures.

**Suggestion:**

*It is suggested that in cases where the application for registration has been belatedly for bonafide reasons) made by a person, the effective date of registration be granted from the date of liability itself.*

**54. Cancellation of Registration obtained by registered person voluntarily**

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.

In some cases, persons who have obtained voluntary registration may not be able to commence business within 6 months for want of clearance of registration norms, permissions and requirements etc. from other laws. In such situations cancellation of registration may not be warranted.

**Suggestion:**

*It is suggested that clause (d) be deleted. Further, it is suggested that the facility of cancellation of registration from an earlier(ante) date be restricted as this would disrupt the entire credit chain.*

**55. Registration in case of transfer**

Section 22 (4) of the CGST Act provides that in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

**Issue:**

The said clause provides that the effective date of registration would be the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court. Although a Certificate of Incorporation will be required for the new entity, the ROC does not issue any Certificate of Incorporation specifically to give effect to the order of the High Court on amalgamation or demerger under Scheme of Arrangement.

**Suggestion:**

*It is suggested that the words “giving effect to such order of the High Court or Tribunal” be deleted since in several situations there are delays in the RoC issuing such Certificate of Incorporation.*

**56. Activation of GST registration certificate**

Rule 10 of the CGST Rules provides that where the application for grant of registration has been approved under rule 9, a certificate of registration in FORM GST REG-06

showing the principal place of business and additional place or places of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number shall be assigned.

Section 26(1) of the CGST Act provides that the grant of registration or the Unique Identity Number under the SGST Act or the UTGST Act shall be deemed to be a grant of registration or the UIN under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in section 25(10).

**Issue:**

Even after grant of deemed registration, the registered person would not be able to proceed with GST compliances such as payment of taxes, filling of returns, etc. unless the registration number is activated by the tax authorities.

**Suggestion:**

*It is suggested that the activation of the registration number be done on an immediate basis, so as to facilitate the registered persons to comply with the provisions of the law.*

**57. Insertion of overriding clause in Registration provisions**

Section 9(3) of the CGST Act 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.

In terms of Section 23(1)(a) of the CGST Act, any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act.

Section 24 of the CGST Act *inter alia* provides that a person required to pay tax under reverse charge mechanism is required to obtain compulsory registration irrespective of the threshold limit of registration and does not make any reference to Section 23 of the CGST Act, 2017.

**Issue:**

Although a person engaged exclusively in the supply of exempted goods/services is exempted from obtaining registration u/s 23 of the Act, he will be required to obtain registration u/s 24, if he procures the notified goods /services (covered under the provisions of Section 9(3) of the CGST Act), even though Section 23 gives immunity to such persons from registration.

Section 23 and Section 24 of the Act are independent section and Section 24 cannot override Section 23 of the Act (or vice-versa) and mandate registrations for such persons who are exempted from registration under Section 23 of the Act

For e.g.: - A person engaged in the supply of printed books, which is exempt from payment of tax is exempted from obtaining registration u/s 24 of the Act. If he avails sponsorship services / legal services from an advocate (notified services u/s 9(3) of the Act), in terms of Section 9(3) of the Act, he will be liable to obtain registration and pay tax despite the exemption provided u/s 23 of the Act.

**Suggestion:**

*It is suggested that Section 23 of the CGST Act, 2017 may commence with a non-obstante clause viz., "Notwithstanding anything contained in sections 22 & 24" so as to give effect to the provisions of section 22 and 24 of the CGST Act, 2017.*

*If this amendment is not carried out it appears that section 22 and section 24 will still hold the field even in situations covered under section 23 of the CGST Act, 2017*

**58. Registration of Works Contract services – Interstate Supply**

Section 22 of the Act provides that every supplier is liable to be registered under the 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 lakh.

Section 2(50) of the Act defines ‘fixed establishment’ as a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;

**Issue:**

Works Contractors, having a principal place of business in one state may undertake execution of works across India in many States. The registration provisions require the works contractor to obtain registration in each such State even though he has no place of business in those States and the administration and control of such a person lies in registered State itself. It is also possible that the person will not have a fixed establishment in each such State.

For e.g.: XYZ, a works contractor (fabricator) having principal place of business in Maharashtra undertakes execution of fabrication works in 10 States across India. In such scenario, he is expected to obtain 11 registrations (i.e. 1 In Maharashtra and 10 in the States where the projects are executed).

**Suggestion:**

*It is suggested that a suitable clarification be issued in respect of registration requirements relating to construction works contracts executed by a registered person outside the State. It appears that mere installation works attracts registration requirement.*

**59. Verification of application and approval of registration**

**Issue:**

If there is a validation error, the reason for the error is not provided through an email sent to the authorised signatory, and appears much later on the portal.

**Suggestion:**

It is suggested that the reason for validation error be communicated to the applicant through email, sms, etc. so that he can take immediate corrective action by providing the correct particulars.

**60. Option of having multiple Trade Names with single GSTIN**

Under earlier law, in case of proprietorship, an assessee was entitled to have multiple trade names while having a single registration, for running his business. However, under the GST Laws, there is no provision for having multiple trade names against single GSTIN.

**Issue:**

The GST Registration application forms do not provide for declaring various trade names under which the registered person operates.

**Suggestion:**

It is suggested that the option of having multiple trade names against one GSTIN be provided to all registered persons, regardless of the constitution of business, to facilitate ease of doing business.

**61. Effective date of cancellation of registration with regard to migrated tax payers 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 an appropriate notification be issued stating that if cancellation application has been filed by an automatically migrated person within the specified time limit it will be effective from the appointed date to give relaxation to such assesses.*

**62. Mismatch in GST Registration Number**

Rule 10 of the CGST Rules provides that where the application for grant of registration has been approved under rule 9, a certificate of registration in FORM GST REG-06 showing the principal place of business and additional place or places of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number shall be assigned.

**Issue:**

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

For example: 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 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 system glitches be looked into and resolved so that the genuine assesseees are not penalised for system defaults. Where multiple GSTINs have been issued against a single PAN (may be due to migration from various registrations, or any other reason), within the same State, a communication can be sent to the respective persons to intimate them regarding the multiple registrations within the same State. Accordingly, where a person has wrongly been allotted more than one GSTIN in a State, he may be permitted to apply for cancellation of such registration as per his choice.*

**63. Proof of Business Premises**

Assessee at the time of registration is required to submit the proof of business premises being owned by him.

**Issue:**

Many a time, the owner of a property does not update the name at the property tax office and for the purposes of the electricity bill, given that property ownership is mainly decided by its sale deed or Index 2.

**Suggestion:**

*It is suggested that the sale deed/ Index 2 in name of owner be accepted as a valid proof of business premises in the application for registration.*

**64. Size of Documents to be uploaded while undertaking registration**

At the time of registration, supporting documents are required to be attached, for which the uploaded file must be within the prescribed file-size.

**Issue:**

Several documents such as agreements, are larger than the prescribed maximum size of 1 MB, and therefore, the assessee must resort to compression of files, or deletion of certain pages. Both the options would not serve the purpose of attaching the documents, as they would not be comprehensible.

**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 in the GST online portal.*

**65. Selection of Commissionerate code under State & central while applying registration**

**Issue:**

At the time of registration, certain assesseees would not have provided the proper information about the jurisdiction code, and in a few cases, the proper officer has rejected the application for the reason that wrong Commissionerate code is entered by the applicant.

**Suggestion:**

*It is suggested that system selects the appropriate Commissionerate code on the basis of the area PIN code entered by applicant, at both Centre and State jurisdictions.*

**66. Compulsory registration under GST**

As per Section 24 of the CGST Act, 2017, threshold limit of Rs. 20 Lakhs of aggregate turnover for obtaining registration under GST Laws does not apply.

## Issue

Section 24 covers the persons who are required to pay taxes under reverse charge basis. Non-availability of threshold limit leads to loss to the taxpayers merely because the liability to pay tax is shifted from the Supplier to the recipient.

## Suggestion

*It is suggested to split Section 24 of the CGST Act, 2017 into two sub-sections, in the following manner*

*“24(1) Subject to section 22 and 23, the following categories of persons shall be required to be registered under this Act,*

- (iii) persons who are required to pay tax under reverse charge;*
- (iv) persons supplying services, through ecommerce operator other than supplies specified under sub-section (5) of section 9, through electronic commerce operator*

*24(2) notwithstanding anything contained in Section 22(1). the following categories of persons shall be required to be registered under this Act,*

- (x) persons making any inter-State taxable supply;*
- (xi) casual taxable persons making taxable supply;*
- (xii) person who are required to pay tax under sub-section (5) of section 9;*
- (xiii) non-resident taxable persons making taxable supply;*
- (xiv) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;*
- (xv) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise; Input Service Distributor, whether or not separately registered under this Act;*
- (xvi) every electronic commerce operator;*
- (xvii) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and*
- (xviii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.”*

## TAX INVOICE

### **67. Receipt Voucher in case of receipt of Advances against supply of goods or services in same month**

Section 31(3)(d) of the CGST Act, 2017, provides that a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

**Issue:**

The GST Law requires a registered person to issue a receipt voucher each time an advance is received. However, it is possible that the supply against an invoice is made in the same month in which the advance is received. This requirement for issuance of receipt voucher in such cases, will unnecessarily increase clerical activity.

**Suggestion:**

- *It is suggested that the raising of Receipt Voucher with respect to advance received be made mandatory only for cases where the advances are to be adjusted against supplies to be made in a month subsequent to the month in which the advances are received.*
- *A consolidated receipt voucher can be issued on a monthly basis to every recipient from whom advances are received. This is suggested to avoid complexity in documentation and ease the pressure on the IT system since the above does not involve any revenue implications.*

**68. Raising of Invoice and Determination of value in case of Barter transactions**

In terms of section 7 of the CGST Act, supply includes 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 the barter supply, there is a confusion regarding issue of invoice by both parties exchanging goods or services as well as in respect value of barter transactions

**Suggestion**

*It is suggested that a specific rule be inserted to prescribe for manner of raising tax Invoice Clarification is sought as to whether different values can be adopted by the supplier and receiver, respectively for the purpose of payment of tax on same transaction.*

**69. Withdrawal of HSN disclosure in 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 and error free system is in place, GSTIN and general product details with some identification marks to correlate with an invoice or delivery challan is sufficient for invoicing. Place of supply, HSN and other mandatory fields be implemented when GST system is all set to run smoothly.*

## ACCOUNTS & RECORDS

### **70. 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

#### **Issue:**

The meaning of 'books of account' is not provided by law and therefore, many taxable persons are not in a position to understand that what is the records that is required to be maintained. Each person would derive their own understanding of the term 'books of account'.

#### **Suggestion**

*It is suggested that the phrase "Books of Account" defined for the purpose of GST Laws. Further, the reference to 'books of account' has also been made in the provisions pertaining to time of supply. Therefore, a clear meaning to be established by law would support the correct interpretation and guide taxable persons in maintaining the minimum records.*

## RETURNS

### **71. Simple Annual Audit Formats**

Section 35(5) of the CGST Act, requires every registered person to get its accounts audited by a Chartered Accountant or Cost Accountant and its submission along with reconciliation as mentioned under section 44(2). However, the format for the audited accounts and audit report is yet to be prescribed.

#### **Suggestion**

*It is suggested that a comprehensive annual return formats in Form GSTR-9 be thoroughly thought out, checked, beta-tested, use case tested and thereafter be put in place by the end of June 2018. It is also suggested that, comprehensive annual return formats be designed for entities with aggregate turnover exceeding Rs. 50 Crores and simpler formats for those with aggregate turnover less than Rs. 50 crores be evolved and notified well in time.*

### **72. Online GST Portal- password for login**

The copy-paste option has been disabled for passwords required for logging-in into the GST Common Portal. The portal also mandates a change of the password beyond a specified period. This requirement only increases the compliance burden.

**Suggestion:**

*It is suggested that the copy-paste options be enabled in passwords, and the requirement to change password beyond a specified time be done away with.*

**73. Pure agent reimbursement would have to be reported as non-taxable supply which 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 a suitable column in the return be inserted to reflect services provided as “pure agent” so that while calculating the proportionate ineligible credit, services provided as pure agent will not be considered as non-taxable supply.*

**74. Payment provision be made available in Form GSTR 1**

**Issue:**

Payment option of tax liability is only available at the time of filing GSTR 3B. Although there is a reconciliation procedure and any discrepancy in liability found will get rectified by making payment in GSTR 3. However no dates has been specified yet for filing GSTR 2 & 3 leading to delay in payment of tax and increasing the interest amount.

**Suggestion:**

*It is suggested that a payment option be provided in Form GSTR 1 so that any liability which is inadvertently left out in Form GSTR 3B is allowed to be recorded and gets paid at the time of filing GSTR 1.*

**75. Actual date of Return filing missing**

**Issue:**

The filing date is not displayed / does not appear in the portal, and if the officers are in need of such details for which they would have to follow up with the assessee.

**Suggestion:**

*It is suggested that the actual date of return filing must appear in the record of the assessee on the GST portal, along with the record of filings made by the assessee.*

**76. 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 27<sup>th</sup> July 2017 and has been granted registration on 2<sup>nd</sup> 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 returns for the month(s) preceding the month in which registration is granted, if registration has been applied for within prescribed time limit.*

**77. Non-availability of filing of GST Return without payment of Tax**

Taxpayers like 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 permit filing of return without payment of tax before the 20th of the succeeding month and enable tax payments till last date i.e. 20th, which will be credited automatically in the ledger.*

**78. Aggregate turnover figure entered wrongly in return**

**Issue:**

There could be instances where the assessee has inadvertently entered a wrong amount of aggregate turnover while filing a return. The GST portal does not allow for rectification / revision of the same.

**Suggestion:**

*It is suggested that a facility be provided to the assessee to correct the amount of aggregate turnover which has been furnished wrongly by the assessee.*

## PAYMENTS

**79. Interest on Reversal of Capital goods**

Rule 43(h) of the CGST Rules, 2017 provides that the amount of input tax credit along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

**Issue**

Assesses are practically facing a problem while first claiming input tax credit on Capital goods being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies and after then paying interest on the proportionate amount of reversal.

**Suggestion**

*It is suggested that in case of reversal of input tax credit on capital goods, the words “along with applicable interest” be omitted.*

#### **80. Implementation of Single Electronic Cash ledger**

##### **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.

There are a number of instances where flexibly to appropriate amounts deposited in cash ledger is necessary for ease of doing business because the exact tax liability may not be known at the time of making cash deposit. Also, this is similar to request for TDS-TCS to remain in this common can ledger so that Deductor-Collector does not get to decide the nature of supply.

##### **Suggestion**

*It is suggested that as regards cash ledger there should be only one cash ledger and as the money in the cash ledger is still not (yet) revenue of the Government, whereas it can remain with the Union. Let cash ledger act as an e-wallet but, not as a dedicated column for the payment type. Adjustment of late fee, interest, penalty, etc be made possible in cash ledger with any head. Accordingly, suitable changes to be made in FORM GST PMT-06*

#### **81. No interest recovery on the credit reversal on date of completion of building or Occupation Certificate or Possession Certificate**

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 cases of reversal of input tax credit at a later date, and such reversals may occur after the financial year as well (e.g., reversal due to grant of occupancy certificate for buildings) which would render supplies as activities not to be treated as supplies. In such cases, demanding the interest recovery on the GST amount would be inequitable.

### **Suggestion**

*It is suggested that a proviso is inserted in the section as under: -*

*"Provided that interest payable would be computed from the date on which the credits become ineligible".*

### **82. High rate of interest in case of default in payment or wrong availment of credit**

In terms of 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

<b>Serial Number</b>	<b>Section</b>	<b>Rate of interest (in per cent)</b>
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 high.

### **Suggestion**

*In the implementation phase of GST, the notified interest rate should be equivalent to present bank rate and in any event not exceeding 9% per annum, as tax payers would lack awareness, given that GST is a new law, and taxpayers may have made some inadvertent errors / mistakes.*

*Even post first year, the notified interest rate should not exceed 12% per annum.*

### **83. Payment of refundable amount to applicant**

Section 54(8) of the CGST Act, 2017 provides that the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

- (a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs

- or input services used in making such zero-rated supplies;
- (b) refund of unutilised input tax credit under sub-section (3);
  - (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
  - (d) refund of tax in pursuance of section 77;
  - (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
  - (f) the tax or interest borne by such other class of applicants as the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

**Suggestion:**

*It is suggested that all the input tax credits be seamlessly covered under the provisions of Section 54(6).*

**84. Execution of LUT / bond for export**

In terms of Rule 96 A of the CGST Rules, any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under section 50 (1) within a period of 15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

**Issue**

Execution of LUT for export of services is not practical and it does not serve any purpose

**Suggestion:**

It is suggested that execution of LUT be done away with export of services and also for third country trading cases.

**REFUNDS**

### **85. Taxes paid incorrectly under wrong head due to error in determination of place of supply**

In situations where an assessee has paid Central and State / Union territory tax on a transaction considered by him to be an intra-State supply but which is subsequently held to be an inter-State supply, he is required to make a fresh payment of integrated taxes and the tax wrongly paid will be refunded.

#### **Issue:**

The given section provides for refund of the tax paid earlier on account of incorrect place of supply; however, the assessee is forced to pay the correct nature of tax again (i.e. integrated taxes instead of Central and State / Union territory tax) i.e. he will have to end up remitting double the amount of actual tax that is liable to be paid until the refund is processed and paid to him. This double payment of tax amount by the assessee will lead to severe financial hardships to the assessee depending on the gravity of the error and blockage of working capital funds.

#### **Suggestion:**

*It is suggested that the taxes paid under incorrect head due to mistake in determining place of supply be allowed to be adjusted through a journal entry in the GST portal since claiming of refund is a cumbersome process and it also leads to blockage of working capital.*

### **86. Refund in case of inverted duty structure**

Sec 54(3) (ii) of the CGST Act, 2017 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:**

Any registered person, (especially manufacturers or service providers) may have accumulated credit balances for the reason that they are availing input services which attract at higher rate of GST (say, 18% or 28%) whereas the final product or output service / goods attract GST rate of 5% or 12%. However, the authorities may deny refund on the grounds that the provisions of the law merely allow refund benefits in respect of inputs subjected to higher rate of GST and not in case where the input services attract a higher rate of GST. If a strict interpretation is taken that refund would be allowed only if the GST rate on “inputs” is higher without considering the rate of input services, 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'.*

*A mechanism for computation of the refund due on account of an inverted duty structure, given that the rate of tax applicable to various components of the inward supplies used for effecting outward supplies taxable at a lower rate, may vary from one category of goods / services to another.*

**87. Deemed exports**

Rule 89 of the CGST Rules inter alia provides that any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 which shall be accompanied by various documentary evidences in Annexure 1. One such document in terms Rule 89(1) (g) is

“a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports”

Further, the Central Government vide Notification No. 49/2017-Central Tax dated October 18, 2017 notifies the following, as evidences which are required to be produced by the supplier of deemed export supplies for claiming refund, namely:-

- (1) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
- (2) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
- (3) An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

**Issue:**

There is no 'end use' test in case of Deemed exports in terms of Notification Number 49/2019-Central Tax

Non-creditable supplies and ineligible supplies can also be claimed as 'deemed exports' due to the benefit under Notification Number 49/2019-Central Tax read with Rule 89 ; which appears to bye-pass the tests in section 16 and 17 of the CGST Act.

This implies that credit that would be available now becomes refundable and this appears to be unfair to non-EOUs and other supplies

### **Suggestion**

*It is suggested that Notification Number 49/2019-Central Tax to be made 'subject to' section 16 and 17 of CGST Act. There is no section granting entitlement to refund in case of deemed exports. Merely including it in the definition of refund in section 54 does not become a substantive provision for entitlement to refund in these cases*

### **88. Non-availability of refund to exporters due to technical glitches**

*Although there are several circulars issued for speeding up of the refund process the ground reality is that trade and industry have not been in a position to obtain refunds. It is suggested that some kind of accountability on the part of Officers be introduced to alleviate the difficulties faced by trade and industry.*

### **89. Refund of unutilised ITC for deemed exports**

Section 54(3) of the CGST Act provides that subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;
- (ii) 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:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

### **Issue**

There is no specific section under GST Laws which grants the right to claim refund of unutilised input tax credit in case of deemed exports, although as per Explanation to

Section 54 of the CGST Act, 2017, “Refund” includes refund of tax on supply of goods regarded as deemed exports.

**Suggestion**

*It is suggested that a third clause be added to the proviso to Section 54 (3) of the CGST Act, 2017 which reads as follows*

*(iii) “supplies notified under Section 147 as deemed exports”*

***Insertion of the above clause would give a better clarity in terms of refund claim on deemed exports.***

## **ASSESSMENT AND AUDIT**

### **90. 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 the registered person is required to give an indemnity bond, there should be no further requirement of a bank guarantee equivalent to 25% of the amount covered under bond. Obtaining bank guarantee would mean that the registered person has to block funds to get bank guarantee (i.e. by opening an account for a Fixed deposit with the bank to obtain bank guarantee). In addition to that, the Bank will charge

commission on the same to the tune of 1% to 2% which can be a huge cost and a wasteful expenditure for the registered person. In addition to this, GST will be levied on the bank commission which would further increase the cash outflow.

**Suggestion:**

*It is suggested that requirement of executing surety in the form of bank guarantee or security with prescribed bond be done away with.*

**91. Adjustment of additional tax paid – Section 60(3)**

In the provisions pertaining to provisional assessment, the law does not clearly state as to the manner in which any additional tax is payable upon receipt of final order shall be adjusted by the registered person (i.e., whether by way of reduction in the input tax credit / increase in output tax liability).

In terms of the proviso to Section 39(9) of the CGST Act, 2017: Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

Even if we assume that the decision shall be delivered by proper officer within a period of one year then the period of September of the following year would have lapsed, where the application for provisional assessment is filed at the end of the financial year. In such a case, the registered person would not be entitled to utilise the input tax credit to discharge additional liability, nor would a registered recipient be entitled to avail in put tax credit on the additional liability arising on account of the order finalising the provisional assessment, by virtue of the aforesaid proviso to Section 39(9) and the provisions of Section 16(4) of the CGST Act, 2017.

**Suggestion:**

*It is suggested that the provisions of Section 60 (for provisional assessment) be amended to provide for utilisation of credits to discharge additional tax liability, and availment of additional credits in the hands of the recipient, upon finalisation of provisional assessment, and such provisions should have an overriding effect on the provisions of Section 16(4), Section 37, 38 and 39(9) of the CGST Act, 2017.*

## DEMANDS AND RECOVERY

**92. Time limit for issuance of order for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized not 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. All the transactions are reported online and the 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 suggested that the time limit be reduced to 12 months in the cases covered by Section 73 (i.e., other than fraud, suppression etc. in which case it can be 3 years (as per limitation Act)).*

### **93. 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 specific registered person's own case and accordingly, this could result in varied interpretations. 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 – otherwise, it could result in

situations where some States may have already completed assessment on a particular matter and the same would be re-opened based on the decision of dispute pertaining to some other State.

**Suggestion:**

*It is suggested that exclusion of time limit under Section 75(11) be qua registered person and qua State.*

## **ADVANCE RULING**

### **94. Procedure for simplification of Advance Ruling**

**Issue**

Present provisions of Sections 96 & 97 of the CGST Act, 2017 are procedurally complicated and would be out of reach of small & medium taxpayers. Advance ruling can only be filed by the “applicant” who is the registered person / person intending to be a registered person but not an association representing the industry, or in the capacity as a member of such association / industry.

**Suggestions:**

- *It is suggested that Advance Ruling provisions be extended for filing of application on behalf of an association representing its members (with a unanimous vote from the members), whereby the decision rendered by the Authority would mutatis mutandis apply to all the members of association representing such issue /industry.*

### **95. Advance ruling creating confusions in the trade and industry.**

**Issue:**

Certain rulings have clearly shaken the faith one would have reposed in the Advance Ruling Authority, such rulings will also open flood gates of litigation.

**For eg:** UPS & Battery (SWITCHING AVO ELECTRO POWER LTD): Advance Ruling Authority (“AAR”) has held that supply of UPS and battery shall be regarded as a mixed supply and not a composite supply. It was held that goods can be considered as “naturally bundled” only if the supply contract is indivisible. We submit that definition of composite supply u/s 2(30) of the CGST Act, 2017 does not talk about whether the contract is divisible or not. It only says that two or more taxable supplies shall be regarded as composite supply if they are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

***Suggestion:***

It is suggested to re-think on the current mechanism as *this eventuality will clearly defeat the purpose for which authority has been set-up.*

## **OFFENCES AND PENALTIES**

### **96. Penalty provisions**

Section 122 of the CGST Act provides for penalty provisions in case of certain offences.

**Issue**

The taxpayers are still in the process of understanding the various complex provisions and taxability of various transactions under the GST Laws. By penalising every taxpayer, in certain cases for even for frivolous issues, there would be no accountability on the mischief maker as every taxpayer (genuine taxpayers and non-compliant taxpayers) are treated at par.

***Suggestions***

*Until the law is made simple, transparent and easy to comprehend, clear & stable and unambiguous in all respects, it is suggested to suspend the penalty provisions under the GST Laws as it is unfair to penalise the tax payer for the reasons which are dynamic in nature. The penal provisions must be suspended at least until 31.03.2019.*

### **97. 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 issuance 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, has classified the goods or services provided by him incorrectly, and consequently becomes liable to penalty under section 122.

For Example: Mr. A (a dealer) sells a television set to Mr. B (a dealer) and charges GST @ 18% under the HSN 8528. However, the rate of tax applicable to television is

28%, which also falls under the HSN 8528. In such a case, Mr. A would be penalized for incorrect classification and issue of incorrect invoice.

**Suggestion:**

*It is suggested that initially (say for a period of 2 years), to support taxpayers during transition process, the cases of wrong or incorrect classification of goods and/or services be treated as tax neutral, and any additional liability arising on account of incorrect classification be subject to interest alone, and not penalty, unless the incorrect classification is on account of fraud or wilful suppression, etc.*

## **TRANSITIONAL PROVISIONS**

### **98. Transitional Claim**

Form GST TRAN-01 should be filed by every person who is registered under GST regime and wants to take ITC, even if he was not registered under the pre-GST regime.

**Issue**

Many taxpayers were unable to file/submit Form GST TRAN 01 on the due date ie. 27.12.2017, due to the various technical glitches encountered on the said date. There are several cases where large industries were not even able to log-in for technical reasons. Therefore, in such situations, there is no audit trail that the system leaves behind.

**Suggestions**

*It is suggested that the online portal for Form GST TRAN 01 be reopened for filing afresh/ allow rectification till the date of filing of annual return*

### **99. Refund claims with regard to Transitional provisions**

Section 142(4) of the CGST Act provides that every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

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

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

**Issue**

The given provision denies the refund claim of any amount of CENVAT credit if it is so rejected and it does not provide for an opportunity of being heard in such cases.

**Suggestion**

*It is therefore suggested that a proviso be included in section 142(4) of the CGST Act by virtue of which the CENVAT credit may lapse only after being given an opportunity of being heard and based on the grounds of rejection given in writing.*

## **MISCELLANEOUS PROVISIONS**

### **100. Eligibility of Input Tax Credit with regard to deemed supply to Job worker**

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 of any delay in return of goods by the job worker (or direct dispatch for supply from the location of the job worker), i.e. after the period of 1 or 3 years, as the case may be, interest would be liable to be paid from the date on which the goods were sent to job worker until the date on which the time limit prescribed by law expires. Such a demand from the principal would be harsh on the principal.

The law must also provide for availment of credits upon receipt of goods / direct dispatch for supply from the premises of the job worker, where the event takes place after such a deemed supply.

**Suggestions:**

*It is suggested that the deeming provision for supply should consider the date on which the time period (1year/3year as may be applicable) prescribed by law expires as the date on which the goods are deemed to be supplied by the principal to the job worker.*

*It is further suggested that the law expressly provides that the job worker would be entitled to input tax credit thereon, although the supply is made without consideration, regardless of the provisions of Section 16(2) read with Rule 37 of the CGST Rules, 2017; a similar provision should also be made to enable the principal to avail credit*

*on receipt of goods from the job worker (or direct dispatch for supply from the premises of the job worker) where the event takes place after the expiry of the time period prescribed by law.*

*Where the job worker is not a registered person, the principal must be entitled to avail the credit of taxes paid by him pursuant to the 'deemed supply', when the principal receives the goods from the job worker / directly dispatches the goods for supply from the premises of the job worker.*

#### **101. Deletion/alteration of Anti-profiteering clause under GST**

In order to pass the benefit on account of GST implementation, the Government of India has brought anti-profiteering provisions. In the said provisions, benefits are required to be passed on following situations:

- Any reduction in rate of tax on any supply of goods or services.
- Any benefit of input tax credit passed by the supplier to recipient.
- Any reduction in price of goods by way passing the benefit of input tax credit.

National Anti-Profiteering Authority is therefore constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him - this is to ensure that the consumer is protected from arbitrary price increase in the name of GST.

#### **Issue:**

Only the benefits accruing from the implementation of GST have been factored by the Government while drafting the anti-profiteering clause. The additional costs arising from implementation of GST like additional compliance burden in each State, up gradation of software, additional manpower requirement and so on, have been ignored.

#### **Suggestion:**

*It is suggested that:*

- (v) *Some margin (may be upto 5%) depending on the value and volume of business may be allowed to the industry considering that GST has been recently implemented and therefore, frivolous issues be avoided. Further, investment made by Industries on implementation of GST in regards to changes in software & other compliance cost be also considered for.*

- (vi) *The view of a professional be sought before taking final decision to invoke the Anti-profiteering clause i.e. before referring the matter to the Director General of safeguards for investigation.*
- (vii) *To ensure that only genuine complaints are being filed, a condition be imposed on the applicant that in case complain are found to be bogus, penalty would be imposed on the applicant.*
- (viii) *Some restriction/limit be imposed on the maximum number of complaints to be filed against a particular company.*

## **IGST – LEVY & COLLECTION**

### **102. Levy of IGST in respect of goods ‘imported into India’**

#### **Issue**

Proviso to section 5(1) excludes levy of IGST under IGST Act and requires these goods to be subject to IGST levied under section 3(7) of Customs Tariff Act. But the usage of the words ‘goods imported into India’ is not the same as ‘imported goods’ as defined in Customs Act. Hence, it is important to ensure consistency in use of expressions in IGST Act and Customs Act.

#### **Suggestions:**

- *It is suggested that words “goods imported into India” in proviso to section 5(1) be replaced with “imported goods”*
- *It is suggested to withdraw circular 46/2017-Cus which states that ‘IGST is levied but deferred’ which is unauthorized in law.*

### **103. Levy of Integrated Tax on goods remaining in Bonded warehouse**

Clause 100 of the Finance Bill, 2018 has inserted sub-section (8A) and (10A) in Section 3 of Customs Tariff Act, 1975 which provides the method of valuation of goods deposited in custom bonded warehouse which are sold to any person before clearance for home consumption or exported, for the purpose of calculating the Integrated Tax and compensation cess under GST Act (to be effective from the date of enactment of the Finance Bill, 2018).

#### **Issue**

Proviso to section 5(1) of IGST Act leaves the ‘levy’ to Customs Tariff Act on ‘goods imported into India’. Goods ‘not yet’ imported into India cannot be brought back into section 5(1) of IGST Act. If this were allowed, then goods that are directly purchased from Country ‘A’ and shipped to Country ‘B’ by an Indian entity (called merchant Trading) will also be liable to IGST merely based on the location of the Supplier being within India and not the

goods supplied having link within taxable territory. If this is also to be subject to IGST, then clause 100 will transform GST into a person-based tax rather than territory-based tax that can lead to Merchanting Trade transactions being undertaken through offshore entities surely this is not the intention. Goods that are ‘yet’ to cross the ‘customs frontiers’ of India are liable to duties under Customs Act (even if it is equal to IGST and cess). However, it is contingent on the fact whether they will really be cleared on ex-bond BE or re-exported outside India.

***Suggestion:***

*It is suggested that clause 100 of the Finance bill be omitted as integrated tax and Cess are leviable under Section 3(7) and 3(9) of Custom Tariff Act, 1975 is in the nature of ‘Customs Duty’ and without a levy section this quantification is meaningless.*

## **PLACE OF SUPPLY**

### **104. Location of the recipient where the address on record exists**

Section 12(2) of the IGST Act refers to the location of the recipient where the address on record exists (wherever they occur) which is potentially litigative and could result in multi-routing in the case of retail trade thereby depriving the appropriate State of their legitimate right to collect revenue.

**Suggestion**

*It is suggested that appropriate clarification be provided for the cases in retail trade.*

### **105. Place of Supply of Services**

Section 12(4) of the IGST Act provides that the place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.

**Issue**

In case services mentioned in Section 12(4) of the IGST Act, pertaining to supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break of various places should be clearly spelt out

**Suggestion**

*It be suitably clarified that the list of services provided in Section 12(4) be rephrased as follows:*

*“(4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment **and** health service including cosmetic and plastic surgery shall be the location where the services are actually performed.”*

**106. Section 12(6): Place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park etc.-**

Section 12(6) of the IGST Act provides that the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

**Issue**

The words “or where the park or such other place is located” may turn out to be potentially litigative. The purpose is served without these words and without any ambiguity. Furthermore, if services mentioned in section 12(6) are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break of various places should be clearly spelt out

**Suggestion**

*It is suggested that the words "or where the park or such other place is located" be deleted.*

*Also, a mechanism be provided for cases where services are provided at multiple locations under a single contract.*

*A proviso be added as: **Provided** where the basis of allocation is not forthcoming, the duration in each State as a proportion to the total duration of the event shall be applied.*

**107. Place of Supply in case of Insurance of Immovable Properties-**

Section 12(13) of the IGST deals with situation where the place of insurance does not cover immovable properties. It is suggested that a mechanism for such coverage be incorporated in the statute.

**Suggestion**

*It is suggested that a mechanism for insurance of immovable properties be incorporated in the statute by way of following proviso:*

*Provided that in the case of insurance of immovable property, where the basis of allocation is not forthcoming, the value of immovable property situated in each State as a proportion to the total value of the immovable property shall be applied.*

**108. Place of supply of services provided by tourism accommodation services such as hotels, cruises, campsites etc.**

Section 12(3) of the IGST Act interalia provides that the place of supply of services

- by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or [Section 12(3)(b)]
- by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property [Section 12(3)(c)]

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

Thus, it can be inferred that place of supply of accommodation services is the location of the immovable property.

**Issue:**

Persons not having registration in the place of where the immovable property is located would lead to restriction of credit, despite the fact that the consumption of the services (such as accommodation) is by the registered person.

Thus, the taxes paid in such other State would become a cost to the business, and it discourages businesses to hold seminars, conferences and other gatherings outside the State. Consequently, while the Government of the State in which the immovable property is located would receive the revenue from such taxes, tourism and business visits to such State would gradually reduce.

**Suggestions:**

- *It is suggested that suitable amendment in the place of supply provisions be made to achieve seamless flow of credit and avoid any harm to the tourism industry.*
- *Place of supply of accommodation (B to B) service provided to*
  - *registered person shall be the location of recipient;*
  - *person other than a registered person shall be the location of immovable property.*

**109. Place of supply of services in case of works contractor**

The place of supply of services, —

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

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

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation. —Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

**Issue**

In terms of Section 12(3) of the IGST Act, the works contractor needs to register in the State where he performs the work.

In practical scenario, where most of the works contractors come with a group of people, led by one person and they go for civil works wherever they get a contract and later dissolve or a contractor himself gathers the people and take them for work. Once the contract work is completed they will dissolve, till the contractor gets new work order. Since, most of the work contractors are illiterate, they are unable to decide whether multiple registration is required or they can opt for IGST billing by taking single registration.

**Suggestion**

In case of works contract being service movement of goods from one state to another state is not industry friendly, therefore appropriate amendment be made in CGST Rules.

An equivalent provision similar to section 10(1)(b) be enabled in relation to services involving goods or all services to enable free flow of trade.

**110. Relief from payment of IGST to representatives in India earning foreign exchange from Overseas Suppliers**

Section 13(8) of the IGST Act provides that the place of supply of the following services shall be the location of the supplier of services:

- (c) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (d) intermediary services;
- (e) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

**Issue:**

The inclusion of intermediaries in above section might work against members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products in return for which they receive commission in convertible foreign exchange and no consideration is received from Indian customers. Though these activities satisfy all the remaining conditions of 'Export of Services', the same has surprisingly been proposed to be taxed under the category of 'intermediary services' for the reason that the place of supply would be the location of the supplier, i.e., in India.

Further, the proposed provision is a clear case of double/multiple taxation within India. For example, IGST would be required to be paid on the entire value of commission received by an intermediary and the same would also be an intrinsic part of the CIF value of goods imported into India, which would be again subjected to Basic Customs Duty and IGST. It is also a settled principle of taxation to not levy the same tax on the same value twice. In fact, recently, the Tribunal in the case of *United Shippers Ltd. vs. CCE, Thane –II* reported in 2015 (37) S.T.R. 1043 has held, that on the same value, a component of service tax as well as Customs duty cannot be imposed by the Government. This judgment has been upheld by the Supreme Court also vide its order reported in 2015 (39) S.T.R. J369 (SC). Also, this sub-rule is opposed to 'destination principle' of GST.

**Suggestion:**

*If this 'origin based tax' rule cannot be omitted for whatever reason, it is suggested that the general definition of an "intermediary" in Section 2(13) of the IGST Act be reconsidered by excluding "an intermediaries for goods", in order to provide a level-playing field to members engaged in assisting the overseas suppliers in the formulation*

*of commercial and technical strategies resulting into successful marketing of their products.*

### **111. Place of Supply in case of supply to SEZ**

#### **Issue**

Due to the prescriptions in section 7 and 8 of IGST Act, a DTA-supplier supplying goods and services to an SEZ is liable to charge IGST but the Place of Supply applicable to the goods/services may well be outside the zone.

Often supplies may be ‘delivered’ to zone but billed to a different entity outside the zone and vice versa. Zero-rating benefit will apply only in respect of supplies that SEZ authorities approve to be ‘authorized’. This list of authorized supplies are not static and change based on policy of SEZ. Though place of supply may be outside the zone, zero-rated benefit may be available. Hence, clarity is required.

#### **Suggestions:**

- *It is suggested that section 12 and 13 of IGST Act contain an explanation that “provisions of this section shall not apply to supplies effected to SEZ developer or SEZ unit and the same shall qualify as zero-rated supply”*
- *Accordingly, either IGST will be charged on all supplies ‘billed to’ SEZ or zero-rated benefit allowed.*

## **ZERO RATED SUPPLIES**

### **112. Payment of IGST on imports**

As per section 54(3) of the CGST Act, Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period on zero rated supplies made without payment of tax.

#### **Issue**

In case of exports (Zero rated supplies), the unutilised input tax credit attributable to the exports effected, shall be claimed as a refund as per Proviso (i) to Section 54(3) of CGST Act, 2017. In case of import of goods/services, IGST shall be paid under reverse charge by way of cash. This has a bearing on the cash flow of the business and working capital requirements.

#### **Suggestions**

*It is suggested that the liability to pay taxes on import of supplies, can be remitted by way of utilising the input tax credit available in the electronic credit ledger of the exporter. Paying IGST on imports by way of cash and then claiming a refund of the same would affect the ease of doing business by way of blockage of working capital.*

*It is also relevant to note that similar procedure is laid down in UAE VAT laws wherein the tax payment on imports is deferred to the point of outward supply*

### **113. Levy of IGST on import of services from outside India by SEZ be withdrawn**

#### **Issue**

SEZ is admitted to be ‘a territory outside India’ as per section 53 of SEZ Act. Therefore, levy of IGST on services received from outside India by an SEZ is a contradiction. And an exemption 18/2017 to resolve this contradiction is not harmonious.

#### **Suggestions:**

*It is suggested to issue a notification/circular indicating that import of services from outside India by SEZ is not leviable to IGST*

### **114. Export of Goods on Payment of IGST**

Exporters are required to raise commercial invoice for export of goods and as per GST, tax invoice is issued. There is no need for filing a separate refund claim as the shipping bill filed by the exporter is itself treated as a refund claim. The details of the relevant export invoices contained in FORM GSTR-1 (or Table 6A thereof) shall be transmitted electronically by the common portal to the system designated by the Customs.

#### **Issue**

One of the Major reason of rejection of refund application is mismatch in the Invoice data as per Table 6A and as per Shipping Bill.

#### **Suggestion**

*It is suggested that the tax invoice may have reference of Commercial invoice and Table 6A may also have reference of commercial invoice so that the delay in refund may be avoided and additional exercise to match data between Table 6A and Shipping Bill need not to be carried out.*

## **COMPENSATION CESS**

### **115. Compensation Cess on Coal**

In the GST regime, Compensation Cess on Coal is levied at every point of sale while under the erstwhile Central Excise laws, corresponding clean energy cess on coal was levied only on Raw Coal, Lignite and Peat raised and dispatch from a coal mine.

#### **Issue:**

- **Similar basis for incidence of tax under the Central Excise Laws:** The basis of incidence of the compensation cess in the GST law is same as that of clean energy cess in erstwhile Excise Law. It is prudent to understand that there was a reasoning behind levy of clean energy cess on coal only on Raw Coal, Lignite and Peat raised and dispatch from a coal mine, and providing exemption for all other type of coal at other stages.

Even for the purpose of import, the Central Excise Law provided that – ‘As imported coal would not satisfy the condition regarding payment of appropriate cess at the raw stage, clean energy cess would apply to all forms of imported coal including wash coal’. Thus, it is suggested that status quo of compensation cess taxability be made as that of clean energy cess in the erstwhile Central Excise Law

- **Revenue-neutral situation:** If the Compensation Cess on Coal is only levied at the first point when the raw coal and lignite and peat are raised and dispatch from the mine and any further moment thereon is exempted, it would be a revenue neutral for the Government situation because the Compensation Cess is levied at the rate of Rs. 400/- per tonne of coal. Once the coal is raised from the mine, that would be the maximum quantity on which Compensation Cess would be payable. After each further processing, the quantity would stand reduced proportionately. Thus, even if there is a credit chain of compensation cess, it would not bring any effect on the revenue.
- Further, in practice, the way coal is used by various industries like power industry or coal industry, it is difficult to maintain the credit chain even if they wish too. For instance, in case of purchase of coal by power companies from a mine, they may use part of the coal themselves to produce power or they may send the coal for processing or they may sell some reject coal. When they sell the reject coal they will again have to pay compensation cess on which they would wish to take input credit of such cess. But in their accounting systems, the clean energy cess component is expensed in the

books of accounts all the while and forming part of their cost, which in turn affects the price of the power.

**Suggestion:**

*It is suggested that Compensation Cess be levied on Coal only at the first point when the raw coal and lignite and peat are raised and dispatched from the mine and any further moment thereon, be exempted. Further the transitional Credit be allowed for the Clean Energy Cess paid under the erstwhile law.*

**116. GST Compensation Rules to be prescribed**

Section 12 of GST (Compensation to States) Act, 2017 empowers the Central Government to make rules in relation to Compensation Cess. Presently, these rules have not yet been notified.

**Issue:**

Inference of the applicability of the same is drawn from the cells / columns in the return formats in GSTN as to how the compensation is to be levied. Such rules are required to clarify the law related to the input credit of compensation cess particularly. Absence of Rules regarding the manner of collection and input credit in case of Compensation Cess

**Suggestion:**

*It is suggested that appropriate GST Compensation Rules be prescribed in relation to charge of compensation cess and manner of availment of credit of Compensation Cess.*

**117. The permanent/ temporary transfer of intellectual property right in respect of goods/service is classified as goods or services**

Clause (c) of Para 5 of Schedule II of CGST Act, 2017 provides that temporary transfer or permitting the use or enjoyment of any intellectual property right shall be treated as supply of service.

Notification no. 1/2017-CT (R) and 1/2017 –IT(R) dated 28<sup>th</sup> June, 2017 providing applicable rates for goods has provided the rate of tax applicable on permanent transfer of intellectual property right in respect of goods. At the same time Notification no.11/2017-CT ( R) and 8/2017 –IT ( R) dated 28<sup>th</sup> June, 2017 providing applicable rates for services Sl. No 17 providing rate of tax applicable on temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods.

Further, Notification no. 13/2017 CT (R) dated 28th June, 2017 providing services chargeable to tax under reverse charge includes Supply of services by an author, music

composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.

**Issue:**

The GST law does not provide a clear answer to whether the permanent / temporary transfer of IPR in respect of goods / services is classified as a supply of goods or a supply of services. Although the rate of tax applicable on the permanent / temporary transfer of IPR is the same, whether such transfer is classified as goods or services, the provisions for determining the time and place of supply for goods and services are different. This leads to confusion and ambiguity in interpreting the law.

**Suggestion:**

*It is suggested that suitable amendment is made to Notification 11/2017-CT(R) as amended from time to time, to omit the words “or permanent” in Sl.No.17, or that an appropriate clarification be provided in this regard to clarify whether a permanent transfer of IPR is a supply of goods or a supply of services.*

## **118. Requirement of Information System Audit in GST**

It is to be noted that, Information system are vital part of every business enterprise to automate all tax responsibilities by keeping proper track of records, payments, filing of returns and generating different records as per the requirement of GST Act.

Authorities, auditors and users rely upon the Information System without knowing how it functions. A computer error could be repeated indefinitely, causing more extensive damage than human mistake. The ratio of Assesses to GST Authorities is more than 100:1, same is in the case of ratio of assesses to GST Auditors (Chartered Accountants). So, this is a challenge for the Authorities and Auditors to understand the Information system used by taxable persons and the reports generated from the same. Normally, reliance is placed on the information provided by the taxable persons, whether it is a case of audit, or assessment. The Audit and assessment is carried out on the basis of information provided by the client.

**Issue:**

Software used by business enterprises across India are tailor-made. Therefore, this is a big challenge for the Authorities and Auditors to understand the different information systems used by different assesseees and reports generated from the same.

**Suggestion:**

*It is suggested that:*

- *some standard functionalities that every information system should have, be drafted by the GST Council; and*
- *suppliers of such software be mandated to get the same audited by Chartered Accountants, and furnish the audit report to the tax authority.*

### **119. Requirement to pay certain amount of tax before filing an appeal**

Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed under sub-section (1), unless the appellant has paid—

- (a) In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) A sum equal to ten per cent. of the remaining amount of tax

**Issue:**

Under the Excise laws & Service tax laws, if CENVAT credit was available, then the assessee can debit the CENVAT account & attach a copy of the CENVAT account with appeal papers. However, under the GST laws, there is no clarity for giving effect to such adjustments, and hence, the appellant's money may get blocked. The appellant will then face liquidity problems, and this will impact the operations of his business.

**Suggestion:**

*It is suggested that suitable clarification be provided to allow the registered person preferring an appeal to effect payment of the amounts specified in Section 107(6) of the CGST Act, 2017, either through electronic cash ledger, or electronic credit ledger.*

### **120. No provision for carry forward of PLA balance in Excise LAW as ON 30.06.2017**

Personal Ledger Account (PLA) was used to pay excise duty liability to the Government. However, there was no restriction with regard to any minimum amount, which should necessarily remain in balance to the credit of an assessee in his PLA. The requirement was that with the monthly payment system, there should be enough credit at the time of payment of duty for the month.

**Issue:**

There may be cases where the balance in PLA has not been fully utilised by the assessee as on 30.06.2017 for which there is no provision in the GST laws for carry forward into the GST regime.

**Suggestion:**

It is suggested that a remedy for such balance of PLA be provided to the assessee, under GST.

**121.** Penalty levied for Refund made erroneously

**Issue:**

In case an assessee files a refund claim and refund is being provided to him and later on It is found that refund claim is not in line with provisions of the Act or the rules than assessee get penalized for the erroneous refund

**Suggestion:**

*It is suggested that Penalty should not be levied for refund made erroneously as if the refund claim is not in line with provisions of the act then it should be rejected.*